

Parting the waters

The Supreme Court's decision on the [Cauvery dispute](#) is arguably a landmark in the history of inter-state river water dispute resolution in the country. This is the first time that the apex court has allowed a Special Leave Petition (SLP) challenging a tribunal's award, and also modified the award. At first glance, the court appears to have overstepped the provisions of Article 262 of the Constitution and the Interstate River Water Disputes Act, 1956. However, a close examination of the verdict shows that the court has clarified several vexing legal questions. The decision opens up new directions for tribunals and policymakers to approach inter-state river water disputes.

Yet, can we say that the Cauvery water dispute has been resolved? The challenges of water-sharing in distress years remain, especially because the country lacks institutional models for implementing inter-state river water awards.

The Cauvery water dispute has its roots in the historical inequities around prejudiced agreements dating back to 1892 and 1924 between the then British-ruled Madras Presidency and the princely state of Mysore. The matter was referred to the Cauvery Water Disputes Tribunal (CWDT) in 1990 on Tamil Nadu's request. The tribunal took more than 16 years before giving its final award in 2007. The dispute recurred several times after that because Tamil Nadu and Karnataka did not comply with the award.

The Supreme Court had to step in to give effect to it. Last year, when faced with the embarrassing situation of its orders being ignored, the Court took it upon itself to deal with the dissatisfaction of the two states. In December last year, the apex court justified the maintainability of SLPs — appeals under Article 136 of the Constitution — in view of Article 262 barring its jurisdiction over inter-state river water disputes.

The February 16 verdict is an outcome of the subsequent proceedings that looked into the petitions of the two states against the CWDT award. On the issue of sharing the Cauvery's waters, the Court has largely agreed with the tribunal's approach. It has not changed the total available water to be allocated: 740 thousand million cubic feet (tmcf) available at 50 per cent dependability, including 14 tmcf for environmental requirements and outflow to the Bay of Bengal. It has also not changed the allocations to Kerala and Puducherry. But it has reduced Tamil Nadu's share by 14.75 tmcf and added that to Karnataka's share. Thus, the court has reduced Karnataka's obligations to release water, from 192 tmcf to 177.25 tmcf, to Tamil Nadu at the inter-state point in Billigundlu.

How has the Court managed to conjure this up? It pulled a wild card with groundwater — a component that tribunals, including the CWDT, avoided dealing with on grounds of inadequate knowledge and capacities to engage with groundwater's transboundary apportionment. The Court has picked up on groundwater reserves in Tamil Nadu's delta areas — the availability of which was earlier recorded and accepted by the state before the tribunal. It has decided that at least 20 tmcf of this water can be distributed, and allocated 10 tmcf to Karnataka. However, this foray into groundwater apportionment, with all its ambiguities, will stir a hornet's nest. It will encourage disputing states to revisit stakes and claims before other river water tribunals.

The additional allocation of 4.75 tmcf is for Bengaluru's drinking water requirements. In making a case for this allocation, the Court has disagreed with the tribunal's reasoning that only one-third of Bengaluru falls within the Cauvery basin. It has, instead, considered the entire city's drinking water requirements. The court's prioritisation of drinking water needs, with particular reference to Bengaluru's status as a global city, stands out. Similarly, its assertion that inter-state river waters are national assets disrupts the notions of riparian rights we often cling to.

From a legal perspective, the verdict has several important and nuanced insights. The Court's decision to review the tribunal award is a huge shift from its long-held stand of restricting itself only to questions of law. The judgment provides a better sense of congruence between the scope of Article 136 and the provisions of Article 262. The apex court has asserted that the provisions of Article 262 and the Interstate River Water Disputes Act were not meant to curtail its powers. Its appellate jurisdiction under Article 136 can be invoked even after a tribunal adjudicates a river water dispute.

This is noteworthy for policymakers, especially since a process to constitute a permanent tribunal for all river water disputes in the country has begun—a bill to amend the Interstate River Water Disputes Act was introduced in the Lok Sabha last year. A useful question then is: If the Supreme Court's jurisdiction is established, is it worth going through prolonged adjudications by tribunals? Are there any alternative ways of settling river water disputes? After all, we can be certain that every inter-state river water dispute will now end up before the Supreme Court, given the political stakes states attach to such disputes.

Does this decision put a lid on the Cauvery dispute? Sadly, that does not appear to be so. Though the states appear to have accepted the reallocations for now, these are for a normal year. In a distress year, these reallocations will have to be proportionately reduced and should follow monthly releases of water as prescribed by the tribunal. The Court has directed the Centre to frame an institutional scheme for implementing its decision within six weeks. The country's history of basin-wide institutional models for inter-state coordination does not inspire confidence about the government coming up with an effective scheme at such a short notice.

Besides, the underlying premise of the judgment is that the states will comply with the Supreme Court's decisions or that of the tribunal or the institutional scheme to be put in place. But the memories of states defying the Supreme Court's directives in 2017 are not too distant. The lean rainfall years will test the endurance of the decision and the scheme that will be put in place by the Centre. With doors open for appeals, the Supreme Court could have its hands full on river dispute matters.

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