

## MULLAPERIYAR: THE WAY FORWARD

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### **ABSTRACT**

The inter-state river water dispute enacted under article 262 of constitution of India in which it is mentioned that water dispute is a dispute which would arise in the use, control and distribution of an inter-state river or river valley.

Mullaperiyar dam issue is between two south Indian states that is between Tamil Nadu and Kerala. It was 116 years ago, the dam was built on the Periyar River to restore the water. The dam totally belongs to the state of Kerala but it was given on lease to the Tamil Nadu on 29<sup>th</sup> October, 1886 for 999 years. The disputed state that is Tamil Nadu totally depends on the water of Periyar River in fulfilling its needs in agriculture and basic needs therefore they are asking to raise the water level of the dam. In this dispute Kerala is not opposing to give more water but it opposes to provide more water to Tamil Nadu because there is threat to 119 years old dam by raising the water level to higher extent. The dam is also declared as endangered construction and any further addition into the water pressure may result in collapse of the dam, which may take life of many people from the state of Kerala as well as Tamil Nadu. This is a very big issue that is still going on in the Supreme Court for which Supreme Court has appointed Justice A.S. Anand to look into the matter and to do the investigation as well as to recommend government on its judgment. The latest judgment issued by the government was that the government did not entertained the claim of government of Tamil Nadu as to raise the level of the dam to 136ft. but it also did not entertained the desire of Kerala government that is to decrease the level of the dams and maintain it at 120ft.

The scope of research paper shall be limited to brief study of inter-state water dispute in context with Mullaperiyar dam and to provide a mechanism for the settlement of inter-state water dispute. The object of research paper is to analyze condition of the people of Tamil Nadu as well as Kerala and the problems faced by them.

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## **INTRODUCTION:**

Because India is a federal democracy, and because the rivers cross state boundaries, constructing efficient and equitable mechanisms for allocating river flows has long been an important legal and constitutional issue. Numerous inter-state river water disputes have erupted since independence and one of those is Mullaperiyar Dam issue. The Mullaperiyar Dam is on the River Mullayar and its tributary, the Periyar in the state of Kerala.<sup>3</sup> It was constructed between 1887 and 1895 by the British Government to divert the water eastward to service the farmers in the Madras presidency which now a days known as Tamil Nadu. Earlier it was known as Periyar Dam as it was basically meant to be the dam of Periyar River. The present name of this dam is derived from portmanteau of Mullayar River and Periyar River so together it is called as Mullaperiyar Dam. The Mullaperiyar Dam is located 881m which means 2,890 ft above mean sea level on the Cardamom Hills of Western Ghats in Idukki District of Kerala. Its height is 53.6m (176ft) and length 365.7m (1,200ft).<sup>4</sup> There is also a National park which is known as the Periyar National Park in Thekkady located around the reservoir of dam.

The main purpose of the construction of this Mullaperiyar Dam is to provide water to the arid shadow region of Madurai which was in greater need of supply of water. That is why the Periyar River which flows westward of Kerala was diverted towards the Bay of Bengal to provide water to the people of Madras presidency. This dam is owned and operated by Tamil Nadu Public Work Department.<sup>5</sup>

## **HISTORY OF MULLAPERIYAR DAM:**

On 29 October 1886, a lease agreement for 999 yrs was made between the Maharaja Travancore, Viakham, Thirunal Rama Varma and the British Secretary of state for India for Periyar irrigation works. The lease agreement granted full right, power and liberty to the secretary of state for India to construct make and carried out all such irrigation works. The agreement gave 8000 acres of land for the reservoir and another 100 acres to construct the dam.<sup>6</sup>

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<sup>3</sup> India: Central Water Commission.2009. pp. 194-197. Retrieved 30 November 2011.

<sup>4</sup> Ibid.

<sup>5</sup>“The Mullaperiyar Conflict” India: National Institute of Advanced Studies. 2010. p. 7. Retrieved 10 August 2012.

<sup>6</sup>R. Krishnakumar (11–24 March 2006), “Verdict On Mullaperiyar” *the Hindu, Frontline*(Chennai, India), 23 – Issue 05,

After independence 1947, the Kerala government said that the earlier agreement signed between British Raj and Travancore was invalid and needed to be renewed. The agreement renewed in 1970 when C AchuthaMenon was Kerala chief minister, and accordingly Tamil Nadu government has been operating the dam and has been paying to Kerala government for the past 50 yrs.<sup>7</sup>

### **MULLAPERIYAR INTER-STATE WATER DISPUTE:**

The dispute between Kerala and Tamil Nadu states<sup>8</sup> is because of the control and safety of the dam and the validity and fairness of the lease agreement. The dispute began in 1998 when Tamil Nadu wanted to raise the height of water level and Kerala opposed to it. The dispute came to Supreme Court in 27 February, 2006 after being tried in the Madras and the Kerala High Court. The Supreme Court in February, 2006 allowed Tamil Nadu to raise the water level of the dam to 152ft (46m). In response to which Kerala government enacted irrigation and water conservation (amendment) Act, 2006 to ensure safety of all endangered dams in the state, according to which the second schedule of Mullaperiyar Dam which was constructed in 1895 as endangered and fixes its maximum water level to 136ft. and restrain from obstructing Tamil Nadu government to raise the water level. According to Kerala government, if the water level would be increased then it will add more pressure to be handled by the already leaking dam. While the Tamil Nadu government wanted the 2006 order of Supreme Court<sup>9</sup> to be implemented so as to increase the water level to 142ft.

Kerala in its suit also claimed that the Periyar River was an inter-state river. So Tamil Nadu cited a 1950 report signed by then Kerala state irrigation minister VR Krishna Iyer recording the Periyar was an inter-state river since drainage area lay in Madras.

For Tamil Nadu the Mullaperiyar dam is like a life line for the people of madras presidency for irrigation, drinking, and also for the generation of the power in lower Periyar water station and as we know the region of madras presidency is shadow and arid. So, the government of Tamil Nadu

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<sup>7</sup> <http://wikipedia.mullaperiyar-dam-controversy>.

<sup>8</sup> Roy Mathew (2 December 2011). "state is unprepared for disasters". *The Hindu* (Thiruvananthapuram, Chennai, India: Kasturi& sons ltd). Retrieved 6 November 2011.

<sup>9</sup> Mullaperiyar water level can be raised. *Deccan Herald* 28 February 2006.

insisted on raising the water level in the dam to 142ft. pointing out the failure of crops<sup>10</sup>. According to an estimate the crop losses due to the reduction of height of the dam between 1980 and 2005. Tamil Nadu has also raised an issue that the dam is given to Tamil Nadu in lease for 999 yrs. So, it has full right over the control of the dam and its water but Kerala obstructs Tamil Nadu to do so by calling the lease as invalid.

And Kerala has the issue about the fairness of the lease agreement. According to them the lease agreement which was signed in 1886 was unfair and they have challenged its validity in the Supreme Court.

Kerala's main concern is the safety of the 119yrs old dam and the people living around the reservoir. As it has been already mentioned above that there is a National Periyar Park nearby the dam reservoir which consists of animals which has been declared as endangered species. So, if the height of the dam water will be increased then it will also be a great threat for these endangered species.

Kerala proposed for decommissioning of the dam and construction of a new dam which has been challenged by the Tamil Nadu.<sup>11</sup>

### **COMMITTIES APPOINTED TO LOOK INTO THE ISSUE:**

#### **SUPERVISORY COMMITTEE-**

A three member supervisory committee was appointed by the centre and the Supreme Court in 2006 which was headed by senior Central Water Commission (CWC) officer, LAV Nathan. The commission consisted of one representative each from both the states. It was constituted to make periodic visit to inspect the dam before and after the monsoon and to supervise the safety of the dam. The committee was empowered to oversee the repair work and allowed to take the required necessary safety measures for the benefit of both the states and the dam. It was also free to issue necessary directions to the Kerala and Tamil Nadu required for the safety of 119 yrs old Mullaperiyar Dam.

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<sup>10</sup>The Mullaperiyar Imbroglio. Hard News April 2006.

<sup>11</sup> Ministry of Water Resource (2 December 2011). Mullaperiyar Dam Issue. Govt. of India. Retrieved 6 December 2011.

### ***A.S. ANAND COMMITTEE-***

A.S. Anand committee was set up by the Supreme Court in February 2010 during the course of argument on Tamil Nadu's suit questioning the law enacted by the Kerala to restrict the water level of the dam to 136ft. The committee was constituted to look into the dispute and prepare a report within six months. The committee was mandated to study all the aspects of the 119 yrs old dam including its safety.

Meanwhile the Tamil Nadu government also requested to scrap the idea of formation of new committee which the Supreme Court<sup>12</sup> refused to do.

### **JOINT INSPECTION COMMITTEE-**

The Supreme Court also constituted a joint inspection committee on Mullaperiyar Dam to conduct a chemical test of the samples of seepage water from over the 119 yrs old dam<sup>13</sup>. This committee was constituted to supervise the restoration of full reservoir level (FRL) in the Mullaperiyar Dam to the elevation of 142ft.

### **REPORT OF A.S. ANAND COMMITTEE:<sup>14</sup>**

The justice Anand committee which was set up in February 2010 gave its 250 pages report to the Supreme Court in April 2013. Its report was based on the studies and investigations done by many agencies.

According to the reports of the committee appointed by the Supreme Court which was headed by former chief justice of India A.S. Anand the dam is structurally and hydro logically safe and Tamil Nadu can raise the water level from 136ft to 142ft after carrying out certain repairs. The report also says that the dam is seismically safe.

On demand of Kerala for the construction of new dam the committee said that in view of the age of existing reservoir building a new one could be considered as an alternative proposal. If the

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<sup>12</sup>K.T. Thomas to be on Mullaperiyar Panel. The Hindu Chennai India, 4<sup>th</sup> March 2010.

<sup>13</sup> <http://wikipedia.org>.

<sup>14</sup>[www.theHindu.com-mullaperiyar-dam-issue-kerala-and-tamil-nadu](http://www.theHindu.com-mullaperiyar-dam-issue-kerala-and-tamil-nadu).

new dam will be constructed the maximum water level of that dam should be fixed at 155ft and a fresh agreement should be signed between the two states on water sharing and maintenance.

Therefore the empowered committee has concluded the existing Mullaperiyar Dam is safe on each of the hydro logic, structural, and seismic consideration and said that the water level can now be raised to 142ft from the existing 136ft.

### **SUPREME COURT JUDGEMENT:**

In 2006 Tamil Nadu's plea for raising the water level of the reservoir to 142ft from 136ft was upheld by the Supreme Court and the law which the Kerala promulgated which declare the dam as endangered and restraint Tamil Nadu government to raise the water level was struck down and it was said that the law framed by the Kerala was unconstitutional since it interfered with the judicial functions and violated the doctrine of separation of power. The bench headed by R.M. Lodha said that the water level must be increased from 136ft to 142ft to redress the grievances of Tamil Nadu. The bench also allowed Tamil Nadu government to carry out necessary repair works in the dam.

In 2012 the Supreme Court rejected the plea of Kerala government which was to bring on record new data to counter an expert's committee report which was appointed by Supreme Court that the Mullaperiyar Dam structure was safe.

While the Tamil Nadu has welcomed the Supreme Court verdict, Kerala government said that it was an unfortunate that the apex court did not consider safety of the people in the state while striking down the legislation passed by the state. "The court, it seems, did not look into the safety of the people living near the old dam. The Supreme Court on May 7, 2014 upheld its earlier decision and allowed Tamil Nadu to raise the water level in the controversial Mullaperiyar dam to 142 feet (43.28 m). The court quashed the Kerala Irrigation Water Conservation Act 2006 that restricted raising the water level in the dam above 136 feet (41.45 m) on safety grounds.

### **PROVISIONS FOR THE DISTRIBUTION OF WATER IN INDIAN CONSTITUTION:**

The relevant provisions of the Indian Constitution are

- Entry 17 in the State List,

- Entry 56 in the Union List, and
- Article 262.<sup>15</sup>

The first provisions makes water a state subject, but qualified by Entry 56 in the Union List, which states: “Regulation and development of inter-state rivers and valleys to the extent to which such regulation and development under the control of the Union is declared by parliament by law to be expedient in the public interest.”<sup>16</sup> Article 262 explicitly grants parliament to legislate over the matters in Entry 56, and also gives it primacy over the Supreme Court. As documented by Iyer (1994), parliament has not made much use of Entry 56. There are various river authorities which are been proposed, but they are not legislated or established which are vested with powers of management, instead of that there are river boards that are that are vested only advisory powers are created. Therefore the distribution of the river waters is dominated by states. This also results in to disputes and for that purpose there is “Inter-State Water Disputes Act, 1956 which was legislated to deal with the matters of conflicts between states, along with this it also had the provision for establishing tribunals. Though there are tribunals to deal with the conflicts, sometimes the decision of the tribunal is denied and thus it results in bigger disputes. However, states have sometimes refused to accept the decisions of tribunals. Therefore, arbitration is not binding. Significantly, the courts have also been ignored on occasion. Finally, the center has sometimes intervened directly as well, but in the most intractable cases, central intervention, too, has been unsuccessful.

An unambiguous institutional mechanism for setting inter-state water disputes does not exist. Water disputes are sometimes settled. Economic analysis is necessary to illuminate whether and how water disputes get resolved in India.

### **MEASURES TO RESOLVE DISPUTE-**

In India there are several mechanisms adopted for resolving all such disputes and for the purpose of such government has enacted Interstate water disputes Act, 1956, along with this government

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<sup>15</sup>Website India kanoon.

<sup>16</sup> <http://www.vakilbabu.com/Laws/SubList/SList>.

has also established tribunals that award the decisions in disputes which come under those tribunals.

#### The Inter-State Water Disputes Act, 1956 -

Pursuant to the power conferred by the Constitution (article 262), Parliament has enacted the Inter-State Water Disputes Act, 1956. Its main features can be thus summarized:

- (a) A State Government which has a water dispute with another State Government may request the Central Government to refer the dispute to a tribunal for adjudication.
- (b) The Central Government, if it is of opinion that the dispute cannot be settled by negotiation, shall refer the dispute to a Tribunal.
- (c) The Tribunal's composition is laid down in the Act. It consists of a Chairman and two other members, nominated by the Chief Justice of India from among persons who, at the time of such nomination, are Judges of the Supreme Court.
- (d) The Tribunal can appoint assessors to advise it in the proceedings before it.
- (e) On the reference being made by the Central Government, the Tribunal investigates the matter and makes its report, embodying its decision. The decision is to be published and is to be final and binding on the parties.
- (f) Jurisdiction of the Supreme Court and other courts in respect of the dispute referred to the Tribunal is barred.
- (g) The Central Government may frame a scheme, providing for all matters necessary to give effect to the decision of the Tribunal. The scheme may, *inter alia*, provide for establishing an authority for implementing (section 6A).

#### **CONCLUSION:**

Looking at the above case and dispute that takes place between two states i.e. Tamil Nadu and Kerala and a procedure to resolve those disputes that is by the way of tribunals which look into the disputes according to their jurisdiction and there is also an act which deals with the interstate water dispute but, looking at the way and time consumption it can be observed that the dispute take lot of time to get resolved as result of that it is the states who have to suffer for that in their daily matters related to water like development and meeting all the basic needs, which ultimately results in hindrance in the development of the state.



Therefore other than establishing tribunals, speedy justice should also be done so that it does not affect any of the concerned party.

**SOURCES:**

Original work by taking references from

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