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**INTERNATIONAL WATER CLASHES AND INDIA
(A STUDY OF INDIAN RIVER-WATER TREATIES WITH BANGLADESH AND PAKISTAN)**

**HIMANSHU GUPTA
ASST. PROFESSOR
DR. NAGENDRA SINGH COLLEGE OF LAW
BANSWARA**

**DR. KRISHNA KISHOR TRIVEDI
ASST. PROFESSOR
DR. NAGENDRA SINGH COLLEGE OF LAW
BANSWARA**

ABSTRACT

Water is considered as one of the Basic Human Need. Indian rivers with a large drainage system had a history of legal problems with neighboring countries. Major Indian Rivers namely Ganga, Teesta, Indus, Jhelum, Chenab, Sutlej, Ravi and Beas flows to the lower riparian Pakistan and Bangladesh and thus disputes with respect to the water sharing is quite obvious. Although these countries had evolved certain mechanism in the form of River water treaties like Indus River water treaty and Teesta River water treaty but their implementation always remains a bone of contention. Neutral expert's award and International arbitration's awards was often sought but trust deficit has mounted over the period of time. This article talks about such mechanism and their implementation over period of time.

KEYWORDS

Indus Treaty, Baghlihar, Kishnganga, Tulbul, Teesta.

INTRODUCTION

India, with a population of nearly 1.30 billion, is apt to be inducted in the group of powerful countries of the world both economically and militarily. The country should have say in the international affairs and in its quest to exert its power on international issues it has to first and foremost settle down its own domestic as well as regional concern with neighboring countries especially Pakistan, Bangladesh, Nepal, Sri Lanka, Maldives and Bhutan, in short the SAARC¹ group of Nations. The water is and has always remained a matter of great concern between Indian and its neighboring countries. Water sharing issue remained a bone of contention and a major hurdle in accomplishment of permanent political and economic settlement with these nations. The clash over Teesta River Water Treaty with eastern neighbor Bangladesh is to be blamed for the delayed Economic Liberalization Treaty with this country. Similarly Dispute over trans-boundary sharing of Indus River water is proving a road block in determination of other political, economical and security related issues with Pakistan. Therefore it is a *sine qua non* for both the Nations to ensure triumphant execution of 1950, Indus River Water Treaty.

With the victory of independence, India inherited many unresolved problems to be dealt with by the future government with the trust deficit counterpart, neighboring Pakistan. Although in 1942, to resolve the dispute over management of Indus basin between Sind and Punjab province, the then British government appointed a judicial commission which recognized the concurrent claims of both the provinces and the joint management of the basin as a whole. The report was however not honored by both the sides and the issue continues till the dispute was submitted to the London for the final verdict in the year 1947. But fortunately or unfortunately before the verdict could resolve the clash, the Indian Independence Act of 1947 internationalized the disagreement.

STATEMENT OF THE PROBLEM

Even after seven decades of Independence the problems inherited by the Independent Nation remain as it is. Over the period of time only the trust deficit has mounted and the issue of water distribution between India, Pakistan and Bangladesh has further added salt to the already bitter relationship between these Nations. This Article is the study with regard to the steps taken by these countries in these seven decades and the progress of those steps.

RESEARCH HYPOTHESIS

The atmosphere in which the India and Pakistan is sharing Indus river water is optimal and there is no trust deficit between these two Nations, rather Pakistan is deliberately making hue and cry over certain matters only to subserve its other Economic & political objectives. Even during Indo-Pak wars the Indian Government never violated the provisions of the treaty. Admittedly the government at both ends has failed to effectively resolve the bilateral issue which gave way to the international community to intervene.

Indo-Bangladesh River water Dispute can be solved amicably if all the stakeholders are consulted and are ready to compromise at certain issues.

RESEARCH METHODOLOGY

This work is analytical, descriptive and doctrinal wherein the author has researched this project work by reviewing and critically analyzing the primary and the secondary sources available. While primary sources refer to the nature of the bare text of various regulations and policies of the jurisdiction being adhered to, the secondary sources relate to the books and scholarly articles that have also been referred to. Due to the certain limitations, the research is restricted to articles and publications on the Internet.

LITERATURE REVIEW

The Author came across sufficient literature which is relevant to the topic and some of the articles and other material has been briefly reviewed as under:

- Indus River Water Treaty Provisions
- World bank report on Indus River Treaty and its role in Negotiation
- Different views from Indian electrical and print media like The Hindu, Times of India, Economic Times, Indian express, law Journals like EPW Economic and Political weekly, Jstore and Pakistan's electrical and Print media.
- Report of Indus River Water Commission
- Awards of the International Court Of Arbitration

¹ Abbreviation SAARC: SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION, available at: <http://saarc-sec.org/SAARC-Charter/5/> (last modified Feb, 27)

FINDINGS AND DISCUSSIONS

With the conferment of the independence, the boundary line between the two newly created independent Nations was penned down right across the Indus Basin, with India as upper Riparian Nation and Pakistan as the lower riparian nation. Moreover, two significant irrigation head works, first one on Ravi River (Madhopur) and the second on the River Sutlej (Ferozepur), on which the irrigation canal supplies in Punjab (Pakistan) wholly relies, were left in the hands of Indian province². A clash thus broke out between the two newly Independent Nations vis-à-vis the exploitation of irrigation water from present facilities. Along with other issues both the countries strived at developing an acceptable solution on the sharing of Indus River water to facilitate the growth of water resources of this region. Negotiations held under the good offices of IBRD (World Bank), which finally culminated in the signing of Indus Waters Treaty in 1960.³ As per the treaty provisions, waters of the three western rivers i.e. the Jhelum, the Chenab, and the Indus itself were awarded to Pakistan, and those of the three eastern rivers i.e. the Ravi, the Beas and the Sutlej were assigned to India.

Being an upper riparian certain limitations on water utilization were imposed on India whereas Pakistan was given unrestricted right on use of water originated from Western rivers. Under the treaty provisions India is under compulsion to let flow the waters of the Western Rivers namely: Chenab, Jhelum and Indus allocated to Pakistan save for the following uses:

- Domestic purpose
- Non-consumptive purpose
- Agricultural purpose
- Generation of hydro-electric power as specified⁴

As per the treaty Provisions India can establish run of the river hydropower projects with the limited reservoir capacity and the flow control just needed for viable power generation. Availing this provision of the treaty India developed several run-of-the-river projects e.g. Baglihar and Kishanganga hydroelectric Projects. Pakistan's fear was that the certain design parameters were too slack than were desirable for viable power generation and therefore they afford India an excessive ability to accelerate, decelerate or obstruct flow of the river thereby providing India a strategic leverage in period of political turmoil or war.

MAP 1: THE BASIN OF RIVER INDUS⁵



AREAS OF DISPUTES

THE BAGLIHAR HYDROPOWER PROJECT⁶

Baglihar Hydropower project is a run-of-the-river power project on the Chenab River. As per the verdict of the neutral expert that was appointed by the World Bank on Pakistan's request, India could build a dam with water storage capacity upto 32.56 million cubic meters, a number just lower than India's design of 37.5 mn meter cube, but substantially greater than that of 6.22mn meter cube suggested by Pakistan. Verdict also supported India's approach in dealing with the silt management through outlet method that flushes sediments via low-level gates.

THE KISHANGANGA HYDROPOWER PROJECT

According to the Annexure D para 15 of the IWT 1960 act, for a Project on a tributary of the Jhelum the water released under the project may be diverted as per the need into another tributary by the India only to the extent that the then existing agricultural use or hydroelectric use by the State of Pakistan on the former tributary would not be unfavorably hampered⁷. As at that time there was no such already existing use by the Pakistan, the Indian project of Kishan Ganga got green signal. But the judgment in this case has altered the Indian position that has been created after Baglihar verdict under which India can build these hydro-electric projects with greater live storage capacity if it is justified under "for sediment flushing" purpose.

The International Court of Arbitration in this case concluded that verdict in Baglihar project cannot be used for future hydro-electric projects and design of project in the three western rivers cannot incorporate more live storage than allowed under the Indus Water Treaty, even under the pretext of silt management.

² Indus Water Treaty, available at : <http://wrmin.nic.in/forms/list.aspx?lid=346&id=4> (last modified at March, 2)

³ Indus Waters Treaty—An Exercise in International Mediation by N. D. Gulhati, available at: <http://www.jstor.org/discover/10.2307/29794129?uid=3738256&uid=2129&uid=2&uid=70&uid=4&sid=21104149629693>. (last modified at March, 6)

⁴ Indus Water Treaty, 1960: Available at: <http://siteresources.worldbank.org/INTSOUTHASIA/Resources/223497-1105737253588/IndusWatersTreaty1960.pdf> (last modified at March, 2)

⁵ Available at: <https://propakistani.pk/2016/09/27/understanding-indus-water-treaty-can-india-really-block-pakistans-rivers/> (last modified March, 7)

⁶ Baglihar Dam, available at: https://en.wikipedia.org/wiki/Baglihar_Dam (last modified March, 23)

⁷ Indus Water Treaty, 1960: Available at: <http://siteresources.worldbank.org/INTSOUTHASIA/Resources/223497-1105737253588/IndusWatersTreaty1960.pdf> (last modified at March, 2)

TULBUL NAVIGATION PROJECT OR WULLAR BARRAGE (PAKISTAN)

In 1984, India planned to build the barrage on the River Jhelum, at the mouth of largest fresh water lake of India i.e. Wullar Lake in Kashmir Valley so as to make the river navigable during summer season. The contention of the Pakistan was that the India is violating IWT, 1960 because by such barrage India can control the run of the river and can use it as a geo-strategic weapon. The proposed barrage also has the capacity to interrupt the triple canal project of Pakistan, Upper the Jhelum Canal, the Lower Bari Doab Canal and the Upper Chenab Canal⁸ and with around 95% of Pakistan's river water originating or flowing via J&K, the country can barely overlook Tulbul Navigation Project or Wullar Barrage. After the case was referred to the International Court of Arbitration, India had stopped construction.

But recently in retaliation of the Uri Army Camp attack, the statement by the Indian PM Modi that "Blood and water cannot flow simultaneously," is a hint for the Pakistan that the water-sharing pact was not sacrosanct and Pakistan has to rein in terrorism if He wants corporation from India. Beside all the New Delhi Government has also hinted that it is planning to revive its Tulbul Navigation Project.⁹

If one look into the issue analytically the atmosphere in which the India and Pakistan is sharing Indus river water is optimal and there is no trust deficit between these two Nations, rather Pakistan is deliberately making hue and cry over certain matters only to sub serve its other Economic & political objectives. Evidently during Indo-Pakistan War of 1948, the war of 1965, the Bangladesh liberation war of 1971 and the kargil war of 1999¹⁰, New Delhi Government never violated the provisions of the treaty and the International arbitration's award in this regard also furnishes the same impression. Admittedly the government at both ends has failed to effectively resolve the bilateral issue which gave way to the international community to intervene. At present the situation is such that issues can still be amicably settled bilaterally and a fresh set of amendments can be introduced to revive the treaty provisions instead of abrogating the whole treaty. Next in the list is *Teesta River water Treaty* with neighboring Bangladesh.

TEESTA RIVER WATER TREATY

The Fourth largest river in Bangladesh, the Teesta River which joins Brahmaputra in Bangladesh and terminates in Bay of Bengal is the bone of contention between the two nations i.e. India and Bangladesh. The River with most of its catchment area in India originates from the Kangse Glacier, Sikkim. The issue arose with the construction of the barrage and the catchment area by the west Bengal Government. The Bangladesh Government protested against this move stating that their "rice bowl" Rangpur region is heavily depends on the water of Teesta. This brought both at negotiation table and after rounds of negotiations both the countries concluded an ad-hoc agreement on Teesta Water sharing in the year 1983.

As per the agreement India will get 39% share of water, Bangladesh will receive 36% of share and the rest 25% of river water was remained unallocated. But the problem remained unsettled because Bangladesh was in favour of equal sharing and thus both the nation decided to form a Joint-river commission to gather hydrological data and put forward a rational scheme for water allocation. After due deliberations finally Commission opinioned that certain share should be increased as the West Bengal's barrage is next to the Bangladesh border i.e. just 90 km away and thus some river water will in any case penetrate underground and will benefit both the Nations. Finally after rounds of talks in 2011 the New Delhi and Dhaka government agreed on an interim arrangement for 15 years. As per the new proposal India will get 42.5%, Bangladesh 37.5% of Teesta's share during the dry season and the rest 20% of river water was remained unallocated. As per the proposal also a joint hydrological observation station needs to be set up to collect precise data for the future discourse.¹¹ But strident opposition by the then West Bengal Government, The Trinamool Congress¹² has resulted in cancelling the agreement at the last minute.

Hopefully after the change of political dimensions in 2014 Bangladesh expressed new optimism for this concord to take place and more precisely ahead of June 2015 visit of Indian PM Narendra Modi. But despite Modi's discourse that "rivers should nurture the relationship of the two Nations and should not become the source of discord", the deal could not be finalized. But it would not be hoping against the hope if something concrete is done in this regard very soon similar to exchange of enclaves because the Trinamool Congress who was the key coalition partner of the then UPA government has ceased to exert undue pressure on current Government because today's center government is a Majority government and will not think once before taking harsh decision in favour of National security.

SHARING OF WATER OF RIVER GANGA AND FARAKKA BARRAGE

Other water dispute between India and Bangladesh is with respect to sharing of water of River Ganga and Farakka Barrage. Ganga originates from Gangotri and flow through the upper riparian India states of Uttarakhand, Uttar Pradesh, Bihar and West Bengal before entering the lower riparian Bangladesh. Roughly half of the Indian population and around one third of Bangladesh Population live in the Ganges basin. And hence water sharing is major concern for both the nation. The dispute over Ganga water sharing started with the construction of Farakka Barrage which as per the Bangladesh authorities has cuts off Bangladesh's water supply.¹³

After the round of negotiations between the two nations in 1975 the New Delhi Government agreed to run the barrage with specified discharges for the remaining period of the dry season of 1975. But the assassination of the then President of Bangladesh and its founding leader Sheikh Mujibur Rahman on Aug 15, 1975 strained the healthy relations between the two countries and India was blamed for continuing to withdraw water even after the agreed period. Bangladesh approached the UN general assembly and lodged a formal protest against India. Which resulted in the resumption of the talks between the two Nations in December 1976, but they failed to reach to any conclusion. After the Awami league¹⁴ come into power in Bangladesh the 30-year water-sharing arrangement was signed between the two, which not only recognized the Bangladesh's rights as a lower riparian but also authorized the country to construct barrages and irrigation projects in Kushtia and the Gorai-Madhumati River in Bangladesh¹⁵

Over the period of last 30 years the Bangladesh Government alleged India of drawing excessive water and for the unjust and insufficient allocation of water to the country and India on the other hand protested that the water allocated to Bangladesh under the treaty resulted in scarcity of water essential for the proper working of the thermal plant of NTPC at Farakka and the Kolkata Port.

CONCLUSION

Although the time has not arrived as per the treaty but to stop mounting of trust deficit between the two nations which will be reflected in other social and economic relations of the counties, the treaty provisions should be revisited. Peace is not something which can easily be defined but a proper way of life can be summed up as living without violence in any form i.e. physical, mental or spiritual and living in a way that embraces respect and tolerance for our neighbors. Every Nation should put efforts for the achievement of a peaceful neighborhood and it should be the cardinal and foremost principle of any country's foreign policy. Peace and development go hand-in hand as peace is vital for the development of Nation; similarly Development is essential for the durable peace. Hence the treaties should have more of morality and humanity element than political overtone. Time has ripened and India along with its neighbor should assert their commitment to strengthen their relations with each other and also with other regional countries. And with the recent visit of Bangladesh Prime Minister to India and warm welcome by Indian Prime Minister has given ray of hope that dispute concerning water sharing will soon be resolved amicably.

⁸ *Winning the battle but losing the war: available at: <http://www.thehindu.com/opinion/lead/winning-the-battle-but-losing-the-war/article4439676.ece> (last modified at March, 2)*

⁹ *Modi gets tough, says blood and water can't flow together; available at: <http://epaperbeta.timesofindia.com/Article.aspx?eid=31804&artixml=Modi-gets-tough-says-blood-and-water-cant-27092016001053> (last modified at Feb, 27)*

¹⁰ *Indo- Pakistan wars and conflicts, available at: https://en.wikipedia.org/wiki/Indo-Pakistani_wars_and_conflicts (last modified at Feb, 27)*

¹¹ *The Teesta water dispute: Geopolitics, myth and economics; available at: <http://www.orfonline.org/research/teesta-water-dispute/> (last modified at Feb, 27)*

¹² *All India Trinamool Congress; available at: https://en.wikipedia.org/wiki/All_India_Trinamool_Congress (last modified at Feb, 27)*

¹³ *Farakka Barrage: available at: https://en.wikipedia.org/wiki/Farakka_Barrage (last modified at Feb, 27)*

¹⁴ *Government under Sheikh Hasina Wajed (the daughter of Sheikh Mujib Rahman)*

¹⁵ *Sharing the water of Ganges: available at: https://en.wikipedia.org/wiki/Sharing_the_water_of_the_Ganges (last modified at Feb, 27)*

LIMITATIONS

Trust deficit amongst the Nations is the main cause of the settlement of the dispute concerning water sharing still seems a distant dream to realize. Although Good office and mediation is offered by other Nations like United States of America and world organizations like World Bank but it is often perceived as an unnecessary intervention in the sovereignty of the disputing Nations. The vested interest of different sub group also act as a road block in reaching a consensus with other nation for e.g. rider put by the West Bengal Chief Minister regarding Teesta River Water dispute as it affects the interest of the farmers of West Bengal has restrained the Central Government to sign the Teesta accord. Hence need of the hour is that all the Stockholders have to sit together and put aside the differences to find win-win solution for the current problem.

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