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River Water Disputes Between India and Its Neighbours

India's behaviour is in accordance with customary rules of International law which is an accepted and justifiable source of international law. According to the law on river a state has the exclusive jurisdiction and control over the waters of rivers which flow through its territory.

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Due to its location, size and contiguous borders with other South Asian countries, it is India in its capacity as both upper and lower riparian state, that has come into conflict with its neighbours i.e. with Pakistan, Bangladesh and Nepal on the cross-border water issue. Given an atmosphere of mistrust, an upper riparian India has serious issues to resolve with lower riparian Pakistan and Bangladesh and, despite being lower riparian, with the upper riparian Nepal. This however, does not mean that India solely responsible for certain deadlocks, even though its share of responsibility may be larger than other countries which have their own physical limitations and political apprehensions.

What is, however, quite appreciable is that the countries of the sub continental have made certain remarkable efforts to resolve their differences over water distribution through bilateral agreements. India and Pakistan signed the Indus Water Treaty (IWT) in 1960 allocating three eastern rivers (Ravi, Sutlej and Beas) to India and three western rivers (Indus, Jhelum and Chenab) to Pakistan. The sincere involvement of the World Bank as a neutral third party internationalized the dispute which made each of two parties accommodative, flexible and co-operative to avoid any charge either of them by the international community for the failure of the negotiation. The World Bank stewarded the negotiation with a strong determination to achieve a permanent settlement of the dispute. Whenever the talks reached a stalemate in the long course it applied its pragmatic and imaginative approach to remove the hurdle. It arranged finance from the developed countries along with its own contribution for the establishment of a fund for undertaking development projects in Pakistan which were essential for the success of the treaty. The World Bank also played a significant role in the Baglihar dispute in the present scenario. So it is the good offices of the World Bank who brought the two parties always on a negotiating table.

The Indus Water Treaty remarkable survived the ups and down of Indo-Pak relations and despite wars the parties

uphold the treaty, although serious differences persist over various projects being under taken by India over Jhelum and Chenab rivers. Similarly, the Farakka dispute over Ganges Water sharing was resolved between India and Bangladesh in 1996, although differences continue on Bangladesh's share of water during the lean period. Nepal and India also signed the Mahakali Treaty in 1996 but despite ratification by Nepalese parliament, the treaty is not operative.

Despite these treaties, serious differences over water sharing, water management and hydropower projects continue to spoil relations between India, on the one hand, and Pakistan, Bangladesh and Nepal on the other. Differences between India and Pakistan continue to create ill-will between the two countries on Wuller barrage, Kishanganga project and Bagliher project. However, Bagliher project has been completed after the decision of neutral expert appointed by World on the demand of Pakistan. But this is still a dispute which is spoiling the relations of two countries. More than the dispute over Jammu and Kashmir, the issue of waters of Jhelum and Chenab has the potential to once again provoke the people of two countries against each other and push the two countries to war.

Bangladesh which shares 54 rivers with India as a lower riparian, has serious differences with New Delhi. India received continuing complaints by Bangladesh over sharing of water of Ganges. A simplified version of the Bangladeshi view of this dispute is 'unilateral diversion' of the waters of Ganga by India at Farakka to the detriment of Bangladesh, that the resulting reduction in flows had severe adverse effects on Bangladesh. A national sense of grievance grow and became a significant factor in electoral politics in Bangladesh. In its extreme form the nationalistic position became a myth with India being cast in the role of a demon whether Bangladesh was afflicted by drought or by floods, the responsibility was laid at India's doors. "Farakka" was blamed for all kinds of ills.

But overall the position seemed that the treaty worked

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reasonably well. The problem arose during the first lean season due to low flows. This made the treaty controversial. But several factors are responsible for this. Due to these factors the treaty always because a soft target, and Bangladesh claimed that it had not received proper share of water allotted to it. Because of longstanding emotional attitudes towards India, there was a predisposition on the part of many to be negative towards the treaty. As soon as the problem emerged, the latent negativism came to the fore. Actually the Farakka Barrage has become the main issue in the domestic politics of Bangladesh due to which it is utilized by the Bangladeshi politicians to criticize India and to attain the public support.

As an upper riparian state, Nepal has a different relationship with India and has serious doubts about the projects proposed by India. In so far as Indo-Nepal relations are concerned, water sharing has not been a major issue. There had been no conflict over water before Mahakali River Treaty. What is involved in the Indo-Nepal context is essentially a question of co-operation in deriving benefits from the water resources by way of hydropower, irrigation, flood management and perhaps navigation. However, the very attempts at co-operation can give rise to conflicts and have done to Nepal's mistrust, beside other factors has been reinforced by what it perceives to be various unequal treaties-starting from Sharda dam construction (1927), Kosi agreement (1954), Gandak agreement (1959), Tanakpur agreement (1991) and new chapter of mistrust was opened up in the Indo-Nepal relations with Mahakali River Treaty of February 1996.

The signing of the treaty was preceded not merely by negotiations between the two governments but also by extensive informal consultations covering all parties in Nepal so as to facilitate the process of parliamentary ratification. After much difficulties and suspense parliamentary ratification by a two-third majority also came through. Now the treaty is in force and in the process of implementation but the process has been stalled due to some differences.

With regard to the treaty, there is a difference between the Indian and Nepalese on what the 'equal sharing' principle implied. A further point, which has the potential of becoming an issue between the two countries is the question of power tariff. However the price of power is not a question of abstract principles but one of negotiations. It will have to be attractive enough for Nepal to warrant the undertaking of a big project and affordable enough to India to warrant purchase from this source. These differences can, become more difficult if the two sides take rigid position.

Under Customary International law, an upper riparian state was entitled to divert the flow of an international river at its own discretion. A clear statement of this principle which has been accepted by the various states had been made by Attorney General Harmon justifying the right of the United States to divert the waters of the Rio Grande which flowed into Mexico. The Harmon doctrine is still considered as a part of international jurisprudence in spite of the fact that the Helsinki agreement refers to sharing of river waters.

However, India's adopts a moralistic outlook in its policy and has accepted that Helsinki rule.

India's behaviour is in accordance with customary rules of International law which is an accepted and justifiable source of international law. According to the law on river a state has the exclusive jurisdiction and control over the waters of rivers which flow through its territory. Due to the political, economic, strategic, humanitarian and many other considerations, however the upper riparian states have not rigidly adhered to the rule. Keeping in view their own national interest, they have voluntarily conferred benefits to lower riparian state by signing bilateral or multilateral treaties. The existing rights and duties regarding waters of a particular river, must therefore, be determined on the basis of existing treaties.

All of these treaties are also justifiable according to Helsinki conference Rules 1966. These rules also stated that a state can make use of international river under article 13 which determine the reasonable use of international river for social and economic needs of the state but without much disturbing the existing conditions. So India's position in all of these treaties is in the accordance of international norms and international law.

But still there are differences between India and these three neighbours of India. But it will be a mistake to take a gloomy view of such differences and difficulties and to regard these as an indication of the failure of the treaties. Differences in the interpretations and practical operational difficulties are quite common in the cases of most treaties themselves. The issues that have arisen or may arise in relation to these treaties will also doubtless be eventually resolved. What is important is that they should be quickly dealt with and settled. Delay and drift will render them more difficult and perhaps even intractable. The value and importance of these resources and had created new areas of conflict between or among the co-shares of common natural resources particularly surface waters.

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