

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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LEGAL AND POLITICAL CHALLENGES IN TRANSBOUNDARY WATER GOVERNANCE: NAVIGATING SOVEREIGNTY, RIGHTS, AND COOPERATION

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Abstract

Transboundary water governance presents complex legal and political challenges as nations strive to balance sovereignty, equitable rights, and the necessity for cooperative management of shared water resources. Right of water is a basic human right of every individual in a society. However, the growing complexities of water dispute across nations has led to violation of human right to water. With the fast-changing globalization the issue of water politics is emerging day by day. This paper examines the intricate relationship between politics and water governance, highlighting how power dynamics, legal frameworks, and institutional structures shape access to and control over water resources. In many regions, especially those sharing transboundary rivers or aquifers, political tensions often arise due to competing demands, lack of trust, and absence of enforceable agreements. This study explores the multifaceted issues that emerge in the form of hydropolitics when various nation shares water resources such as lakes and rivers. The study focuses on the disputes and discussions surrounding the distribution of water, right to use water and environmental safeguards. Furthermore, the paper highlights how diversified national interest, legal ambiguities. Imbalances in power and political water governance hinders the effectiveness of sustainable governance system amongst nations.

Legal and Political Challenges in Transboundary Water Governance: Navigating Sovereignty, Rights, and Cooperation

Trishala Chettri¹

INTRODUCTION

Since time immemorial water has been a strategic natural resource and the most integral part of human life. About 70% of the earth surface is covered with water. The issue of water as an important natural resource cannot really be captured by a particular dimension. It considers social, economic, cultural and every area of dimensions out of which water and politics are closely related to each other. Thus, water politics also known as “hydropolitics”, is politics affected by the availability of water and water resources, a necessity for all life forms and human development. The first use of the term “hydropolitics”, came in the book Hydro politics of the Nile Valley.² In other words, it refers to the conflict and cooperation between the states on one hand and relationship between the people and the state on the other over water resources which transcends the national and international borders.

The United Nations recognizes water as a fundamental human right essential for survival sanitation and sustainable development, yet it struggles to enforce equitable water sharing policies globally.³ According to the World Health Organization (WHO), a minimum of 20 liters of fresh water per day is essential for an individual to maintain basic hygiene, which amounts to approximately 7.3 cubic meters annually per person.⁴ However, water usage and accessibility vary significantly across nations, largely influenced by the degree of infrastructure development and water resource management. In developed countries, well-established water systems facilitate the treatment and distribution of potable water directly to households. Contrastingly, several regions including parts of Latin America, Asia, Southeast Asia, Africa, and the Middle East either face a shortage of freshwater resources or lack the necessary infrastructure for equitable distribution.⁵ These disparities are driven by a range of socio-economic, political, and environmental factors. As a result, many communities experience

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² Waterbury, John, *Hydropolitics of the Nile Valley* (Syracuse University Press, 1979).

³ U.N. General Assembly, *The Human Right to Water and Sanitation*, U.N. Doc. A/RES/64/292 (July 28, 2010), available at: <https://docs.un.org/en/A/RES/64/292> (last visited Jan 1 2025).

⁴ World Health Organization, Domestic Water Quantity, Service Level and Health 1 (2003), available at : https://www.who.int/water_sanitation_health/diseases/WSH03.02.pdf (last visited on September 3 2024).

⁵ World Health Organization, Domestic Water Quantity, Service Level and Health 1 (2003), available at : https://www.who.int/water_sanitation_health/diseases/WSH03.02.pdf (last visited on September 3 2024).

limited per capita water availability, which frequently contributes to outbreaks of disease and in extreme cases, starvation and mortality.

The unequal availability of safe drinking water is a persistent driver of political tension in various regions around the world. As emphasized in the 2006 Human Development Report published by the United Nations Development Programme (UNDP), huge contrasts exist while wealthier nations sustain a lucrative bottled water industry that often offers minimal health advantages, developing and under developed nations are forced to consume water from polluted sources such as rivers, lakes, or open drains, exposing them to serious public health risks.⁶

RAGING ISSUE OF WATER POLITICS: A GLOBAL SENARIO

The problem of water politics lies on the fact that the rivers passes through many countries including India which eventually demarcates the capacity of preserving waters for one's own country or state. With these rivers, water supply, allocation, control, and use are of great consequence to survival, quality of life, and economic success. The control of a nation's water resources is considered vital to the survival of a state similar cross-border groundwater flow also occurs. Competition for these limited water resources have caused a lot of conflicts in the past. The main problem lies about the political relationship between the countries as to correlating government resources which has escalated gross human right violation to adequate drinking water.

Water related tensions are particularly pronounced in the Middle East, a region where rapid population growth and heavy reliance on irrigation for agriculture heighten the complexity of the issue. Disputes over access and usage rights largely revolve around three key river systems mainly the Nile, the Jordan River, and the Tigris-Euphrates basin. Among these, the Jordan River basin stands out as the most water-stressed, as it is shared by multiple territories including Israel, Jordan, the West Bank, and parts of Syria.⁷ Thus, to secure reliable levels of water access for their populations, states must either have a large water supply in terms of economic availability, or their rights to such supplies must be established. Studies of water in the Middle

⁶ United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity—Power, Poverty and the Global Water Crisis* 3 (2006), available at: <https://www.undp.org/libya/publications/human-development-report-2006-beyond-scarcity-power-poverty-and-global-water-crisis> (last visited on September 2024).

⁷ *Water Resource Conflicts in the Middle East*, *Journal of Geography*, Jan.–Feb. 1997, Vol. 96, No. 1, pp. 4–12, available at: <https://pubmed.ncbi.nlm.nih.gov/12178551/> (last visited on September 3 2024).

East have also suggested that, in a sensitive hydrological location, a country's existing surface- and ground-water access should be protected as a first priority if it is to begin to address any water difficulties or shortages.⁸ Such measures as these can be seen as being the primary responsibilities of national governments or ruling authorities; and water is therefore closely tied up with statehood and geographical territory in international relations, and with the recognition and rights of nation states as the central actors in this field.

A recent publication titled “Water Cooperation for a Secure World” by the Strategic Foresight Group finds that active collaboration on water management between nations significantly lowers the likelihood of conflict. This conclusion is based on an analysis of cross-border water interactions across more than 200 shared river basins in 148 countries.⁹ The report highlights that Middle Eastern countries remain at risk of war partly because they have long avoided regional cooperation.

As far as India is concerned the problem of water politics has become acute. The impact of climatic change due to global warming has worsened the situation and has lowered the availability of water making the supply of drinking water to many parts of the country a huge challenge. As the Himalayas are the source of dozens of Indian rivers, this has dramatically reduced the water availability during the summer months, leading to severe water cries all around the country for at least four month a year before the thirsty, dry land is quenched by the monsoon showers.

According to the studies by the United Nations, the per capita water availability in India has fallen steeply over the last 25 years, declining from 2,309 cubic meters in 1991 to the current 1,500 and it is projected to fall to 1,340 by 2025, pushing India into danger.¹⁰ But climate change is not the only reason behind country's water scarcity. There is also the continuing rise in the Indian population, which has grown from 846 million in 1991 to the current 1.3 billion. India is now home to nearly 20 percent of the world's population but has barely 4 percent of its fresh water.¹¹ However, in India the biggest reason behind the water scarcity is the way water is used, abused and priced at a very high rate at places where there is shortage of water

⁸*Id*

⁹ Water Cooperation for a Secure World -Focus on the Middle East, 2013, Strategic Foresight Group, available at : https://www.strategicforesight.com/publications_inner.php?id=31 (last visited on September 6 2024)

¹⁰ Ranvir S Nayar, *India and Politics of Water*, *Arab News* (Apr. 19, 2018), available at: <https://www.arabnews.com/node/1287886> (last visited on 8 September 2024).

¹¹ Ranvir S Nayar, *India and Politics of Water*, *Arab News* (Apr. 19, 2018), available at: <https://www.arabnews.com/node/1287886> (last visited on 8 September 2024).

resources. The distribution of water is extremely unequal between the rich and the poor both in the rural areas leaving most poor fighting for the survival of the balance. Therefore, the rich end up paying very little or nothing at all for their excessive consumption, while the poor often must pay over the top contractors. While the poor people, who mostly live in slums or cluster of small homes, depend on public tap, the rich dig borewells around their homes to draw upon the groundwater.

In rural areas, the disparities are even higher. The average farmer, with holding of less than two acres, depends on rainwater or the rare canal near his fields and hence can plant one or two crops a year. The richer farmers on the other hand have access to borewells and canals, and plant extremely water-thirsty crops. Most irrigation bureaucracies believe problems of farmers end once water is delivered on to a block of land. Irrigation is an essential component of agriculture but it is not neutral. Often it reaches rich farmers. This can affect poor farmers unless there is concerted social action to counter the effect. The problems of allocation of canal water, its rotation, rationing, distribution, pricing, lending, and policy gaps are still prevalent in nature.¹²

Rivers are the primary source of water for most of the country and they traverse through several states, ensuring there have been fierce disputes about sharing of the water from these rivers. In India, agricultural states like Punjab, Uttar Pradesh and Haryana have engaged in a bitter battle over water for the past few decades. Similar situation has been seen in the states of Karnataka and Tamil Nadu over the waters of Cauvery.¹³ The situation has been made worse by leaking pipes, broken canals and wastage. Water recycling though mandated by law for hostels commercial establishments and industry, is something of a rarity across the nation and water harvesting is still a challenge in many nations. Unfortunately, the water wars have been inflamed by politicians who seek to please their voters by making unrealistic and unsustainable demands over water distribution. Instead of changing the distribution patterns, taking concrete measures to promote conservation and recycling, and distributing water more equally across the nation the political leaders have demonstrated lack of long-term vision.¹⁴

¹² *Politics of Irrigation, Down To Earth*, available at: <https://www.downtoearth.org.in/environment/politics-of-irrigation-40727> (last visited on September 6 2024).

¹³ Ray, Meenakshi, "Troubled Waters over Cauvery but Karnataka, TN Have History of Sharing," *Hindustan Times* (Sept. 13, 2016), available at: <https://www.hindustantimes.com/india-news/troubled-waters-over-cauvery-but-karnataka-tn-have-history-of-sharing/story-XXXXXX.html> (last visited on 8 September 2024).

¹⁴ Ranvir S Nayar, *India and Politics of Water*, *Arab News* (Apr. 19, 2018), available at: <https://www.arabnews.com/node/1287886> (last visited on 8 December 2024).

Recent discussions on global water politics have underscored the growing link between water scarcity and geopolitical conflict. The United Nations Educational, Scientific and Cultural Organization (UNESCO), in its World Water Development Report 2024, revealed that 2.2 billion people worldwide still lack access to safe drinking water, and that water insecurity is contributing to regional instability, migration, and public health crises.¹⁵ Notably, over 60% of global freshwater resources are shared across national borders, yet comprehensive cooperation treaties exist for only a fraction of these shared waters, exacerbating tensions between neighbouring states.¹⁶

The World Economic Forum (WEF) also addressed this issue, framing water governance as a fundamentally political challenge. The WEF emphasizes that climate change intensifies the political nature of water distribution, as decisions about allocation inevitably benefit some groups while marginalizing others.¹⁷ Cities and economies dependent on already strained water supplies face increasing pressure, suggesting that the intersection of water policy and political power must be more directly addressed in national planning. Additionally, the Institute for Economics and Peace (IEP), in its Ecological Threat Report 2023, identifies 27 global "ecological hotspots" where deteriorating water access intersects with political fragility and conflict risk.¹⁸ This report clearly warns that without substantial investment in sustainable water management, millions will be pushed toward migration and conflict.

WATER GOVERNANCE AND POLITICS

Water governance in India is both decentralized and fragmented. Fragmentation arises from the involvement of multiple agencies, departments, and institutions, each playing a role in managing water resources. This overlap, along with a variety of laws, has led to a regulatory framework that is often unclear and complicated. Furthermore, because Indian states hold primary authority over water management within their territories, rather than the central government, river governance is decentralized. As a result, neighboring countries like Nepal, Bhutan, and Bangladesh must engage not only with India's central government but also with

¹⁵ UNESCO, *World Water Development Report 2024: Water for Prosperity and Peace* (Mar. 22, 2024), available at : <https://www.unesco.org/en/days/water> (last visited on 10 November 2024).

¹⁶ *Id*

¹⁷ Giulio Boccaletti, *Why Climate Change Will Make Water Scarcity a Political Issue*, World Econ. F. (Mar. 22, 2023), available at: <https://www.weforum.org/agenda/2023/03/climate-crisis-water-scarcity-politics/> (last visited on 12 November 2024).

¹⁸ Institute for Economics & Peace, *Ecological Threat Report 2023* (Sept. 2023), available at: <https://www.visionofhumanity.org/water-investment-key-to-averting-global-conflict-surge/> (last visited on 12 November 2024).

individual state governments when addressing shared water concerns.¹⁹ This situation adds further complexity and political challenges to managing water across national borders. The decentralized control over India's rivers becomes increasingly troublesome as rising water demand fuels tensions within the federal system.

Since the 2000's, economic liberalization has intensified competition among states, with each one bearing more responsibility for attracting investments and funding its own development. This heightened competition has contributed to conflicts over water between states. Another significant factor is the contested issue of ownership. Disputes over who controls water resources occur at various levels between the state and local communities, the central and state governments, and between local and state authorities. These overlapping claims to ownership often lie at the heart of water-related conflicts.²⁰ The Indian Constitution does provide for the establishment of tribunals for the resolution of inter-state river water disputes, but in practice this gives the central government no real advantage or maneuverability over the states, as it is still constricted by the influence of interest groups and voters. These tribunals have been largely ineffective in resolving disputes between the contesting states.²¹

Furthermore, the management of the Ganges-Brahmaputra-Meghna basin is heavily shaped by how Indian states handle their water resources, as most of these river's flow through India. Water withdrawals and pollution within Indian states directly impact downstream regions like Bangladesh, while the amount of water Indian states claim to require influences negotiations with upstream countries such as Nepal and Bhutan. Indian states also play a significant role in shaping national water policy. For instance, Gujarat perceived the World Commission on Dams as a threat to the Sardar Sarovar Project and viewed it as a biased intervention. These perceptions had a notable effect on India's central government, contributing to its decision to reject the Commission's report.²² India's water relations with neighboring countries are complicated by the participation of several of its own states, such as Uttar Pradesh, Bihar, and West Bengal. These states can exert considerable influence over international negotiations. A recent example is Sikkim, which opposed a proposed water-sharing agreement with

¹⁹ Lahiri-Dutt, Kuntala and Wasson, Robert J, *Water First: Issues and Challenges for Nations and Communities in South Asia* (New Delhi: SAGE Publications, 2008).

²⁰ *Id*

²¹ Mohan, N. Shantha, Routray, S., and Sashikumar, N, *River Water Sharing: Transboundary Conflict and Cooperation in India* (New Delhi: Routledge, 2010) p. ix.

²² Iyer, Ramaswamy R, *World Commission on Dams and India: Analysis of a Relationship*, 36(25) *Economic and Political Weekly* (June 23–29, 2001) pp. 2275–2278.

Bangladesh, claiming that the deal did not adequately consider its own water requirements, ultimately halting the negotiations.²³

The state of West Bengal has also played a significant role in shaping India's water relations with Bangladesh. It opposed a proposed deal between the central government and Bangladesh regarding the Teesta River, preventing the agreement from moving forward. However, the administration by the ruling government may have a better chance of securing the deal due to its stronger ties with West Bengal's leadership compared to the previous central government.²⁴ This example highlights how domestic political dynamics can heavily influence international river negotiations and should be considered when formulating cross-border water policies.

Therefore, a clear understanding of how water politics is governed within provides an important insight into the broader dynamics of transboundary water governance in the Ganges-Brahmaputra-Meghna (GBM) basin. Water management in India is marked by decentralization and institutional fragmentation, which often leads to confusion over ownership and, consequently, frequent conflicts between states. Although legal mechanisms exist, such as specialized tribunals designed to resolve inter-state water disputes, these bodies have proven largely ineffective.

Similarly, there is no overarching authority, like a River Basin Organization, with the power to resolve international disputes within the GBM basin. Both domestic and transboundary water issues in the region are shaped by complex political considerations. Within India, internal water challenges often overshadow international concerns, limiting the attention given to cross-border water cooperation. Moreover, Indian states exert considerable influence over international water negotiations at times conflicting with the central government's positions.

There are noticeable similarities in the way water is managed within India and across the GBM basin.²⁵ In both cases, increasing demand for water drives reliance on supply side interventions. Power imbalances between stakeholders constrain equitable management, and political intricacies must be accounted for in any negotiation over water-sharing. At both the inter-state

²³ Prasai, Sagar and Surie, Mandakini, *Political Economy Analysis of the Teesta River Basin* (New Delhi: The Asia Foundation, 2013) p. 13.

²⁴ *Id*

²⁵ *The Politics of Water Governance in Ganges-Brahmaputra-Meghna Basin*, ORF Issue Brief No. 112 (2015), available at: https://www.orfonline.org/wp-content/uploads/2015/12/ORFIssueBrief_112.pdf (last visited on September 29, 2024).

and transboundary levels, there is a strong tendency to pursue bilateral solutions rather than multilateral frameworks.

CONCLUSION

Presently, the central government's involvement in resolving internal water disputes in India has been a core issue since the nation gained independence. From the very beginning, India's founding leaders recognized that managing the country's rivers many of which cross state boundaries would be a source of potential conflict and therefore would require a framework for cooperation. To address this, the Indian Constitution was designed to grant the union government several key powers intended to facilitate water-sharing and conflict resolution. These powers include the authority to establish inter-state water dispute tribunals and, under specific conditions, take control of rivers that flow across multiple states to ensure fair and effective management.

Despite these provisions, the structure of India's democratic and electoral system often limits the central government's willingness to intervene in subnational water conflicts. Political parties, both at the centre and in the states, are frequently hesitant to take firm positions on water disputes due to the sensitive nature of water issues among voters. Supporting one state's claim over other is can have serious political consequences, making it difficult to resolve disputes impartially.

In recent years, however, the Indian government has shown renewed interest in reforming how inter-state water conflicts are managed. One of the key proposals is to amend the Constitution to expand the central government's role in addressing water-sharing disagreements between states. Another initiative involves replacing the current system of ad hoc tribunals with a single, permanent water disputes tribunal. This new body would be staffed by technical experts and professionals in water management, aiming to ensure faster, more consistent, and scientifically informed decisions. Although this reform reflects a step toward better conflict resolution, it is not entirely new similar efforts have been made in the past but failed to produce lasting change, often due to political pushback or implementation challenges.

Beyond institutional reforms, a critical but often overlooked aspect of water governance in India is the role of non-governmental organizations (NGOs) and civil society. These groups, which include environmental organizations, local activists, and water management experts,

frequently promote dialogue, cooperation, and sustainable practices. In some cases such institutional reforms greatly contributed to reducing tensions and encouraging more constructive conversations between the parties involved. However, despite their valuable contributions, civil society groups are rarely given a formal seat at the decision-making table. Their exclusion limits the diversity of perspectives in water governance and reduces opportunities for innovative, community driven solutions.

India could benefit from looking at international examples that promote inclusive and participatory water governance. However, the governance of water conflict in India is still a deeply rooted and underappreciated challenge. These disputes threaten not only inter-state relations but also the country's broader political stability, economic development, and environmental security. As climate change increases water scarcity and demand continues to grow, India must find more effective, inclusive, and forward-looking ways to manage its water resources both within its borders and in cooperation with its neighbours.

Thus, right to adequate drinking water is a fundamental human right essential for both survival and sustainable living. However, ongoing debates over water privatization and the political conflicts surrounding water resources among nations have led to significant violations of these rights globally. Ensuring equal access to water means that no one should have preferential treatment when it comes to this necessity. According to the United Nations, water should not be commodified or sold because it is recognized as a universal human right. The right to water was specifically established to help disadvantaged populations in developing countries gain fair access, thereby reducing preventable illnesses and deaths caused by inadequate water supply. Additionally, water rights are also associated with protecting the environment, strengthening the economy and strengthening the water delivery system. Water wars can arise over the necessity of water for survival; a lack of water can result in economic consequences, biodiversity consequences, environmental consequences, illness and even death. The world is still yet to develop policies that appropriately creates balance in terms of water-sharing and allocation. Moreover, there is a necessity of fundamental change in attitudes and policies between the states to eradicate water scarcity, social legal injustice, and political instability.