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INDUS WATER TREATY: NEED A FRESH LOOK **INDIA MUST HAVE UNRESTRICTED RIGHT TO USE** **AND CONTROL WESTERN RIVERS**

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ABSTRECT

This Paper explains the Indus Water Treaty 1960, signed on 19 September 1960 between India and Pakistan brokered by World Bank. The Indus is a river of North West India and Pakistan. The main river Indus is about 1800 miles long. From the Himalayan snow to Arabian Sea the Indus river system has a drainage area of 450,000 square miles. The Indus river comprise the main river Indus and its major tributaries, Jhelum, Chenab, Ravi, Beas and Sutlej from east and from west Kabul, Swat and Kurram. According to this Water Treaty waters of three Eastern rivers Ravi, Beas, and Satluj belongs to India and water of three western rivers Indus, Jhelum, and Chenab belongs to Pakistan. This paper maps out some of the recent issues regarding this treaty like, what the treaty archived? Whether treaty was a diplomatic defeat to India and political success to Pakistan? Whether India's interest had been let down? Can India abrogate the treaty unilaterally? This paper argues that abrogation of this treaty is in Indian interest or against Indian Interest.

Introduction

Indus Water Treaty was the outcome of 8 years Negotiation between Government of India and Pakistan carried on under the auspices of the World Bank. Indus Water Dispute had existed in pre-partition days between two provinces Punjab and Sind of undivided India. Dispute becomes International issue after partition. The Indus is a river of North West India and Pakistan. The main river Indus is about 1800 miles long. From the Himalayan snow to Arabian sea the Indus river system has a drainage area of 450,000 square miles.¹ With in India, Indus basin lies in J&K, Himachal Pradesh, Punjab, Haryana and Rajasthan. The Indus river comprise the main river Indus and its major tributaries, Jhelum, Chenab, Ravi, Beas and Sutlej from east and from west Kabul, Swat and Kurram. Main Indus river rises near lake

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¹ Niranjan D. Gulhati, *Indus Water Treaty: An Exercise in International Mediation* 18(Allied Publishers Private Ltd. New Delhi, 1973).

Mansorrower at Kailash Mountain. Indus flows in Tibet before it enter the Kashmir and skirting Leh- Ladhak and the river flows on toward Gilgil and enters Pakistan.

All natural resources like land and minerals, canals and others came to belong to the new country in which they lie but river water could not be so divided. The upper reaches of the main Indus and its tributaries from east lie in India and the lower reaches in Pakistan.² The partition had posed a serious problem for the new government of Pakistan because Indus Rivers were the Life Blood of Pakistan.³ Pakistan wanted to take the matter to International Court of Justice but India advocated Bilateral Discussion. In May 1952, the issue was transferred to Washington D.C at the instance of Eugene R. Black, the then president of the International Bank for reconstruction and development, commonly called the World Bank. A working of engineers from India, Pakistan and World Bank was set up to find a solution on a functional basis.⁴ The negotiations broke many times but Bank decided that it would continue in its efforts to find an acceptable solution. The Bank was represented by E. R. Black and W.A.B Lliff, India by Niranjana D. Gulhati and Pakistan by G. Mueenuddin. In May 1959, Black and Lliff visited India and Pakistan and succeeded in securing agreement of the two governments. In August and September of 1959, the three representatives with their supporting groups met in London to work out the outlines of a treaty and produce the final draft of the Indus Water Treaty 1960. The treaty was signed at Karachi on 19th September 1960, by Prime Minister Jawaharlal Nehru on behalf of India, by President Mohammad Ayub Khan, on behalf of Pakistan and by Vice President W.A.B. Lliff on behalf of World Bank. The treaty was duly ratified by the two governments and exchange of ratifications in January 1961. It came into force retrospectively, from 1st April, 1960.⁵ The Indus Water Treaty of 1960 is a proof of India generosity as an upper riparian. Despite the fact that India has abided by the terms of treaty, Pakistan has time and again raised the issue of unfair treatment stealing of water and violation of the terms of the treaty.⁶ India suspended the Indus water treaty in April 2025, after the pahalgam attack and remain suspended until Pakistan takes strict action against cross border terrorism.

² *Id.* at 8.

³ *Supra* note 1, at 9.

⁴ *Supra* note 1, at 10.

⁵ Niranjana D. Gulhati, *Indus Water Treaty: An Exercise in International Mediation* 11 (Allied Publishers Private Ltd. New Delhi, 1973).

⁶ Rumel Dahiya, Ashok K Behuria, *India's Neighbourhood*, 180 (Pentagon Security International, New Delhi, 2012).

Provisions of the Treaty

According to this Water Treaty all the waters of Eastern rivers available for the unrestricted use of India except for Domestic use and Non-Consumptive Use, Pakistan shall be under an obligation to let flow, and shall not permit any interference with, the waters of the Sutlej Main and the Ravi Main in the reaches where these rivers flow in Pakistan and have not yet finally crossed into Pakistan. Except for Domestic Use, Non-Consumptive Use and Agricultural Use Pakistan shall be under an obligation to let flow, and shall not permit any interference with, the waters (while flowing in Pakistan) of any Tributary which in its natural course joins the Sutlej Main or the Ravi Main before these rivers have finally crossed into Pakistan. There was a Transition Period during which, India limit their withdrawal for Agricultural Use, limit abstractions for storages, and make deliveries to Pakistan from the Eastern Rivers. The Transition Period was begins on 1st April 1960 and it was end on 31st March 1970.⁷

Western Rivers

Pakistan shall receive for unrestricted use all those waters of the Western Rivers which India is under obligation to let flow under the treaty. India shall be under an obligation to let flow all the waters of the Western Rivers, and shall not permit any interference with these waters, except for the following uses, in the case of each of the rivers, The Indus, The Jhelum and The Chenab, to the drainage basin thereof :Domestic Use, Non-Consumptive Use, Agricultural Use and Generation of hydro-electric power, as set out in Annexure C,D, E, Pakistan have the unrestricted use of all waters originating from sources other than the Eastern Rivers which are delivered by Pakistan into The Ravi or The Sutlej, and India shall not make use of these waters. Each Party agrees to establish such discharge observation stations and make such observations as may be considered necessary by the Commission for the determination of the component of water available for the use of Pakistan on account of the aforesaid deliveries by Pakistan.

Except as provided in Annexure D and E, India shall not store any water of, or construct any storage works on, the Western Rivers.⁸

⁷ Indus Water Treaty, Ministry of external Affairs, Government of India, available at: <https://mea.gov.in/bilateral-documents.htm?dtl/6439/Indus> (visited on 17/07/ 2021).

⁸ Indus Water Treaty, Ministry of external Affairs, Government of India, available at: <https://mea.gov.in/bilateral-documents.htm?dtl/6439/Indus> (visited on 17/07/ 2021).

Indus Commission

India and Pakistan shall each create a permanent post of Commissioner for Indus Waters, and shall appoint to this post, as often as a vacancy occurs, a person who should ordinarily be a high-ranking engineer competent in the field of hydrology and water-use. Unless either Government should decide to take up any particular question directly with the other Government, each Commissioner will be the representative of his Government for all Matters arising out of this Treaty, and will serve as the regular channel of communication on all matters relating to the implementation of Treaty. The Commission shall determine its own procedures. Any question which arises between the Parties concerning the interpretation or application of this Treaty or the existence of any fact which, if established, might constitute a breach of this Treaty shall first be examined by the Commission, which will endeavor to resolve the question by agreement.⁹

What the Treaty Achieved?

An announcement issued by the World Bank on 19 September 1960, stated “the treaty marks the end of critical and longstanding dispute between India and Pakistan , and opens the way to the peaceful use and development of water resources on which depends the livelihood of some 50 million people in the two countries.”¹⁰ President of Pakistan Mohammad Ayub Khan said that “treaty is an event of historic significance for the two countries concerned and if I may say so in all humility, for the whole World.”¹¹ Prime Minister Jawaharlal Nehru of India said that “this is Memorable because it will bring assurance of relief to large number of people, farmers, agriculturists and others in Pakistan and in India.”¹² In India while two opposition parties Swatantra and Communist welcome the treaty. Other political parties and a section of Press felt that Concessions made by India were not justified by merit of the claims advanced by Pakistan. That the Indian financial contribution was too high, that the treaty was a diplomatic defeat to India and Political Success to Pakistan. They Blamed the Government of India for a policy of appeasement and surrender to Pakistan and said that India’s Interest had been let down.¹³

⁹ *Ibid.*

¹⁰ Niranjana D. Gulhati, *Indus Water Treaty: An Exercise in International Mediation* 349 (Allied Publishers Private Ltd. New Delhi, 1973).

¹¹ Niranjana D. Gulhati, *Indus Water Treaty: An Exercise in International Mediation* 342 (Allied Publishers Private Ltd. New Delhi, 1973).

¹² *Ibid.*

¹³ *Supra* note 11, at 344.

Present Indus Waters Treaty Issues

Although this treaty was not touched and violated during the various Indo- Pak wars and conflicts. However, lately Pakistan has complained that India is violating the treaty by constructing a Dam in the upper stream, which is against the spirit of the treaty.¹⁴

- i. In 2016, Pakistan had approached the World Bank, raising concerns of India's **Kishenganga and Ratle hydroelectric power projects** being constructed in Jammu & Kashmir. India then requested for neutral experts to inspect the plants, saying that the points raised by Pakistan were technical ones and do not require a court of arbitration. The World Bank permitted India to proceed with the projects after talks were concluded between both the countries on the technicalities of the treaty.
- ii. The **Tulbul project** which is a navigation lock-cum-control structure at the mouth of the Wular Lake, situated on the Jhelum from Anantnag to Srinagar and Baramulla was suspended in 1987 after Pakistan objected to it. Recently, the government decided to review this suspension not taking into account Pakistan's protests.
- iii. Pakistan's **Left Bank Outfall Drain (LBOD) project** passes through the Rann of Kutch in India's Gujarat. The project was constructed without India's consent. India has objected because this is in contravention to the Indus Water Treaty. The lower riparian state is in India and hence it needs to be given all details. There is also the danger of flooding in the state of Gujarat.¹⁵

Recently, the bilateral relations between India and Pakistan have taken on a downward spiral. In the wake of the Uri attacks on India, Prime Minister Modi remarked that **blood and water cannot flow simultaneously** indicating to Pakistan that its support to terrorism across the border will lead to India rethinking its generous stance on the Indus Water Treaty. Indeed, many experts believe that the treaty is more favorable towards Pakistan than India. India does not use its entire share of water it is entitled to as per the provisions of the IWT. About 2 million acre-feet of water from the River Ravi flows into Pakistan unutilized by India. In the wake of the Pulwama attacks in 2019, the Indian government stated that all water flowing into Pakistan at present, in the three eastern rivers, will be diverted to Haryana, Punjab, and Rajasthan for

¹⁴ Shriram Yerankar, *Indo- Pak Relation : Border Dispute*, 142 (Adhyayan Publishers & Distribution, New Delhi 2015).

¹⁵ available at: <https://byjus.com/free-ias-prep/indus-water-treaty> (visited on 17/07/ 2021).

different uses.¹⁶

Conclusion

Many political thinkers consider that the Indus Water Treaty is one-sided and unfair towards India and that it should be abrogated. The treaty's provisions do not permit a unilateral abrogation, even if India decides to stick down from the treaty. The Vienna Convention 1969, on the law of treaties should be abided by and this can damage the country's image internationally. India's other neighboring countries like Nepal, Bangladesh, Shrilanka, and Bhuttan may become dubious about alike treaties with them. a further angle is that of China. China, with its support to Pakistan, may block the water from the Brahmaputra to Assam. It can also stop the waters of the Indus which originates in the Chinese territory Mansarover at Kailash Mountain and Tibet which is occupied by China.¹⁷ There are people in both countries who believe that the division of waters under the treaty was unfair, but the unfairness alleged in one country is the exact opposite of that alleged in the other.¹⁸ But there is rising circumstances and concern that the Indus treaty will not survive afar a few more years.

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¹⁶ *Ibid.*

¹⁷ *Supra* note,15.

¹⁸ available at: <https://economictimes.indiatimes.com/news/politics-and-nation/why-abrogation-of-the-indus-water-treaty-is-not-in-indias-interest/articleshow/54632343> (visited on 18/07/ 2021).