Chapter 8: Kashmir Vs Pakistan

Pakistan's primary interest in Kashmir to secure its water resources in order to satisfy Punjab and contain Sindh is in confrontation with the interests of the people of Kashmir on both sides of line of control. For the last 15 years, Kashmiri youth have been preoccupied with a conflict with India. However, a water war with Islamabad is in the offing.

Kashmir on the Pakistani side of the line of control is predominantly agriculture-based, depending on farming, livestock and related activities. Of the total cultivated area in the region, only 10 per cent is irrigated, compared with about 80 per cent in Pakistan. The average farm size is only 1.2 hectares, as compared with 4.7 hectares in Pakistan. The average annual per capita income in Kashmir is half of the national average. Industry is underdeveloped, with only 930 industrial units, mostly in the private sector. There is no railway network. Road and air transport is the only means of transportation. Per capita electricity consumption is around 232 kWh, as compared with 325 kWh in Pakistan. With regard to health, as of 1999, there were 1,382 hospital beds in the province, averaging 0.46 beds per thousand persons as compared with 0.67 in Pakistan.

In Kashmir (Pakistan), 13 per cent or 172,721 hectares of land is under farming. Agriculture is an important sector of the Kashmir economy, providing livelihood to 84 per cent of the household. About 97 per cent of the farmers have less than 5 hectares of land and the farming system is based upon cereals and livestock production. The typical farmer has, on an average, 1.2 hectares land in which 60 per cent of land is either under forest or wasteland, with only 0.47 hectares constituting the farm size. Average household size is 7-8 persons. There is an intense population pressure that is already evident in many areas.

Though this region is well endowed with water resources, it is marginally irrigated. Worse, hardly any development projects have been envisaged. Apart from lack of development, the province also suffers from manipulations. Its resources are tapped, but the region is not duly compensated. The Mangla dam, constructed in Mirpur has revolutionised agriculture in Punjab, but at the cost of Kashmir's deprivation. The Mangla dam, a major asset to the region, irrigates the canals in Punjab and also generates electricity. This dam supplies 20 per cent of the hydro-electricity needs of Pakistan. However, till early 2003, the province had not received any royalty for the electricity generated from Mangla dam. NWFP, however, has been receiving due compensation for the electricity generated from its Tarbela dam.

In late 2002, during General Musharraf's regime, it was decided to raise the height of Mangla dam by another 30 feet to 1,264 feet. This issue had long been under dispute due to objections from Kashmir. It was feared that by raising the dam, around 44,000 persons and 8,000 households in Kashmir would be displaced, and the district of Mirpur would be submerged.

Following the federal government's decision, Kashmiris organised several protests. Though the water authorities assured building a new city adjacent to Mirpur for the project-affected people, the locals are not inclined to trust the authorities and almost all the political parties in the province opposed to the project.

To appease the government in Kashmir, Pakistan decided to pay royalty to the province for the electricity generated from Mangla dam. It was also decided to charge domestic consumer electricity rates, as against the prevailing bulk rates, which are considerably higher.

Whilst the debate was on between WAPDA and the Kashmir government over the issue of tariffs and royalty, the Pakistan government proposed to bring the Mangla dam territory under the federal jurisdiction, which would have deprived Kashmir of its constitutional rights to claim net profits from Mangla Dam power station and fishing in the lake. However, this proposal did not materialise and finally, by end-June 2003, Kashmir and WAPDA managed to reach a compromise over the issue based on receiving a royalty of 50 paise per unit of electricity generated, more compensation for the people displaced and a reduction in electricity tariffs. Though the AJK government accepted the package, the people of the province did not receive this proposal well, and agitations against the project continued. By late 2004, the agitations slowed down temporarily, and Pakistan government was pumping in funds to aid various development projects in the region. The lull in protests can be partially explained, as the construction has not yet started. The Pakistani authorities fear resurfacing of protests once construction of the dam commences.

General Musharraf while inaugurating the Mangla dam extension project stated: “This raising of Mangla dam

project will first be benefiting Punjab, Sindh, NWFP, Balochistan and would then accrue benefits for Azad Kashmir." This clearly reflects Pakistan's policy towards Kashmir an intermediate for the development of its provinces, especially Punjab. Kashmir is needed for developing water and hydropower projects that will ensure reliable supply to the provinces in Pakistan. But at the same time, Kashmir's own development needs are being neglected.

The Mangla dam project and the royalty earmarked encouraged the Kashmir (Pakistan) government to demand a share in the National Finance Commission allocations and also in the Public Sector Development Programme. Kashmir (Pakistan) has never been granted the status of being a province of Pakistan. Such demands reflect their assertion to not remaining a mere surrogate to Pakistan's interests, but also seek their share from the national exchequer.

At a seminar held by the Urdu daily *Ausaf* in early March 2003, the President of Pakistani Kashmir, Sardar Mohammad Anwar Khan, categorically demanded that the Kashmir in Pakistan be strengthened in every sense in comparison to the Kashmir in India, so as to entice the latter to join Pakistan. Similar statements are often heard from leaders in Pakistani Kashmir and these statements definitely mirror their sense of deprivation.

Punjab has always claimed the Mangla dam to be its exclusive compensation for the three eastern rivers ceded to India under the Indus Waters Treaty. It is on account of provisions of the same treaty that Pakistan has a direct conflict of interest with Kashmiris on the Indian side.

Indus Waters Treaty

As pointed out in the previous chapter, the Indus Water Treaty of 1960 divided the Basin between India and Pakistan. As per Article III of the Treaty, India is under obligation to let flow the waters of western rivers to Pakistan. India can only use these waters for household and agricultural purpose. For instance, the new areas developed by withdrawals from river flows cannot exceed 120,000 hectares. The treaty also puts a restriction of 3.6 MAF of storage capacity on the western rivers.

A major achievement of the treaty was to end the decade-long bitter controversy since partition. It opened the way for large development works in the basin in both countries. The post-treaty period led to an agricultural boom in both the countries, leading to higher levels of production, acreage, yield and rapid growth.

The treaty assured Pakistan, permanent water supply for its canal system. The principal benefits were:

- Gaining independence from India for ensuring its supplies by binding the latter to a formal international treaty
- The treaty helped regulate the flows of the Indus and its tributaries. About 80 per cent of the total water is produced during the monsoon period July to September. Storage projects undertaken due to the treaty ensured water availability during winters and enhanced canal diversions.
- It helped to overcome shortcomings and revolutionize agriculture

The negative outcome for Pakistan was the loss of eastern rivers, and with this, land surrounding these rivers largely irrigated by traditional methods was adversely affected. However, this loss was compensated by the construction of storage reservoirs, canals and diversions. The other drawback was the rise in inter-provincial discord, especially in recent years, due to reduced flows in the Indus. Sindh's stance towards Punjab is comparable to that of Pakistan towards India.

The partition gave India very little of the already-developed areas of the canal and irrigation system. India was free to undertake development works on the eastern rivers, thus helping in irrigating even arid areas like Rajasthan. However, having earlier enjoyed complete rights over the waters of these rivers, the treaty was a compromise. The major benefits that accrued from the treaty are:

- Fully harness the eastern rivers to its benefit. It helped in diverting waters to arid areas like Rajasthan and develop irrigation facilities

- Could build run-of-river hydroelectric plants on the western rivers and flood control storage facilities, though no storage facilities have been built so far.

The losses to India were:

- Ceding western rivers to Pakistan hampered growth of Jammu & Kashmir, as water resources in the state could not be harnessed (this part is discussed later)

- Increased differences amongst basin states as they began contending higher allocation of water

- The treaty does not augur well as it has no exit clause, though Article XII of the treaty provides for a modification of the treaty.

Pakistan's awareness of its vulnerability to its upstream neighbour for economic viability had grown during the period of formulating the treaty. Furthermore, its justification for acquiring the Kashmir valley also found credence with the signing of the treaty.

President Ayub Khan in his broadcast to the nation on September 4, 1960 stated: “The very fact that we will have to be content with the waters of three western rivers will underline the importance for us of having physical control on the upper reaches of these rivers to secure their maximum utilisation for the ever growing needs of West Pakistan.”

The treaty has thus far safeguarded Pakistan's water requirements. It has faithfully served both the countries as a means of forestalling water-related disputes. And despite being the upper riparian state, India has never used it as a 'black mailing' tool in spite of two major wars and constant skirmishes.

Post-treaty, after 45 years, Pakistan can now argue that by submitting to man-made reservoir water, which has inherent complications, Pakistan has accepted an unjust principle of replacing perennial stream water. But it has to be borne in mind that had it not been for the treaty, Pakistan would have been forced to remain in eternal conflict with its neighbour. Pakistan still has a solution in hand by improving management of water resources and developing new projects, though it involves huge capital outlay.

India, on its part, has never used the treaty as a bargaining lever to restrain Pakistan from providing support to *Jihad-e-Kashmir*. Nevertheless, there is bound to be an eternal sense of insecurity in Pakistan's mind given that any call on India's part to change the treaty can jeopardise Pakistan's water supply situation. After all, India is the geographical and political owner of the three rivers ceded to Pakistan by the treaty. If the treaty is revoked, Pakistan stands to lose its lifeline.

In the long-term, the Indus Waters Treaty has favoured Pakistan. Assessing the present water situation, it is evident that India has had much to lose while Pakistan has been insulated from water-related adversities. For India, abrogating the treaty is an extreme step, which may be taken under coercive circumstances. On the other hand, given the bounty that the treaty has bestowed on Pakistan, the country might not entertain even the proposition of renegotiating the treaty.

The Indus Waters Treaty would subsist till such time that:

- India demands an irrevocable renegotiation of the treaty, for reasons including, *inter alia*, water shortage

- The political status of Kashmir changes drastically

- India decides to abrogate the treaty an extreme step in retaliation to cross-border terrorism.

If the treaty subsists, northern India would eventually reach a point where meeting growing water requirements would become difficult.

International laws do not permit linking one river basin to another. India then might be compelled to tap the rivers given away to Pakistan, especially the Chenab. Treaty-bound, India might fail in fostering socio-economic growth in northern states like Jammu & Kashmir and Punjab.
The World Bank had envisioned that mutual trust would finally bind the two countries to the treaty. Instead, the two countries have chosen the path of hostility and terrorists have assumed control of conflict dynamics since 1989.

The treaty has engendered a vicious cycle. Lack of trust between India and Pakistan forced the bifurcation of Indus River Basin. As the gap between water availability and requirements widen in Pakistan, its desire to intensify *jihadi* operations will grow. Agricultural development will be affected, which in turn will produce a stratum of unemployed youth willing to service terrorist groups. This in turn would aggravate the mistrust and hostility between the two countries. This vicious cycle of depleting resources spawning unemployment and fuelling terrorism is feared to intensify in the near future.

Kashmir's Woes

Jammu & Kashmir in India has been the foremost loser as a result of this treaty as all the rivers surrendered to Pakistan were the major water resources for the state. Due to restrictions imposed on tapping of water resources, in conjunction with faltering policies of successive state governments, Jammu & Kashmir has been unable to grow to the optimum potential of its agriculture and electricity sectors.

The limitations imposed by the Indus Waters Treaty that affect Jammu & Kashmir are:

- The Treaty permits building storage aggregating 3.6 MAF on the three rivers of the Indus, Jhelum and Chenab.
- Of the 3.6 MAF water storage capacities, 1.6 MAF is for hydropower, 0.75 MAF for flood moderation and 1.25 MAF for general storage for non-consumptive uses including power generation.
- It permits additional irrigation of just 1.21 lakh hectares from the Effective Date, 1 April 1960.

The treaty permits additional 1.21 lakh hectares, over and above the 2.6 lakh hectares already irrigated at the time of signing the treaty. This implies that Kashmir can irrigate a total area of just 3.81 lakh hectares, or hardly out of a total cultivable area of over 10 lakh hectares. As of 2000, Jammu & Kashmir had already irrigated 3.1 lakh hectares of agricultural land. The present situation provides for just an additional 0.7 lakh hectares of irrigated land.

Hydro-electricity potential in the state has been estimated to be around 15,000 MW, of which only 10 per cent has been harnessed so far. Currently, projects worth 1,600 MW are in various stages of development. Of the existing installed capacity in the state of 1,473 MW (state and central sector), 99 per cent is from hydel plants. There is little scope for any other forms of power generation, particularly thermal, in the state since there are not many feasible sites for such plants and the state's difficult topographical condition makes transportation of raw material impracticable.

Moreover, all the power projects currently under construction in the state have become controversial due to the continuous interference of Pakistan on the pretext of the treaty. The projects end up having long gestation periods and short working lifespan.

Abrogating the Indus Waters Treaty would provide greater benefits and open up several avenues for unrestrained development of the state of Jammu & Kashmir. It can:

- Improve hydro-electricity sector's potential as storage facilities could be developed
- Pave the way for industrialization of the state
- Improve irrigation facilities which in turn would boost agricultural growth

- Give rise to employment opportunities, which will indirectly keep a check on external interference in state affairs

- Help attract private investments, propelling the state's position on India's investment map.

The opportunity to tap the Jhelum and Chenab Rivers would provide windfall gains not only to Jammu & Kashmir, but also to the neighbouring states of Punjab, Rajasthan and Haryana. The three states share the eastern rivers and are in conflict over the sharing of waters. The addition of Chenab and Jhelum would secure water availability for these states.

The Indus Waters Treaty casts unilateral responsibility on India for compliance. It is an obligation that necessarily falls on all upper riparians. Abrogation would not be defensible on any understanding of international water laws or international humanitarian laws. Further, abrogation will necessarily have to be followed by an engineering feat that would greatly strain the Indian economy.

In any case, legally speaking, it is virtually impossible for India to abrogate the treaty. Article XII (4) states that "provisions of this treaty shall continue in force until terminated by a duly ratified treaty concluded for that purpose between the two Governments." The treaty does not provide an exit clause for India *per se*.

Article 54 of Protocol I (1977) to the Geneva Convention (1949) prohibits any measures which could result in the starvation of people. It specifically refers to water resources and irrigation works.

There is yet relatively little international law governing transboundary rivers and defining the rights and obligations of riparian states. The International Law Commission of the United Nations is developing guidelines to help settle water-related conflicts. In 1994, the commission presented a draft on the Law of Non-navigational Uses of International Watercourses, which is regarded as a Framework Convention. Some articles of the Framework Conventions that have been widely adopted are:

- Article 5: transboundary rivers should be used in an equitable, reasonable and optimum manner

- Article 6: 'equity' does not mean equal distribution. It rather depends on a wide range of factors which have to be taken into consideration

- Article 7: individual water course states must exercise due diligence to make sure that they do not give significant harm to others

- Article 8 and 9: call for cooperation and the regular exchange of information between riparian states

Abrogation is bound to incite reactions from the World Bank and the countries that were party to the treaty and have provided funds. The countries, including Australia, Canada, Germany, New Zealand, Britain and the US, are also India's major export destinations.

India is aware of the implications of abrogation of the treaty. Therefore, despite growing protests from the Kashmiri people, no policy maker in New Delhi is ever likely to even contemplate this move. The act of abrogation on the part of India could cause insecurity among the other countries that are lower riparian to India. India's relations with its neighbours would also be affected, as India also has water treaties with Nepal and Bangladesh. SAARC would be diluted

Table 1: Apportionment of Indus Waters in Pakistan as per Water Accord of 1991

(in MAF)

Province	Kharif	Rabi	Total
Punjab	37.07	18.87	55.94
Sindh	33.94	14.82	48.76
NWFP	3.48	2.30	5.78
Civil Canals	1.80	1.20	3.00
Balochistan	2.85	1.02	3.87
*Total**	77.34	37.01	114.35
Distribution of balance river supplies (including flood waters and future storages)			
Punjab			37%
Sindh			37%
NWFP			14%
Balochistan			12%

* - Excluding the supplies to the civil canals in NWFP
Source: Indus Water Accord of 1991

Table 2: Irrigated Cropped Area permitted for India under the Indus Waters Treaty

Basin	ICA as on effective date (hectares)	Additional ICA permissible (hectares)	Net ICA permissible	Total ICA achieved till 1999-2000 (hectares)
Indus	17,070	28,329	45,398	20,619
Jhelum	209,595	60,704	270,299	258,671
Chenab	33,342	20,235	53,577	46,790
Total		109,268	369,274	326,081

Source: Ministry of Water Resources, Government of India

Table 3: Catchment Areas of Indus River System in the Indian Subcontinent

Miles^2

	Indus	Jhelum	Chenab	Ravi	Sutlej	Beas	Total
Jammu & Kashmir	**47,298**	**11,171**	**10,831**	**Nil**	**Nil**	**Nil**	**69,300**
India (Excl. Jammu & Kashmir)	**Nil**	**Nil**	**1,735**	**4,408**	**12,138**	**7,719**	**26,000**
Pakistan	**158,078**	**10,188**	**13,469**	**Nil**	**Nil**	**Nil**	**181,735**

Source: Pakistan Water Gateway