

Indus Water Treaty: Between Law and History

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Abstract: This article looks into the intersection of Legality and history as two categories of inquiry with respect to Indus Water Treaty. Indus Water Treaty was signed in 1960 between India and Pakistan. This treaty decided the future of the shared water relations between the two countries. This article would look into the reasons which led to the culmination of this treaty and the repercussions there after.

Key Words: Legality, Indus water Treaty, Shared Histories, Riparian

Introduction

Any sort of international treaty or for that matter any form of international legal documents strengthen and internationally legitimizes the fiction of national sovereignty. The search for legitimacy is a technique through which the modern state in the era of imperialism derives consent from people. For this the imperialist powers club together in form of an international legal entities to create laws that normalizes a particular act by the state and punishes the other. The necessity to run a bureaucratic oppressive international order requires legal documents that empowers language with a cartographic power, defining imperialism in a new terminology it paves the way for redefining the imperial geography of the underdeveloped regions. The Indus Water Treaty has been successful in redefining the geography of Indian subcontinent in accordance with the needs of imperialism. Besides it has also developed the desire to protect the feminine identity of the desired regions, developing the hetero-sexual notion of sexuality developed by the direct imperial rule to a new level.

The treaty drafted by World Bank has to be seen in contiguous to the cold war strategy of space claiming against the growing communist revolution. The colonial act of appropriating geographical regions according to the imperial needs, has been manifested in the way foreign (Indian and Pakistani) hold over the independent nation of Kashmir has been legitimized by a treaty. The text of the treaty is dictatorial and have less concern about the independent stakeholders in the basin. The use of 'shall' several times in the treaty is the testimony of the authoritative character of the treaty (MEA n.d.). It perceptually legitimizes the domination of Jammu and Kashmir by the imperial appease state of India and Pakistan. There is a constant involvement of third party in form the world bank which in fact is one among the party (Qayoom 2016) in the treaty but its name is absent in the preamble to the treaty but nevertheless it is in an administrative role whom the two parties are obliged to follow (Bank 1960). Clearly the Bank is the instrument of imperialist powers having an immutable power to penalize the one who hamper the objective of its legislation.

Signing of the treaty was a moment of rejoice not just for India and Pakistan but happier were those institutions that represents the interest of imperial capital, UN began to assert cooperation through water by projecting the Indus Water Treaty as a successful way to resolve disputes (Rafi, #Day80: #IndusWaterTreaty Has survived Two Wars 2016). The treaty became successful investment opportunities for attracting the global capital inflow in the third world countries like India. In India too, the big bourgeoisie and feudal lords and its representative welcomed the treaty, their media saw this as a happy end to the dispute (Haines, Indus Divided Pg.155 2017). But the happy end is a mask under which the malicious agenda of imperial capital had been concealed.

The treaty created substantive rights and obligations. These rights as claimed by Raman, Durgeshree has been created based on the principle of equitable and reasonable utilization of resources (Raman n.d.). The substantive rights created under the treaty is based upon the geographical location of the disputants (Raman n.d.). Article 2 of the treaty gives the substantial right to India and Pakistan based on their location, the allocation of rivers to the states of India and Pakistan according to their vicinity to the rivers has been described as a 'simple solution' (Raman n.d.). The six rivers of the Indus basin have been divided between the states, the three western rivers as defined in Article 1(6) of treaty (Indus, Jhelum and Chenab) were given exclusively to Pakistan except for some minor use while the three eastern rivers as defined in Article 1(5) of treaty (Sutlej, Beas and Ravi)

were given exclusively to India except for some minor use (Bank 1960). Pakistan had the access of about 79% of water in the basin, Indian state had 21% (Mehta 1988). Further there is a claim that principle of equitable utilization has been reflected in the treaty. According to the Article 2(2) and (3) of the treaty equitable use of the eastern rivers by Pakistan and western rivers by India for domestic, no-consumptive and agricultural use are allowed (Bank 1960). And Article 4(3) of the treaty allows construction of storage work provided it does not cause material injury to the other state in the basin (Bank 1960).

Besides creating the rights, the treaty has created a bureaucratic apparatus to ensure that the provisions of the treaty are implemented in good faith by the parties. Article 8 of the treaty provides that there should be a commission namely 'Permanent Indus Commission' that would consist of commissioners appointed by the state of India and Pakistan, these commissioners should be high ranking engineer expert in the field of hydrology and water use (Bank 1960). As mandated from the treaty itself these commissioners were not going to be different from those engineers whom Lilienthal had met in order to start a negotiation in the river basin. These commissioners were to be the representative of their states their duration of duty were to be determined by the respective government. Their primary duty as assigned in the treaty is to act as a channel of communication between the two states and especially with regard to the exchange of data as provided for in the treaty (Bank 1960). According to Article 9(1) of the treaty the commission has also been assigned with the power to settle any dispute or differences through mutual agreement. These provisions have strengthened bureaucratic capitalism in the state of India and Pakistan, this form of capitalism historically has been the best way through which imperial capital establish its hold over the underdeveloped countries like India and Pakistan. The signing of treaty doesn't end the role of bank in the basin. This perhaps is the best testimony to the cause for which the bank showed its interest in the Indus Water Dispute. The bank perpetuates the domination of pro-imperial economy of Kashmir. With every water dispute that finds its solution through the treaty the Indian and Pakistani occupancy of the Jammu and Kashmir is reproduced. Throughout the treaty there is a criminal silence on Kashmir. The bank has not recognized the nation as a separate stakeholder in the dispute. Besides, the Bank presence after 1960 is maintained through Article 5 of the treaty, the financial control over the replacement project assigned in the treaty is maintained by the Bank. The bank according to the treaty has been assigned the task to create and administer Indus Development Fund (Bank 1960). With regard to the emergency provision contained in Article 10 the Bank has a role similar to that before 1960, the parties are bound to access the "good office" of Bank in order to facilitate a negotiation (Bank 1960).

The treaty also provides means to settle the dispute which might arise in the process of implementing the Indus water treaty. Article 9 of the treaty provides for this mechanism (Bank 1960). If the disputes are not settled by the commission under Indus Water Treaty, then it is provided that either commissioners can refer the question to a Neutral Expert through a process listed in Annexure F of the treaty. If the neutral expert believes that the difference is a dispute, then the states can make an agreement or refer it to a Court of Arbitration and act under the terms of Annexure G (Miner, et al. 2009).

The treaty sets some specific procedural obligations for the Indian and Pakistani state, it provides that if a party carries out any engineering work in the rivers which would cause interference with the normal flow of water in the rivers and which can materially affect the other party then the party so constructing is bound to inform the other party about the construction work (Raman n.d.). The treaty mentions that the party carrying the construction also has to share information regarding the construction Plan and also such data as would enable other party to know about the "nature, magnitude and effect" of the work (Raman n.d.).

Conceptualising the Pretext Leading To the Treaty

The problem with the water resources like river is that they don't recognize the ruling class concept of state boundaries. But for the state, control over water not only ensures national pride but also provides economic and political stability to the ruling class. Such an importance of water leads into mutual rivalry between states, of these rivalries the imperial powers try to maintain international hegemony over resources so as to assert direct control over the third world nations. The creation of water disputes and the setting of stage for cooperation through both political and apolitical ways are different means to facilitate imperial capitalists' expansion (Karin and Sundell 2014). Water by its very nature is power creator, it has served as the cause of destruction while it has also been instrumental in creating civilizations (Saifal 2011). Sometimes water is used as a mean to foster a fundamentalist idea in order to establish hegemony over the region that contain the water resource. In case of India and Pakistan we find that whenever any disputes arise between the state regarding water then the imperial powers like US and China gets involved in several ways sometimes as envisaged in the treaty the culmination of such imperialist powers in form, of UN comes into decide the matter, in all the manner this only reproduces the hegemony of the developed countries over the underdeveloped subjugated ones.

The Indus Water Treaty had successfully been planted by the world powers into the South Asian subcontinent. Behind this success lies the series of planted conflicts that has been instrumental in creating a

‘public opinion’ for the treaty. Conflicts makes the legitimate ground for the benevolent involvement of a power. It is through their own planted conflicts that the imperialist powers like US sanctifies their presence in the underdeveloped ‘conflict prone region’. Once a region is declared as conflict prone it becomes easy for the American ruling class to derive the legitimacy for imperial loot from the people of America. No conflicts mean less excuse for imperial intervention thus the mantra says make conflicts and creates exclusive zone of imperial capital. While there are also instances when the imperialist powers of a particular country need to go at war with other such powers in order to preserve his own share of loot inside the underdeveloped regions.

Conflicts therefore needs to be seen in contiguous to the global power matrix (Bradnock n.d.), it manifests the contradictions within the global economic order. Conflict comes naturally with the process of state creation. The state claims space through symbolism and appropriation, centered around objects ranging from water to mountains. Water since the very early days has served as the occasion for state creation. Access to clean and pure water is functional to the process of state creation, it has also been instrumental in development of nation states (Haines 2017). The states monopoly over violence gets legitimized through the water disputes it is engaged in. The period of neo-colonialism produces states of a special kind in the third world countries which has been best described as ‘comprador bureaucratic’ (index n.d.), such states are captives of the landlord’s class of the state and are also the agents of the imperial powers. These states have been creating global space to sustain the otherwise decaying imperial capitalists’ powers (Phillipines 1998).

The uneven geographical development moves the otherwise failing imperialistic capitalist’s systems (Harvey 2014). To overcome the crisis of overproduction the imperialists find such geographical areas and superstructure that would be a space to absorb the goods that cannot be absorbed elsewhere (Phillipines 1998). The imperialists form of capitalism forms the space and time matrix of its own, at one hand it consolidates the imperial states boundaries while at the other it claims to create a global society by eroding the significance of national boundaries and state sovereignty. But through its policies and agencies the imperialist capitalists have limited the exercise of sovereign powers of the third world states (Chimni 2006) as a result the states remain comprador and work to serve the imperial power. This sort of state formation serves the ideological interest of the imperial power while at the same time it encourages the dominance of feudal lords in the third world states (S. K. Ghosh, *The Indian Big Bourgeoisie* Pg.12 1985).

History on the Other Side

It comes as no surprise that the feudal lords of Pakistan and India have been instrumental in deciding the boundary line between the states (Haines 2017). But the role of imperial capital was paramount. The British imperialism have distributed the autonomous region of south Asia between India and Pakistan in much the same way as what Arundhati Roy says, “At the time, the Empire on which the Sun Never Set was free to snatch and bequeath national homes like a school bully distributes marbles How carelessly imperial power vivisected ancient civilizations. Palestine and Kashmir are imperial Britain’s fester-ing, blood-drenched gifts to the modern world. Both are fault lines in the raging international conflicts of today” (Roy 2003). The semi colonial states of India and Pakistan have been created on the demise of national identities of several kinds. The presence of states in the national homes is an act of territorial assertion over the identity of a national space. The marking of boundaries thus becomes essential to establish a power (Haines 2017) that would discipline the nationalities and shall ensure that the place so formed remains a safe haven for the Imperial capital. The power in form of a comprador bureaucratic capitalist state gives a delusion of independence and claims to nurture the era of post colonialism. But as a fact the very sovereignty of the state is at stake through acts like WTO, Minerals and SEZ that facilitates imperial exploitation of the natural resources by legitimizing large scale foreign capital investments in the area that has been territorialized by the Indian state (Topno 2005). The state sovereignty is the inter linkage of bio and panoptical power (Agnew and Coleman 2012). Through which the third world comprador bourgeoisie state creates subjects that are controlled and reproduced according to the needs of imperial capital.

The realist approach to geopolitics led by Mackinder and Mahan explains the factor of relative and absolute location as well as inherent geographical significance of a territory in order to assess its significance for the empire (Ankit 2014). Kashmir with its specific location and the varied geographical features presents an ideal ground for the practice of realist theory. The history of Kashmir conflicts needs to be seen from local, subcontinental and international level, this has been called as the ‘triple tragedy’ for Kashmir by Pannikar (Shivpuri 1953). The British imperial power had long realized the strategical importance of the region, the involvement and interest of the mighty empire in the region dates back to 1840 (Ankit 2014), from that very time the region gained its importance as a frontier having its ‘exposed edge’ in form of Persia, Afghan, Russia and China (Ankit 2014).

Kashmir is the place where great empires meet (Ankit 2014), the empire building in the region of south Asia has been done through the frontier significance of Kashmir. And thus the formation of semi colonial state

through neo colonial tactics in the region of South Asia has to be seen from the frontier role of Kashmir. The essence of a semi colonial state lies in the opportunity it provides to all form of imperial powers. Kashmir has been so build by the imperialist and their running dogs in India that it has remained a safe haven for the global capital (Mikhailov 1949) while the question of self-determinism in Kashmir remained unaddressed. The British imperialist expansion in the region of Asia and thereafter the American imperialist expansion in the region has been achieved through the frontier role of Kashmir (Ankit 2014). The control over the region of Kashmir was instrumental to ensure that sun never sets in the British empire. But in the aftermath of second world war the economy of the Britain empire was too weak to control foreign territory. The need therefore was to transfer the region to such hands as would ensure the safe haven for the imperial capital (R. W. Bradnock 2007). With the decline of direct imperialism, the export oriented imperialism (Phillipines 1998) has already converted the countries like India into a semi-colonial state. The imperial power installed comprador states in the third world countries which upsurge the era of neo-colonialism (Phillipines 1998). The comprador bureaucratic bourgeoisie states claim over the regional nationalities and the territories is centric on their relation with the imperial powers. Thus we find that the Indian prime minister uses the argument of Kashmir's strategical significance for global capital to justify Indian state hold on the region, he argues that accession of Kashmir to India will best serve the interest of western world (R. W. Bradnock 2007).

The rise of communist China under the leadership of Mao and the world wide upsurge against imperialists exploitation brought uneasiness to the shrinking imperial capital (Mao 1964). Besides the inability of the US imperialists and its agent in the form of Indian big bourgeoisie to fuel a secessionist movement in Tibet against the communist China increased the strategical importance of Kashmir (Ghosh 1962). The communist China was the real threat to the American led western interest and the imperial power had responded by allowing the Indian state's domination in Kashmir. The sending of armed forces to get the instrument of accession signed by the maharaja of Kashmir (Wolpert 1984) was a clear violation of the Indian Independence Act of 1947 (Legislature 1947). This was followed by Pakistan sponsored tribal aggression in Kashmir (R. W. Bradnock 2007). This helped Pakistan to establish control over 35 per cent of Kashmir territory (Newz 2006). The legitimization of Pakistan control over what it calls Azad Kashmir was done by UN's inactiveness over the inability of the states of India and Pakistan to conduct plebiscite (Ruff 2016). The imperial capital thus ensures that Pakistan's old value against the soviet power to counter the growing presence of USSR in Afghanistan is also preserved (Ankit 2014). Conflicts and cooperation thus becomes an apparatus to control the states so as to preserve the special economic and political interests of the imperialists. Indus Water Treaty too is an example of this.

After 1947, when India supposedly become independent, the state became the monopoly of the comprador bourgeoisie and remnants of feudal landlords but their interest remained secondary to the interest of imperial capital. The contradiction between the comprador and imperialist bourgeoisie gets exposed when the comprador states engineer states according to their own personal interest which for a certain period might cause minute loss to imperial capital or which may even be a gesture (S. K. Ghosh, *The Indian Big Bourgeoisie* Pg.18 1985). Indian leaders Nehru and Patel as the representative of feudal lords and big bourgeoisie engineered a strong state in the Westphalian line (R. W. Bradnock 2007). The principle of Westphalia state system as argued by Gearoid O Tuathail "is a state centric account of spatially" (Tuathail 1989). This state system runs on a geographical assumption that the boundaries of society lies with the boundaries with the state (Tuathail 1989). Creation and limitation of society thus became an essential part for building the state of India and Pakistan. While Indian state projected secularism in disguise of Brahmanism as the trait of its society, Pakistan relied on the two nation theory to guard its society from majoritarianism but this division doesn't hold good in the subcontinent. The geographical unity of the frontiers like Punjab and Bengal could hardly be framed into different societal narrative of two different states.

Summery

The transfer of power to the state of India and Pakistan was done through the Indian Independence Act, the act provided an option for the princely states within the British state of India to remain independent (Puri 2012). This provision was given in the act so that the British imperialist would earn and give respect to its earlier allies who helped to consolidate the British Empire in India (S. K. Ghosh, *The Indian Big Bourgeoisie* Pg.44 1985). But in the era of declining direct imperialism, the British imperial power tried to consolidate its hold over the princely states by assimilating them within the dominions of India and Pakistan so that they remain in the commonwealth league. In case of Kashmir the strong hold of the communists in the region was a cause of concern for the imperial powers. It was apprehended that through Kashmir USSR would spread communism in South Asia besides the triumph of Mao in China further frightened the imperial powers (McMahon n.d.). And thus any attempt to carve an independent nation state of Kashmir was resisted by Britain and other imperial powers (Ankit 2014). Albert Alexander the defense minister of Britain who had the mission

to retain British imperial position in India (Morgan 1984) noted 'increasing communist activity in Srinagar. This became clear when the British communist Rajni Palme Dutt visited Kashmir in July 1946, local leaders like Abdullah who raised the 'Quit Kashmir' movement against the unpopular monarch Raja Hari Singh had close association with the BPL Bedi and GM Sadiq (Ankit 2014) this strengthened the fear of communism in the mind of the imperial capitalist and their agents. Thus there was a need to have a Kashmir that would remain under the domination of not the imperial power themselves but under the domination of its agents, this would provide frontier for the expansion of imperial capital into the region of China and would also provide a check to the growing resentment among the people against the imperial exploitation in the region of South Asia (S. K. Ghosh, *The Himalayan Adventure* 1962). Besides the comprador bourgeoisie politics in the sub-continent creates space for imperial capital of all sorts of financial powers ranging from social imperialist to the capitalist imperialist forces of UK and USA. An example of which is the politics of 'Non Alignment Movement'. The politics of non-alignment was a project funded by the big bourgeoisie and supported by all sorts of imperial powers that helped to create conditions within the territory of India that would facilitate capital inflow from all imperial powers and thereby creating the "condition of neo-colonial development of Indian economy" (S. K. Ghosh, *The Indian Big Bourgeoisie* Pg.255 1985).

It should be noted that USA and UK were suspicious of Nehru's inclination toward therefore they did not vote for the permanent membership in UN Security Council besides the Russian has already termed Nehru government as a counter revolutionary bourgeoisie government (Stalin 2012). The soviet press had even rightly so described Indian Nehru government as new obedient agent of Washington (Ankit 2014). The USSR viewing of India would change shortly after the demise of Stalin and after the coming of the revisionist Khrushchev India successfully maintains a balanced relation with social imperialist power and the capitalist imperialists. This caused inflow of Soviet social imperial capital in the major hydrological and steel project of India (Immanuel Ness 2016). Thus without getting prejudiced of its nature the Indian state welcomed all sorts of exploitative imperial capital and allowed its expansion throughout the sub-continent. These sort of imperial control over the Indian state has undermined the Kashmiris right of self-determinism. The national bourgeoisie and the independent course of Kashmir's historical development is arrested by the exploitative imperial capital intervention in the sub-continent(Mao, *On the question of the national bourgeoisie* 1948).

Conclusion

The neo-colonial mode of resource exploitation in Kashmir is facilitated by the comprador bureaucratic states of India and Pakistan. With help of treaty like 'Indus Water Treaty' of 1960 the self-determinist right of the Kashmiris over the Indus water is snatched and the states of Pakistan, World Bank and India prioritizes the needs and make provisions for the supply of hydro power to the region (Shamsirfan, *Indus Water Treaty puts J&K in diadvantageous position: CM* 2014). Korbelt placed the Kashmir question in the different character of Indian and Pakistani state, he suggested a shift from the territorial and strategical advantage (R. W. Bradnock 2007). He said, "the real cause of all bitterness and bloodshed that characterized the Kashmir dispute is the uncompromising and perhaps uncompromisable struggle of two way of life, two concept of political organization, two spiritual attitudes, that finds themselves locked in deadly conflict, a conflict which in Kashmir has become symbol and battleground" (R. W. Bradnock 2007). He further quotes Nehru who said, "it is not Kashmir therefore but the rather a much deeper conflicts that comes in way to friendly relation between India and Pakistan...we can't give up the basic idea which we have held for so long and on which the whole conception of our society is founded" (Nehru 1951). The idea of Nehru to project India as a secular state from its very beginning is far from the reality, the truth remains that Indian society since its very beginning has been quite violent and discriminative on the basis of class, caste and gender (Ambedkar n.d.). Nehru himself went to Benares to seek blessing through yagnas from the Brahmins before he assumed the office of prime minister while the president of India washes the feet of Brahmins at Benares to mark the coronation of a Brahmin at the highest post of the state (Anand and Iyer 2016).

This proves that the idea of secularism has been used as a veil to cover the Indian state domination in the geo-political fringes. This idea has to be used so as to legitimize the control over the resources of Kashmir and the north eastern nationalities. The idea of secularism has been used as a guard against the Pakistanis claim over Kashmir.

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