

# Inter-State Rights in River Waters: Lessons for Punjab®

**DR. M.S. AHLUWLIA\* M.A. PH.D.**

@ A Paper presented at International Seminar on Water Resources Development under auspices of University of Madras.

\* Formerly Chairman, Deptt. of History and Dean, Faculty of Social Sciences, Himachal Pradesh University. Address: 671/C, Phase 9, Sector 63, S.A.S. Nagar, Mohali – 160 062, Punjab.  
Email: m\_s\_ahluwalia@hotmail.com

THE ECONOMIC PROSPERITY OF a country or a state is based on the development of water resources, particularly the river waters therein. The development of river water resources for purposes of irrigation and generation of hydro-electric power has been progressing steadily since independence. There has been growing realization to tap water resources for beneficial uses in agriculture and industry. But the path of development has not been smooth because of disputes between states sharing river waters. Most of the disputes of India relate to the question of sharing of waters of a river by different riparian states. A few of these have been settled through the agreement between the States involved, but some still remain to be settled though a few of them have been pending for decades.

The Indian Constitution has assigned a primary role to the states in the development of water irrigation as a State subject under the Constitution. Article 262 however, empowers the Parliament to provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters of any-Inter-State rivers, and to bar the jurisdiction of the Supreme Court in respect of such disputes. In pursuance of this provision, the Parliament has enacted Inter-State Water Disputes Act, 1956.

## **Legislation & the Exception:**

The Act provides for the constitution of a tribunal by the Government for the settlement of an inter-state water dispute when a request is received from a State Government and when the Central Government is of the opinion that the dispute cannot be settled by negotiations. Originally the act provided for one man tribunal from among the judges of Supreme Court of India, or a High Court sitting or retired, nominated in this behalf by the Chief Justice of India. Subsequently the Act has been amended to increase the membership of the tribunal to three judges of The Supreme Court or High Court.

Thus in spite of the fact that the Constitution assigns a primary role to the States in planning and development of river schemes, the centre has come to play a vital role. Practically all the major rivers run through more than one State, and therefore, Centre empowered itself to co-ordinate the activities of the different states to avoid waste and friction. This is, however, in case of inter-state rivers only or to be more precise, the riparian states. In case of Punjab, the Centre has nevertheless played an extra-constitutional role with regard to its water resources and hydel power by taking control of the Hydel projects (BBMB) and assigning water to non-riparian states of Haryana, Delhi and Rajasthan.

**Punjab accounts for just 1.57% of India's territory and 2.39% of its population, but it contributes more than 50% of the total food grains procured for the Central Pool. Punjab's success on the agricultural front is due to "the**

agriculture revolution” since 1966 just when a crisis stared the country in the face. Since then, Punjab has recorded a growth rate of 5% per annum, compared to all India growth rate of 2.71%; due to adoption of modern technology and optimum use of water resources. In spite of the phenomenal success, the state has been discriminated against so far as the distribution of its water resources is concerned. In order to draw lessons from the disaster which is awaiting Punjab’s farm sector in the coming decades, one has to begin the story from the partition of India, with special reference to the water requirements of Punjab since its partition in the year 1947.

**The background: Partition & Shrinkage of the Punjab:** There is no denying the fact that there was a terrible loss, both of land as well as irrigated area of the Punjab, following the partition of India at the time of independence. In spite of their sacrifice of property, land and blood for the sake of India’s independence, the state was not given any compensation for their losses by allotment of Government land or irrigated area outside the Indian Punjab, to which they were kept confined.

In 1966, after the acceptance of the *Punjabi Suba* demand and the reorganization of Punjab, the state has an area of 105 lac acres remained with the state. According to the experts of the Punjab Agriculture University, Ludhiana about 5 to 6 acres feet of water are required annually to mature an acre plot for the normal wheat-paddy rotation. As such the minimum annual requirement of the total cultivable area comes to 52.5 M.A.F. The Punjab rivers have a total annual water flow of 32.5 M.A.F at the time of partition.

Now, of the remaining about 22 M.A.F hardly about 5 M.A.F or so, have been allotted to Punjab under the Central powers of distribution. The rest of water has, without reference to the Supreme Court of the Constitutional issue, been allotted to non-riparian Haryana, Rajasthan and Delhi to be used in Yamuna basin and the Rajasthan desert, outside the basin of Ravi, Beas and Sutlej.

#### **“Irrigation and Hydel Power” as State Subjects:**

Article 162 and 246 (3) of the Constitution gives full and exclusive legislative and executive powers to the states over water and hydel power. Agriculture and industry being entirely dependent on irrigation and hydel power, these have been kept purely state subjects in the Constitution, and in the other countries as well. **There is hardly any state except Punjab, which does not enjoy full and exclusive power in relation to irrigation and hydel power of its own state rivers. Ironically, Sections 78 to 80 were introduced in the Punjab Reorganization Act 1966, which gave all powers to the Centre *ultra vires* of the Constitution.**

**In addition, these sections are violative of the equality article 14 of the Constitution because these are discriminatory for the reason that while the Act gives *exclusive* rights of waters of Yamuna to Haryana, it makes the waters of three Punjab rivers not only distributable by the Centre but also vests their control with the Central Government.**

Punjab’s stand since 1966 has been that this patently unconstitutional Act either should be revised and the control of Punjab rivers be given to **Punjab**, or the issue should be referred to the Constitutional Bench of the Supreme Court to determine the constitutionality of these provisions of the Punjab Reorganisation Act, 1966.

### **Punjab Reorganisation Act, 1966:**

To make the position further clear we come, once again, to the sections 78 to 80 of the Punjab Reorganisation Act, through which Haryana has become non-riparian of the river waters of the remaining three Punjab rivers, just as Punjab had become non-riparian vis-à-vis Yamuna. Geographically, no part of these three Punjab rivers runs through any part of Haryana. Punjab which had complete control of its rivers and the utilization of their waters and hydel power, is now entirely functioning through Bhakra-Beas Management Board created by the Centre. **Thus the development of Punjab rivers and its hydel power have been wrongfully taken over by the Centre from the Punjab Government.**

### **Sutlej-Yamuna Link Canal:**

On the basis of a scheme, and without any reference to Punjab, which is a riparian State, Haryana made a scheme for the use of 4 to 5 M.A.F of Punjab water to be used in the Yamuna basin of Haryana and got this scheme (known as Satluj Yamuna Link Canal), approved from Delhi. When Haryana put its claim on Punjab waters, naturally Punjab seriously objected to it. The scheme being beyond the scope of the Beas Project and for that matter is beyond the purview of Section 78 (which related to only two multi-purpose projects, i.e. Bhakra and Beas projects). In this background Haryana naturally created a dispute and wanted the Centre to arbitrate under Section 78 of the Punjab Reorganisation Act.

**The Indira Gandhi Award: An Unfair Dispensation:** In 1976, the then Prime Minister Indira Gandhi gave the Award that, out of available 15.2 M.A.F of the waters of Sutlej, Ravi and Beas, Punjab and Haryana would get 3.5 M.A.F. The remaining 8 M.A.F were unilaterally earmarked by the Centre for Rajasthan, another non-riparian State, unconcerned with the Punjab Reorganisation Act of 1966. To give Rajasthan, the benefit of this Award, a canal scheme, known as Indira Gandhi Canal, was launched. To give 8.6 M.A.F. in non-riparian Rajasthan, the Centre approached World Bank for a loan to construct this canal. The team of experts which was sent to assess its feasibility and productivity was headed by David E. Lilienthal. In this connection A.A. Michel, the reputed author of 'Indus Rivers' concludes:

“The cumulative irrigation experience in India, Egypt, the U.S. and the Soviet Union indicates that more food and the fibre can be obtained by increasing the water allowance to existing cultivated lands than by spreading thin water over new tracts.”

**The U.S. Bureau of Reclamation criticized India severely for wanting to undertake an irrigation scheme in the desert lands. And yet out of 15.2 M.A.F Punjab river waters remained ear-marked for non-riparian Rajasthan. It is significant to point out that the same Rajasthan applied to the Narmada tribunal for water of that river. Its request was rejected outright because Rajasthan was non-riparian in regard to river Narmada. But knowing all this the same government almost gave half of the available waters to non-riparian Rajasthan and only 25% to riparian Punjab.**

### **Punjab Reorganisation Act (Sections 78-80) challenged:**

In 1978, the Akali ministry (headed by Sardar Parkash Singh Badal) filed a case with the Supreme Court to challenge the validity of Section 78 to 80 of the Punjab Reorganisation Act. The constitutional path adopted by the then Government of

Punjab was sabotaged by the Centre. The Central Government was fully aware of the fact that the Punjab Reorganisation Act, relating to Section 78-80, was unconstitutional, and Supreme Court would give a decision in favour of the Punjab State. Since the Court on the same constitutional issue could not give one ruling regarding dispute in other states and another country ruling of law in case of Punjab.

As the issues of water, hydel power and territories, etc., were of basic and continuing importance for the well being of Punjab State and its people, the Akalis rightly resorted to the constitutional path of representing to the Centre.

**At the same time the Akalis argued before the Prime Minister's team that water was the greatest wealth of Punjab as it had no sea coast, no coal, oil or iron ore. Nor was there any major industry in the State. Loss of water and hydel energy would be the biggest set back to the State and its people.**

To frustrate this attempt for a constitutional solution, Indira Gandhi, soon after coming into power in 1980, took some hasty steps. For no reason whatsoever, the Akali Ministry (although enjoying a majority in the State Assembly), in Punjab was dismissed and President's rule introduced. This was deliberately done with a view to prepare the ground for the return of the Congress Ministry in Punjab. Elections were held during President's rule and Congress ministry headed by Darbara Singh, was formed in Punjab.

The story does not end here. As already mentioned above, in 1980 when Indira Gandhi returned to power, it became clear that the apple-cart of allotment made by her to non-riparian states might be upset by the judicial verdict of the Supreme Court. On the one hand she kept the Akali Dal at bay by prolonging the negotiations and on the other hand when Congress ministry was formed in Punjab, she called the Chief Ministers of all the three States and virtually got the allotment under her Award endorsed through an agreement in 1981 among the three states. There is a public report that the then Punjab Chief Minister, Sardar Darbara Singh, was made to sign the above agreement virtually under 'threats'.

How is it that, while for decades on end, the Centre could not hammer out any agreement between Karnataka and Tamil Nadu, it enforced overnight an agreement in 1981 between Punjab and the two non-riparian States? **It is clear that, whether it was the Central Government, the All India Parties, or the media, no one, even while knowing full well the injustice done to Punjab, ever tried even to suggest that the constitutional course should be followed and the matter be settled judicially.**

In case of Punjab, all the Congress Chief Ministers willingly became the tools of the Centre. It happened in case of Giani Zail Singh, who never contested the unconstitutionality of Indira Gandhi's Award in 1976 on waters. Cast in the same mould was Sardar Darbara Singh, who made an agreement in 1981 on the issue of waters and withdrew the case from the Supreme Court.

It was at this stage that the Akalis woke up to the realities of the situation. The Prime Minister Indira Gandhi had not only virtually banged the door against the Akali negotiators but also hastened to lay the foundation stone of the SYL Canal in Haryana on April 8, 1982, at village Kapuri, on the border of the two states. The Akalis were left with no choice but to launch a *morcha*, or agitation, for the stoppage of the digging of illegal canal. It is an unfortunate reality that no all India party has

been able to rise above partisan and communal considerations while trying to judge Punjab River Waters Dispute.

The Congress Government of Punjab, with the exception of the present one, instead of representing against the deprivation of its river waters and hydel power, have become a party to the denuding of Punjab resources. The contrast of this action with that of the Congress Government of Karnataka who issued an Ordinance to stop the flow of water even to riparian Tamil Nadu, and that too against the direction of the Inter-State Water disputes Tribunal, set up at the direction of the Supreme Court, is so obvious.

It is equally striking that whereas the Congress government withdrew the case that had been filed by the earlier Akali Government to set aside the executive order of the Prime Minister, thereby making the unconstitutional drain to non-riparian States a *fait accompli*, the then Congress Government in Karnataka refused to abide by the direction even of the Tribunal mentioned above. Equally colourable is the conduct of the Central Government in these two cases.

Further, while in Cauvery case, the Centre has all along been unwilling to enforce the verdict or direction of the Inter-State Water Disputes Tribunal between the two riparian states, in case of Punjab, the Centre made a special amendment (which seems apparently unconstitutional), so as to force a reference of the Punjab issue to the Tribunal and, for that reason, is beyond the jurisdiction of the Tribunal which under the Inter-Water Disputes Act 1956, can take cognizance only of an issue concerning inter-state waters, which Punjab rivers are not.

Be it known that the issue is purely a constitutional matter, to which no party should have any objection for judicial verdict of the Supreme Court. The real question is not the distribution of waters (under Section 78-80 of the Punjab Reorganisation Act) but the real issue is whether a non-riparian state had any right to any portion of the waters of the Punjab rivers. The clear verdict in this case is that Rajasthan was a non-riparian vis-à-vis Punjab rivers and Narmada, and as such, could not get any waters from these rivers as of right, has already been referred to above.

### **Rajiv-Longowal Accord and River Waters:**

In an effort to give a favourable turn to the tragic events that followed the assassination of the Prime Minister Indira Gandhi in November 1984, the Akali Dal President Sant Harchand Singh Longowal and Prime Minister Rajiv Gandhi signed an accord on 24<sup>th</sup> July, 1985. Leaving its positive and negative aspects to political analysts and critics about the territorial and other claims, a summary of the clause relating to sharing of River Waters, may be mentioned here:

#### **Clause 9 of the Accord:**

“The farmers of Punjab, Haryana and Rajasthan shall continue to utilize the same quantum of water from the Ravi-Beas System as was being utilized on 1.7.1985. Claims regarding the water being actually utilized by the three states shall be verified by the Tribunal to be constituted under para 9.2. Claims regarding the sharing of the remaining river water by Haryana and Punjab shall be referred to the Tribunal to be presided over by a judge of the Supreme Court of India. This Tribunal shall give verdict within a period of six months and this verdict shall be binding on both the

states. All related constitutional aspects shall be settled speedily. The construction of the SYL Canal will go on simultaneously and will be completed by 15<sup>th</sup> August, 1986.”

The Centre has thus succeeded in having its verdict of a Government appointed Tribunal, even though it knew that Rajasthan, by its own admission, was non-riparian, vis-à-vis the Punjab rivers, and the dispute did not relate to the waters of any inter-states river. The Tribunal, which has virtually endorsed Indira Gandhi's Award, has made the following allotments:

Rajasthan (non-riparian)	= 8.60 M.A.F
Haryana (non-riparian)	= 3.83 -do-
Delhi (non-riparian)	= 0.20 -do-
Punjab (riparian)	= 5.00 -do-
Jammu & Kashmir (riparian)	= 0.65 -do-
Total:	=18.28 -do-

It may be mentioned here that actually the waters for distribution, remain, as earlier assessed, i.e. 15.2 M.A.F. The present assessment is the result of technical and mathematical juggleries, having no relation to the ground reality.

### **SYL Canal – The last laugh**

At long last, the State Government has filed a petition in the Supreme Court on the issue of constructing SYL Canal. The State Government, on January 11, 2003 filed a complaint with the Union Ministry of Water Resources (under section 3 of the Inter-State Water Dispute Act, 1956 with regard to the scarcity of availability of Ravi-Beas waters and to set up a Tribunal to consider the matter. The State Government has also filed a civil suit on January 13, 2003, in the Supreme Court, in which the relief from its orders has been sought.

### **Why a Tribunal?**

**It may, however, be pointed out that the issue of setting up a Tribunal is not only irrelevant but also illegal, as Haryana is a non-riparian State, and has no share in Punjab water as a matter of legal right. The Congress Government, is once again repeating the same mistake of setting up a Tribunal to adjudicate on the distribution of river waters. Asking for setting up of Tribunal will lead to bestowing the status of a riparian state on Haryana.** The Central Government's intervention is restricted only to the disputes relating to the riparian states. Haryana in the present case is not a riparian state and therefore, setting up of a Tribunal to adjudicate the distribution of Punjab river waters simply does not arise.

**Instead of asking for setting up a Tribunal to adjudicate the distribution of Punjab waters, the State Government should plead the case against the insertion of Article 78 into the Punjab Reorganization Act 1966, by the then Congress Government in Delhi.**

The Punjab Government's contention is that no rules or laws were followed while determining the quantum of water to be given to Haryana and that the state has been allotted more water than was its due. If the SYL Canal is constructed, the State has not even a drop of water to put into it (SYL) and therefore, before digging the canal, this should be determined whether the Punjab really has any surplus water which can be given to Haryana. The present Government's stand is that if SYL Canal is constructed, half of the State will face draught like situation.

**It is rightly stated in the petition that all previous accords were the outcome of flagrant violation of the Punjab's rights and the ground for doing injustice to Punjab was laid in 1966 by inserting clauses 78-79 in the Punjab Reorganization Act under which Punjab's rights were taken away by the Central Government. The issue is now in the Supreme Court of India.**

Haryana leaders know it for certain that there is considerable weight and substance in the arguments put forth by Punjab. That is why, instead of going to the Supreme Court, they want that the Prime Minister should intervene and bring round the Punjab Government to construct the SYL Canal, so that, with the Centre's intervention, Haryana may retain all that was taken away from Punjab and unjustly handed over to it by courtesy of Indira Gandhi. The Punjab Government has prepared a strong case and the Supreme Court's verdict will have to be watched.

In the meantime, an interesting fact that has come to light is that a cheque of Rs. one crore issued by Haryana Government for the construction of SYL Canal was received during Giani Zail Singh's time. Both Congress and Akali Dal had been accusing each other that, by accepting the cheque, the other party has weakened Punjab's case. Giani Zail Singh, however, put it aside and did not encash it. He was against the acceptance of the cheque, but perhaps did not have the guts to incur the displeasure of the Central leaders by returning the cheque.

Giani Zail Singh, as they say, preferred to put the cheque aside. However, when Parkash Singh Badal became the chief minister, the first thing he did was to get the cheque encashed and, in this manner, owned up the responsibility for constructing the SYL Canal. Meanwhile, both Punjab and Haryana, and farmers of both the states, are keeping their fingers crossed and waiting for the verdict of the Supreme Court of India.

Recently, the Punjab Vidhan Sabha unanimously passed a resolution on the SYL Canal, (1.4.2003) backing the state government to take all necessary steps to safeguard the interests of Punjab. The resolution has urged the state government to approach the Supreme Court, without delay, so that the relief could be sought from the directions dated January 15, 2002 issued by it.

### **The Indus Treaty:**

In August 1947 India was divided which led to the creation of two Punjabs. The international boundary between Indian and Pakistan Punjab cut across the Indus system of rivers. A dispute arose between India and Pakistan over the distribution of river waters. This was however, amicably settled through the good offices of World Bank with the signing of Indus Treaty in 1960. The Treaty conferred full rights on India over the eastern rivers, i.e. Ravi, Beas and Sutlej. There is no mention of river Ghaggar in Indus Treaty which clearly shows that it is not a part of Indus system. Therefore, Haryana which is beyond Ghaggar can, by no stretch of imagination, be regarded as a part of Indus basin.

The State of Indian Punjab, in which Ravi, Beas and Sutlej rivers lie, became entitled to unrestricted rights and development of its river waters. Punjab being a riparian state of Yamuna continued to have its rights on Yamuna waters up to 1966, after which only Haryana has the exclusive rights to use of Yamuna water as a

riparian state. It will be pertinent to refer to some other examples of difference between riparian and non-riparian states.

### **Lessons To be Learned:**

The water and hydel power issue forms, in every respect, the core issue facing the present day Punjab. It has three fundamental aspects which portray the conflicting approaches of the Punjab, on the one hand and the Centre on the other. The lesson we learn from Punjab is that unless the realities underlying the clash of interests are understood and resolved, there can be no solution. There has to be a perceptive change of policies and trends before peace, understanding and amity can be brought about in the State permanently.

***The first result of the water dispute is its ruinous economic impact and implications on the future prosperity of the Punjab.***

***The second impact is that about three-fourth of the 22.5 M.A.F waters available in the Punjab has been diverted to the non-riparian States. This has led to annual loss of the industrial production and employment, the annual loss of agricultural production to Punjab, and gain to Haryana and Rajasthan is about a billion dollars each year. As against all this, even now Punjab has been contributing over 60% of the annual grain reserves of India. This is not because of its canal irrigation but because of the initiative and investment of the peasants in sinking over nine lac private expensive diesel and electric tube wells. About 19 MAF waters of Punjab has been allocated without any justification to the non-riparian states, resulting in an annual loss of 2500 crores to Punjab and equivalent gain to the non-riparian states each year.***

Consequent to the over drawal of the sub-soil water, the continuously falling water table has given a clear warning that by next two decades, about three-fourth of the tube-well irrigated area will become *barani* and unproductive.

***The third impact of the issue is political. The Punjabis, particularly the Sikhs, have a spirit of freedom and self-confidence, as also the capacity to struggle for socio-political values and independence. Today, the key subjects of irrigation and hydel power, which form the basis of both agriculture and industrial development, are in the Central hands. Unless the existing position is undone and the ceiling put on the political growth of the State is removed, the question of gaining any further political autonomy or growth is impossible.***

***Whatever has happened in the Punjab in our own times and whatever decisions have been made are not accidental, but have been the result of calculated and well-planned policies that have been followed with a purpose to drain out the economic wealth of Punjab and to stop its political growth permanently.***

It is apparent that a simple, indeed the only, solution of the water and hydel power dispute of Punjab was a reference to the Supreme Court, but every door of access to it was studiously barred so as to ensure that the judicial verdict was avoided and ultimately through a process of camouflage, the verdict of tribunal has been obtained with a view to permanently exclude any approach to the Supreme Court.

In case of Punjab, however, it could not amend the definition of an inter-state dispute (like the once going in case of Kauveri) because Punjab rivers could not be defined as inter-state waters. The entire process is centered around one process to exclude any approach of the State to the Supreme Court by using the bogies of communalism, law and order, separatism and terrorism. Thus, artificially, a schism has been created between Punjab and the State of Haryana, Rajasthan and Delhi, by giving them unconstitutional gains. The Centre has made these states and its people the hostile-rivals of Punjab.

The lesson for the Centre is that unless there is a clear and well-recognized policy to undo the existing direction and trends as in case of Punjab river waters, it may go on repeating the same mistakes in case of other inter-state river water disputes.

The best course of the Central Government, to avoid any future complications, is to refer the SYL case to Constitutional Bench of the Supreme Court which may determine the validity of:

- (1) Provisions of the Punjab Reorganization Act, 1966 (article 78), and
- (2) The validity of Supreme Court's Division Bench order of January 15, 2002.

□

### References

1. B. M. Bhatia, *India's Food Problem and Policy since Independence*, Bombay, 1970.
2. A. Vaidyanathan, *Water Resources Management*, Calcutta, 1984.
3. B. D. Dhawan, *Irrigation and Agricultural Development in India*, New Delhi, 1988.
4. G. Venkataram, 'Inter-State Relations and Water Resources Development in India', *Proceedings, Platinum Jubilee Celebrations*, History Department, University of Madras, Chennai, 2003.
5. H. S. Sidhu 'Disaster Awaits Punjab' Farm Sector', *Punjab Monitor*, August, 2002.
6. S. S. Patwari, 'Sikh Treaties and Accords with the Governments of the Day.', *Spokesman*, December, 2002.
7. G. S. Dhillon, *Truth About Punjab*, SGPC White Paper, Amritsar, 1966.
8. Daljit Singh, 'Punjab River Waters disputes', The Institute of Sikh Studies, Chandigarh, 2002.