

Riparian Rights - Injustice to Punjab

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SCANNING NEWSPAPERS RECENTLY, one couldn't help but get the impression that Punjab is part of another country. But Punjab is no less concerned than any other state in safeguarding national interests. It is equally possible that Punjab has a case in the river waters dispute.

Any agreement, if drawn to the total disadvantage of one of the parties, that too under threat or duress, can't find favour in law, or provide an amicable solution. The agreement between the Punjab, Haryana and Rajasthan CMs, brokered by Indira Gandhi On December 31, 1981, is such an agreement. The then Punjab CM was commandeered to put his signature on the dotted line under duress, to the disadvantage of his people.

It is this patently one-sided agreement that the Punjab Assembly, acting within its constitutional rights and through the unanimous Resolution of July 12, 2004, terminated. The JPC, which drafted the Constitution, in its report on settlement on inter-state water disputes, recorded: **"The effect is to give each province complete power over water supplies within the province without any regard whatsoever to the interest of neighbouring provinces."** It is this constitutional provision which was undone vide Sections 78, 79 and 80 of the Punjab Reorganisation Act, 1966.

While a number of other states were reorganised, no such unconstitutional provision relating to distribution of river waters was introduced. On the reorganisation of the state of Madras, Andhra became non-riparian to Cauvery and, thus, could not lay any claim to its waters. Similarly, Tamil Nadu ceased to have riparian rights over the Mahanadi, Godavari and the Krishna. Rajasthan's claim over the Narmada, too, was rejected. So why is there one set of law for Punjab and another for Andhra, Tamil Nadu and Rajasthan?

The Indus Water Treaty of 1960's was badly negotiated, with India getting only 19 percent of the waters of the Indus River system. India got rights to the water of the Ravi, Beas and Sutlej. At the time, the requirement of Punjab (including Haryana) was under-assessed and in inflated figure of 8 MAF was pitched against Rajasthan, though this projection by itself gives no legal rights to the state. All the three rivers flow through Himachal Pradesh and Punjab, and confer on them full riparian rights. **They don't touch Haryana and Rajasthan, nor do these states fall within their basins. They are, therefore, non-riparian states.**

Prior to the Reorganisation Act, 1966, Punjab (Punjab and Haryana) had riparian rights over the river of Punjab and the Yamuna. **On Reorganisation, Haryana was given rights over the Ravi, Beas and Sutlej, though it has no riparian rights. But Punjab has no right over the Yamuna, whereas Haryana exercises its earlier rights over this river. Hereagain, we have two sets of laws in operation.** The Reorganisation Act provides for division of assets and liabilities between Punjab and Haryana in the ratio of 54.84 and 37.78. What is the rationale behind allotting 3.5 MAF to Haryana, when Punjab too gets the same MAF from the Ravi-Beas and none from the Yamuna?

The Centre, invoking the provisions of Section 78 of the Reorganisation Act, made allocations of the Punjab rivers, giving Haryana 3.5 MAF, Punjab 3.5 MAF, Rajasthan 8.0 MAF, Delhi 0.2 MAF, J&K 0.65 MAF, making a total of 15.85 MAF, vide notification dated March 23, 1976. The flow series was taken from the years 1920-45. This was not acceptable to Punjab, which challenged this decision and the *vires* of the Reorganisation Act in the Supreme Court. The 1981 agreement revised the allocations, basing it only the year of highest flow from the years 1921-1960, giving 3.5 MAF to Haryana, 8.60 MAF to Rajasthan, 4.22 MAF to Punjab, 0.2 MAF to Delhi and 0.65 MAF to J&K, a total of 17.17 MAF when the actual availability is much less. Punjab was made to withdraw its case from the Supreme Court. When a farmers' organisation in Punjab filed a writ in the High Court challenging Sections 78-80 of the Punjab Reorganisation Act, Chief Justice S.S. Sandhawalia fixed the hearing on Nov. 25, 1983. But suddenly, Sandhawalia was posted to Patna High Court, and the Attorney General made an oral application to transfer the case to the Supreme Court. It's been lying there since the Rajiv-Longowal Accord (Punjab Settlement, July 27, 1985). Section 14 provided for constitution of a tribunal for verification and adjudication of matters referred to in paras 9.1 and 9.2 respectively of the Accord. Para 9.1. laid down that farmers of Punjab, Rajasthan and Haryana would continue to get water not less than what they are using from the Ravi-Beas systems, as on August 1, 1985. If the present dispensation of water allocation is accepted, 0.9 million acres in Punjab will become barren and 1.5 million families rendered destitute. The water table in Punjab has been falling alarmingly, and if this continues, the better part of Punjab could turn into a desert. Ninety per cent of the foodgrain produced in Punjab is sent to other states. But Punjab's own minimum needs of waters must be met first. Punjab asks for nothing but its lawful rights.

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