**India- Pakistan Water Politics and Kashmir**

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A 10-member Indian delegation completed its three-day participation at the annual meeting of the Permanent Commission on Indus Waters (PCIW) from March 1 to 3, 2022, in Islamabad. The Indian delegation had three female members in it. It would have discussed the flood flow information and future programmes, meetings and inspections. The annual PCIW meeting was organised by the office of Pakistan’s Commissioner for Indus Waters under obligations of the Indus Water Treaty, 1960.

The water politics between India and Pakistan is as interesting as the question of self-determination of the people of Kashmir. The future status of Jammu and Kashmir includes either ratification of the provisional accession with India, its rejection and a negotiated accession with Pakistan or the setting up of an independent State. These are a consequence of the free exercise of an UN-supervised vote by the people of the State. There is a UN template in place to take the necessary measures for an UN-supervised and certified free and fair Plebiscite.

The government of India made a reference to the UN Security Council on Kashmir in January 1948 and the matter remains pending. On August 21, 1957, the Indian Government reported to the UN Security Council (UNSC) that Pakistan was likely to execute the Mangla Dam Project in Mirpur and exploit the “resources of the territory to the disadvantage of the people of Jammu and Kashmir and for the benefit of the people of Pakistan.”

The Indian letter S/3869 dated August 22, 1957, flagged that Islamabad’s actions were in violation of the Security Council Resolution of January 17, 1948. The complaint further reiterated that the Government of the State of Jammu and Kashmir is the only lawful Government of the State under the Resolutions of August 13, 1948, and January 5, 1949. India also filed a three-page report titled “The Mangla Dam Project” marked at the UN Security Council as S/3869.

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It is only a few years down the road that in 1960 India and Pakistan entered into the Indus Water Treaty to share the waters of Kashmir. The extent to which Pakistan failed to appreciate its obligations towards the water as trust property, is revealed by the broadcast of Ayub Khan to the nation made on September 4, 1960. He said that the terms of the Treaty were “the best we could get under the circumstances, many of which, irrespective of merits and legality of the case, are against us.” There is a sense of apology and it implies that something had been sacrificed by Ayub Khan in the process.

India and Pakistan are locked in a continuous clash of claims over water in Jammu and Kashmir. Water resources are finite, hence the actual stewardship of water resources in any part of Kashmir should rest with the people of Kashmir. Water politics between India and Pakistan are both strange and interesting. They expose how the two countries have been shifting the goalposts of their interests.

Water in Kashmir is a natural resource and is embedded in the natural habitat of the disputed State. It is trust property and remains part of Kashmir’s self-determination package. It is a violation of trust that India and Pakistan have been taking unilateral decisions regarding water in Kashmir.

Governments of India and Pakistan must fully honour their obligations to create an enabling environment and to regulate and monitor the right to water and sanitation in the three administrations of Kashmir. In this regard, Pakistan has a higher burden of responsibility to ensure that water politics does not dilute the merits of the Kashmir case and at the same time, India does not exploit the natural resource of Kashmir. Pakistan could argue that India and Pakistan have responsibilities towards the natural resource, embedded in the habitat of Jammu and Kashmir. India and Pakistan have to discharge obligations towards this trust.

Unfortunately, there is no expertise and no effort has been made to develop this expertise, in Azad Kashmir in regard to engaging the Government of Pakistan on these issues under the existing frameworks of article 257 of the constitution of Pakistan, Karachi Agreement of 1949, the Constitution Act 1974 of Azad Kashmir and the UN template. The Azad Kashmir set-up has been downgraded to an administrative interest and is punctuated with huge financial exploits. A passive Azad Kashmiri and a dominant Pakistani predatory elite, is using it as a haven.

If Azad Kashmir Government and the political leaders had any genuine interest in the UN template and existing frameworks, they would have asked the Government of Pakistan to take up with the Government of India, the ongoing grievance of the people of Indian occupied Kashmir in regard to the exploitation of water resources by India.

The issue to rectify the unilateral exploitation of water resources and Hydel Projects by India has been formally taken up in the Common Minimum Programme agreed between PDP and BJP in January 2015. In addition, the White Paper released by the “People’s Alliance for Gupkar Declaration” on February 26 in Srinagar has made two important findings.

Regarding the economic distress in the Indian occupied Kashmir, the papers state, “The major reason for economic distress in J&K is the Indus Water treaty. This treaty restricts J&K from making full use of its water resources, the only natural resource available in abundance. J&K has a strong claim for compensation for IWT but in the meantime, it is the responsibility of the centre to provide adequate financial support.”

On the legal and political front, the White Paper published by PAGD has highlighted that the Indian constitution came into force on January 26, 1950, while as the State of Jammu and Kashmir continued to follow and be governed by its constitution of 1939, till the State Constitution came into force on January 26, 1957.

The White Paper has rightly pointed out the incapacity of the President of India to seek under article 356 to assume to himself all functions of the Government of Jammu and Kashmir and all the powers vested in or exercisable by the Governor of the State under the Constitution of India or the Jammu and Kashmir Constitution. This assumption of a truck-load of powers by the President of India for the promulgation of Constitutional Orders 272 and 273 is impermissible.

President of India in promulgating C O 272 and C O 273 has sought his own concurrence and in his own favour, an action, not permissible. President of India has taken support of an “impermissible device under the constitution to declare that Article 370 will cease to operate.”

The entities of a Constituent Assembly and Legislative Assembly are well defined as two different. The State Government should be an elected representative government. The President of India is a non-State Subject and has no representative character in Jammu and Kashmir. On August 5, 2019, the actions of the President of India did not have the concurrence of an elected State Legislature.The White Paper has argued that Article 3 of the Indian Constitution does not confer power on the Parliament to dismember, downgrade or divide a State into Union Territory and make the State disappear. Constitutional functionaries have a limited life and role. White Paper has argued that the State had its own full-fledged army, embarked on armed expeditions and annexed territories. The State had a truly independent status. There is an urgent need to develop and support the core argument, that is, the sovereign status of Jammu and Kashmir and that President of India has tress passed and waded into the Constituent and Legislative authority of the State.

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