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International law and water disputes in India

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Abstract
In relation to water issues in India, this article discusses international law. A relatively regular occurrence in India is water conflicts. Water conflicts involving the Krishna, Narmada, and Ravi-Beas rivers are some of the most significant ones. The interstate water conflicts in India are not governed by some international legal doctrines, such as the Doctrine of Riparian Rights and the American doctrine of previous appropriation. These Harmon principles, along with the territorial-sovereignty doctrine, have been rejected by India. India utilises the Equitable Appropriation principle instead, which is embraced by important tribunals. Equitable apportionment theory has been used to settle domestic and global water disputes and in India since the Helsinki rules were put into effect in 1966. This paper mainly examines how the international law and water disputes in India are implemented.

Keywords: Dispute, riparian rights, equitable apportionment theory, helsinki rules

Introduction
Throughout history, disputes over natural resources, especially river waters, have been common, often leading to conflicts in primitive societies. In the 20th century, population growth, increased human activities, and non-navigational use of rivers escalated these disputes. Today, resolving conflicts related to the fair use and distribution of river waters is a complex global challenge. The situation has worsened due to population growth, water resource depletion, pollution, and controversies surrounding large dam construction, particularly in developing countries. This chapter explores the legal aspects of international and national water disputes.

International dimensions related to inter-state water dispute
Scholars propose theories on international water sharing, cited by opposing governments. To resolve disputes, these theories must be examined for their legitimacy.

Doctrine of riparian rights
Water, essential for life, is scarce; it's believed a future war could be fought over it. "Riparian," from Latin "Ripa," denotes land along watercourses (Oxford, 1950) [21].While "Littoral," from "litus," refers to coastal ownership. Both terms are often used interchangeably, signifying rights along rivers and seas (Bauvier 1975) [2]. Riparian rights, rooted in Roman law, are safeguarded by common law and can be limited by legislation. They rely on customs and case law rather than written statutes, accepted under common law in the U.S. (Chauan, 1992) [5]. Originally influenced by Spanish and Mexican governments in Texas, the U.S. has modified these rights, allowing manipulation unrelated to property type. In the 19th century, jurists Story and Kent developed riparian concepts in American law. (Tripathi, 2005) [52]

Riparian rights
The following are the riparian rights: (i) Water usage, (ii) Construction of the structure, (iii) Fishing, (iv)Navigation, (v) Boating, (vi) Swimming, (vii) Rights of water uses for domestic purposes for example drinking, (viii) Property defend from the soil erosion. (Norton, 2015). In India, water legislation traces back to the Indian Act of 1882. This law grants additional rights to individuals owning land near water bodies. Importantly, The Easement's Act of 1882 recognizes riparian rights based on two fundamental principles.

- long-term or prescribed
- Local practises

These rights, however, are not unrestricted. They do not provide a completely autonomous, absolute authority free from external intervention. To clarify, these rights depend on the government's ability to manage the collection, conservation, and distribution of water from rivers and streams flowing in natural channels (Jain and Jacob, 1972) [18]. However, these privileges are not absolute. They do not offer entirely autonomous and unrestricted rights immune to external interference. The exercise of these rights is subject to the government's authority to regulate the collection, preservation, and distribution of waters from rivers and streams flowing in natural channels (Bauvier, 1975) [3]. In the Vippalapati v. Raja of Vizianagram case at the Madras High Court, a unique conclusion was reached. This case preceded the Ganga Water Pollution Case and highlighted the need to reinforce riparian rights when a dam obstructs them. The court emphasized that the right to access unrestricted, free-flowing water is inherent in riparian rights, even in the presence of a dam (Tribunal 1973).
"*The notion of riparian rights controls the interests of private parties, but does not have an adequate basis for sort out inter-state water conflicts,*" the Krishna Water Disputes Tribunal stated in its ruling (Tribunal 1973).
The Ganga River Pollution Case, also known as M. C. Mehta v. Union of India, reaffirmed riparian rights in India, recognizing the petitioner's dual role as a riparian and defender of those reliant on the river. The judgment highlighted that due to the widespread and indiscriminate

nature of the pollution, it was unreasonable to expect individuals to individually address the issue, emphasizing the collective responsibility of the community (Chauhan, 2015) [4]. The report of Narmada water Tribunal made it clear that Rajasthan was a non- riparian state in matter of water sharing between Madhya Pradesh, Maharashtra and Gujarat (Tribunal, 1978).

The Madras High Court addressed riparian rights in the case of Sethramanamalingam v. Anada Padyach, where upper and lower riparian rights clashed. The case also highlighted challenges in applying riparian rights to engineered water bodies. The judge emphasized that water quality in lower riparian areas should not significantly deteriorate. Riparian rights should be specific to natural streams or rivers and not broadly applicable to manmade water bodies (Padyach, 1934). In the Ravi-Beas water dispute between Punjab and Haryana, the Eradi Tribunal dismissed the riparian rights principle. Punjab argued that Haryana was a non-riparian state, but the tribunal rejected this claim (Tribunal, 1987). "According to the Krishna Water Disputes Tribunal's ruling, riparian rights govern private interests but lack a suitable framework for resolving interstate water conflicts (Tribunal, 1973). The Krishna Water Disputes Tribunal asserted that riparian rights govern private interests but are inadequate for resolving inter-state water disputes. The Godavari Water Disputes Tribunal also concurred with this view in 1979 (Report, 1979).

India does not recognize the concept of riparian rights, which has both advantages and disadvantages. These rights lack clear definition and boundaries, making them dependent on other rights and subject to modifications. Riparian rights only permit access to water for natural needs, not for continuous use unless in cases of extreme water scarcity. The future allocation of water under this doctrine is uncertain, hindering economic growth (Jain, 1971) [19]. This idea forbids the utilization of riparian water anywhere else than on nearby property, thus there will be no more profitable usage of the water. As a result, it is unable to transportation to non-riparian soil and utilised there in a more advantageous way. This demand could result in the wasteful usage of water.

The absence of clear norms or guidelines leads to disputes over riparian rights, often resulting in costly and ambiguous litigation. Outcomes vary among different jurists and streams. The general notion has limitations; merely being near water doesn't automatically grant specific claims or obligations, highlighting the need for clearer regulations (Rao, 1979). People living far from rivers or streams have equal rights. Riparian rights are recognized as legal obligations only in the absence of requirements for fair water sharing. However, this concept is rejected in water allocation disputes. The riparian theory lacks legal basis and cannot be used for water allocation in modern judicial systems at any level—national, local, or global. Due to its limitations, it does not provide a solid foundation for addressing water rights concerns (Wisdom, 1983).

Prior appropriation theory

In the Prior Appropriation theory, water in its natural course is a common resource available to all and cannot be owned by any authority. To gain usage rights, individuals must appropriate and use the water beneficially. The first user establishes a prior right, and subsequent users can only use what the initial user has not taken. This theory, originating from the Roman era, was first employed in the semi-subtropical western states of the USA (Seervai, 1988).

In India, the theory mentioned is not acknowledged. In the case of BelbhadarPerchand v. Shiekh Barkat Ali, the Calcutta High Court rejected this principle. The case involved a dispute between two private properties where the upper riparian owner had constructed a dam, cutting off the petitioner's water supply. The court ruled in favor of the upper riparian, emphasizing their right to appropriate usage. However, this concept has lost relevance as states now have ownership rights over river waters. Originally, it implied generalization of water usage needing authorization from relevant state or regulatory bodies. In the UK, the Water Resources Act of 1963 expanded on existing riparian rights, introducing a licensing system in England (Ramnna, 1992) [26].

Equitable apportionment theory

In India, co-riparian states' rights were initially governed by agreements before specific legislative rules were established. Negotiations in 1873 and 1892 dealt with water distribution in the Jhelum and Cauvery rivers. The Sirhind Canal Settlement, involving the British Government and states like Patiala, Jheend, and Nabha, was among the earliest agreements. A similar pact was made between the Madras government and Mysore princely state regarding the Cauvery River. Critics suggest that the British government's role in these agreements, especially in the Cauvery issue, might have involved coercion (Seervai, 1983). One of the earliest interstate agreements concerning river flow distribution was the Sirhind Canal Arrangement, suggested by the Maharaja of Patiala for cultivating his land. This arrangement employed the concept of appropriate allocation to divide waters from international rivers (Seervai, 1983).

In 1941, a committee led by Justice B.N. Rau was appointed by the governor general to determine the allocation of the Indus River's water. The committee emphasized a novel approach where each state formed a unified group, devoid of legislative or organizational divisions, in the allocation of inter-state river waters (Seervai, 1983). After gaining independence and undergoing partition, India and Pakistan found themselves embroiled in a global-scale water dispute. Numerous rounds of negotiations failed until a resolution was finally reached in September 1960. The World Bank played a crucial role in facilitating this agreement. The treaty allocated rivers proportionally between the nations, allowing them to pursue independent developmental programs. India received control over the Eastern Rivers (Sutlej, Ravi, and Beas), while Pakistan gained access to the Western Rivers (Chenab, Jhelum, and Indus). Pakistan decided to construct a dam for irrigation in regions formerly reliant on Eastern River waters, with India agreeing to contribute 62 million towards its construction (Hussain, 2016) [12].

The concept of equitable distribution, as observed in the Krishna waters disputes tribunal led by Justice R.S. Bachawat, lacks a precise definition due to the absence of a scientific method. Tribunal representatives consider several crucial factors such as groundwater, weather patterns, watershed features, production quantity, obstructions, drainage area, state participation, reliance level, alternative water sources, legal utilization scope, and regional demographics when determining fair allocation (Tribunal, 1973).

In India, the concept of equitable water distribution was adopted in 1867. It focused on watering the most land at the least expense, irrespective of state boundaries. Canal geography remained consistent despite changes in government. Additionally, non-riparian states could use river waters by paying for irrigation schemes proportionate to the water they received (Iyer,2016). Patiala received water from the Sirhind canal despite the Sutlej not crossing its borders. Bikaner, despite the Sutlej flowing through British land, accessed water through the Sutlej valley proposal. Each state was allocated a specific amount of water, and they had the freedom to utilize it as they saw fit (Dhillon, 1983). In 1953, a panel of experts led by Anderson devised a report on water allocation. Their approach, rooted in Bentham's utilitarianism, emphasized against fixed river privileges. Additionally, they recommended avoiding long-term contracts, suggesting regular reviews in light of new water options (Jain and Alice, 1971) [20]. The principle of proportional allocation has been applied to divide water among Madhya Pradesh, Rajasthan, and Gujarat, as well as between Uttar Pradesh and Bihar using the Musakhand dam on the river Kamansa. The Krishna water tribunal in 1973 emphasized the use of this principle for equitable distribution of river water among states (Tribunal, 1973). The notion of fair allocation is acknowledged with all disputed states, the Narmada water tribunal noted in its declaration of its decision (Tribunal, 1978). The Godavari water dispute tribunal made the direct modification of the findings of the Krishna water dispute tribunal in 1979 when it noted that the claim of states in an inter-state stream is also determined in India by applying the fair allocation principle, with each state receiving a equal proportion of the water of the inter-state stream. It is believed that this principle is ambiguous and difficult to explain preciously despite the fact that it has been applied in interstate water disputes (Gulhati, 1980).

Territorial sovereignty theory

The Harmon Idea, named after U.S. Attorney General Judson Harmon, asserts that a nation has absolute control over everything within its borders, including transnational water bodies. This principle prioritizes upper riparian states, granting them unlimited access to rivers within their boundaries, regardless of any negative impact on lower riparian states. This concept emphasizes the complete autonomy of upper riparian states (Rahaman, 2008) India has disregarded this concept. In the Indus Basin, Pakistan has been granted use of the western rivers Indus, Jhelum, and Chenab, while India has been granted access to the eastern rivers Ravi, Beas, and Sutlej, despite India having upper riparian privileges to all of the rivers, in accordance with the provisions of the Indus Water Treaty of 1960 (Vasisth, 2012).

The aforementioned principle has never gained the favour of India, neither in the resolution of interstate water disputes. This concept is not recognized by international water law. In international law, including the "Helsinki Rules," the theory has also been proven false (Ramnna, 1992) [26]. Professor Smith vehemently opposed the concept of unlimited state dominance, arguing that it allows nations to harm rivals without any restraint. He criticized the theory of "territorial sovereignty" for lacking a differential principle and rejecting responsibility. Alternatively, the widely accepted "Limited territorial sovereignty" theory promotes common regulations for global waterways, illustrated by the UN Watercourses Convention. This approach ensures equal rights for waterway parties and emphasizes the importance of riparian nations respecting each other's rights. It upholds sovereign principles while recognizing the rights of both upper-riparian and lower-riparian nations. (Dhillon, 1983).

Community of interest theory

This approach views the entire area as one economic entity, allowing various groups, whether cultural or sovereign nations, to participate. It promotes systematic community use of water resources for mutual benefit (Howden, 2020). The relevant rivers are considered collective assets, assuming that under a systematic approach, infrastructure projects and benefits derived from them will be shared by upper and lower riparian regions based on their needs and requirements (Chauhan, 1992) [5-6].

To facilitate activities from fact-finding about river systems to constructing sea walls for efficient water usage, nations and related political groups can develop and implement various schemes. Examples like the Indo-Nepalese Kosi project demonstrate this approach, emphasizing coordinated efforts across countries for mutual benefit, regardless of geographical boundaries. Instances such as Turkey and the USSR jointly building a sea wall on the ArpaChi Stream, the 1964 agreement between the USA and Canada on the Columbia River, and the 1959 Sudan agreement between the United Arab Republic and Sudan on the Nile, highlight such collaborative initiatives (Scheimer, 2021).

Natural water flow theory

The natural channel principle, also known as territorial integrity theory, is often employed in trans-boundary and national water conflicts. It states that upper-riparian states cannot obstruct a river's natural flow. According to this principle, the upper riparian country can allow water to flow naturally into the lower riparian territory. However, the upper riparian nation is responsible for using the water responsibly within its own territory.

This concept originated from English cases involving water rights in a unified state. Egypt applied this principle in a 1925 dispute with Sudan over Nile River water use. The Nile Water Commission disagreed with Egypt's claim to exclusive rights due to downstream location. However, a 1929 treaty brokered by Britain gave Egypt veto power over Sudan's water use. Critics like Berber deemed it a political, not legal solution. The idea of geographical rectitude, similar to the Harmon Doctrine, restricts basin use for modern needs, seen as too authoritarian. Lipper found no contemporary support for this concept in international law (Berber, 1959) [1].

Equitable utilisation theory

The "Equitable Utilisation theory" addresses water issues and is widely accepted by nations. It asserts that each water user has the right to a fair share of water resources within their geographical boundaries for profitable use (Smith, 1931). It is lying on procedural justice standards of impartiality, transparency, and taking into account the rights of each participating nation. The Equitable Utilisation Theory and the Equitable Apportionment Theory are related to each other. The just and impartial use of assets is the foundation of this concept. The two theories are fundamentally different in a various way. With the use of

talks, mutual consent, or a third arbitrator, this principle seeks to fairly utilise of resources. Allocation shall be made when adequate use will be made from a third-party adjudicator. Allocation should be based on the requirements and needs of the people and state. It seeks to use the assets as effectively or maximally as possible (Ramnna, 1992) [26].
The Helsinki Rules, established by the International Law Association in August 1966, outline principles for dividing international river waters. Article IV examine that each country within a shared drainage basin has the right to a fair and responsible share of the waters for beneficial use within its borders.

Article V

1. What is responsible and equitable share within the meaning of Article IV is to be determined in the light of all the relevant factors in each particular case.
2. Relevant factors which are to be considered include, which are not limited to:

a. The geography of the basin state, including in particular the extent of the drainage area in the territory of each basin state;
b. The hydrology of the basin, including in particular the contribution of water by each basin state;
c. The climate affecting the basin;
d. The past utilization of the water of the basin, including the particular existing utilization;
e. The economic and social needs of each basin state;
f. The population dependent on the water of each basin state;
g. The comparative costs of alternative means of satisfying the economic and social needs of each basin state;
h. The availability of other resources;
i. The avoidance of unnecessary waste in the utilization of waters of the basin;
j. The practicability of compensation to one or more of the co-basin states as a means of adjusting conflicts among uses; and
k. The degree to which the needs of a basin state may be satisfied, without causing substantial injury to co-basin state.

1. The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is responsible and equitable share, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.134 The Article makes clear that the above factors are not exhaustive. The factors are so broad and vague that it is not easy to arrive at the result in a particular case by following them. They only provide flexible guidelines and may not be easy to reconcile and balance various competing factors (Helsinki, 1966) [10, 11].

Later-Helsinki rules development

The Helsinki Rules were adopted in 1966 by the International Law Association.

1. The International Law Association approved the "Resolution on Flood Control", which provide under Article 8:
   "In case of dispute, Articles XXX to XXXVII of the Helsinki Rules are, so far as may be, applicable (Rao, 1979).
2. The Asian-African Legal Consultative Committee, while adopting "the Law of International Rivers", in 1973, adopted, in Proposition II Para 2 the definition of a basin state was adopted as contained in Article III of Helsinki Rules. In the proposition III, Para 1, the contents of Article IV of Helsinki Rules, containing the principle of "equitable utilisation" were reproduced. Further, the Proposition of Articles VI and VII adopted the provisions of Article VII and VIII of the Helsinki Rules dealing with the protection for present and existing uses of water. In addition to that proposition, Article IX adopted the provisions of Article XI of the Helsinki Rules which pertain to the responsibility of a state to stop the measures taken of it in violation of the provisions meant for preventing pollution and pay compensation to the injured co-basin state.
3. The resolution on the International Water Resources Administration approved by the International Law Association at its 57th Conference at Madrid, in 1976, provides under Article 2 that the basin state should be consistent with provisions of Chapter 6 of the Helsinki Rules.139 Article 2 also referred to the concept of "Equitable Utilisation" contained in Article IV of Helsinki Rules (Helsinki, 1966) [10, 11].
4. The International Law Association at its 59th conference at Belgrade in 1980 adopted the "Resolution of the Flow of water of international water sources" and "Relationship between Water, other Natural Resources and the Environment", provided under Articles 7 and 8 of the provisions dealing with "Relationship" respectively of that Chapter 6 of the Helsinki Rules shall apply also for settlement of disputes arising within the field covered by these Articles governing the problems of "Regulation" and Relationship (Law Report, 1982)
5. At its Sixtieth Conference at Montreal in 1982, the International Law Association adopted some Articles pertaining to water pollution in an international drainage basin
6. At its 62nd Conference, held at Seoul in 1986, the International Law Association adopted some "Complementary Rules Applicable to International Water Resources (Law Conference, 1983).

Implementation of Helsinki rules

In a number of actual water conflict, both in the context of worldwide and regional water issues, the ideas included in the Helsinki Rules have been used without being officially cited as such. In 1978 that the declaring doctrine of "equitable apportionment" is recognised by all sides in the Narmada conflict between the Indian states of Madhya Pradesh, Maharashtra, and Gujarat, the Narmada Water Disputes Tribunal proceeds by citing the provision of Articles IV and V of the Helsinki Rules, which provides a wealth of examples. The Helsinki Rules, 1966's Articles II, IV, and V were subsequently used by the Krishna Water Disputes Tribunal in 1973 (Tribunal, 1978). The "Equitable Apportionment theory" and the "Equitable Utilization theory" are two ideas that are frequently confused because of their resemblance in language. But these ideas are distinct from one another on following causes:
The Equitable Utilization concept, rooted in the Helsinki Rules of 1966, pertains to global river law. In contrast, Equitable Apportionment, originating from U.S. interstate

water conflicts, is vague and often based on rationality rather than specific rules, lacking authenticity in approach. The former is detailed and authentic, outlined in specific articles, while the latter is less defined and lacks a clear, authentic framework (Chauhan, 1992) [5-6]. Therefore, the "equitable apportionment theory" discussed the just or equal portion of the disputing sides in common words, while the "equitable utilisation theory" discusses the grant of each river nation to a liable and fair portion in the useful purpose in a legal terms. Understanding was leave to draw the lines between what may or need to be presumed just and equal portion of each contesting side under the "equitable apportionment principle" in every situation, While the Helsinki Regulations easily include some real guidance for the straightforward implementation of the "equitable utilisation principle," most notably it claims of Part Iv by stating that kind a portion will be decided in the sense of entirely pertinent aspects in a given circumstance as well as by providing existing index of circumstances in the compilation of section (2) of part V. By explicitly stating in part V, Section (2) that the important elements to be taken into account would insert, without being restricted to, those listed in sub-sections (a) to (k), By adding the insertion of additional attributes conceivable, the method for deciding the satisfactory and reasonable portion of both the disputing sides has already been resilient, However, the procedure will move more quickly because it slightly begin conforming to the existing real and explicitly listed aspects. On the Contrary, the "equitable apportionment model" method for calculating the equitable portion may take time because each element must be brought up and based on understanding and the usefulness of such element in the particular situation (Rao, 1998). The "equitable apportionment concept" emphasizes allocation, whereas the "equitable utilization principle" emphasizes improvement. The former solely allocates water resources without considering usage, while the latter ensures every nation along a global river system receives a fair share for beneficial purposes. Thus, applying the equitable utilization principle promotes optimal use better than the related river basin allocation concept.

Certain international legal principles, such as the Doctrine of Riparian Rights and the American doctrine of prior appropriation, do not apply to India's interstate water disputes. India has rejected these principles and the territorial-sovereignty theory (Harmon principles). Instead, India uses the Equitable Appropriation concept, which is adopted by major tribunals in the country. Since the implementation of the Helsinki Rules in 1966, the concept of equitable utilization has been employed to resolve domestic water conflicts in India and internationally (Nirvikar and Richards, 1992).

Conclusion

Inter-state river conflicts in India necessitated the application of some international laws, such as the idea of riparian law. In the interstate water conflicts in India, one of the ideas that do not apply is the doctrine of riparian rights**.** The American theory of previous appropriation is not accepted by Indian law or international water concerns. The territorial sovereignty thesis, often known as the Harmon principles, has never been acknowledged by India as a legitimate doctrine. All significant tribunals in India used and endorsed the principle of equitable appropriation. It might argue that since the Helsinki Rules were adopted in 1966, national water disputes have been resolved both in India and globally using the concept of equitable consumption.

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