Revisit Indus Water Treaty

Why in news?

There is a need to revisit the Indus Water Treaty (IWT) rather than action of court of arbitration.

What is Indus-Water Treaty?

- **Indus Waters Treaty** - The Indus Waters Treaty was signed in ***1960*** between India and Pakistan.
- It was brokered by the ***World Bank***.
- The treaty administers how river Indus and its tributaries that flow in both the countries will be utilised.
- **Rights of water usage** - The treaty divides the Indus system into two segments:
  - **Eastern Rivers** - Sutlej, Beas and Ravi
  - **Western rivers** - Indus, Chenab and Jhelum



- India gets right of unrestricted use over the Eastern Rivers while Pakistan is entitled to unrestricted use of the Western rivers.
- India is under obligation to let flow the western rivers unrestricted.
- However, since Indus flows from India, the country is allowed to use 20% of its water for
  1. Irrigation
  2. Power generation
  3. Transport purposes
- Both India and Pakistan have the *right to non-consumptive use* and rights of drainage issues and river conservation aspects.
- **Dispute resolution** - A ***Permanent Indus Commission*** was set up as a bilateral commission to
  1. Implement and manage the Treaty
  2. Solve disputes arising over water sharing
- **Article 8 of the treaty** - Both sides are expected to meet at least once a year to discuss bilateral problems.
- After the *Uri terror attack in 2016,* India had suspended routine bi-annual talks between the Indus Commissioners of the two countries stating that ***blood and water could not flow together***.
- **Withdrawal from the treaty** - Experts suggest that India can exercise the sovereign right of a state under ***Article 64 of the Vienna Convention*** to withdraw from any international treaty.

What is the dispute redressal mechanism laid down under the Treaty?

- The dispute redressal mechanism provided under *Article 9* of the IWT is a graded, *three level mechanism* under Commissioner, Neutral Expert and the Court of Arbitration.
- **Commissioner** - Whenever India plans to start a project, under the Indus Water Treaty, it has to inform Pakistan that it is planning to build a project.
- If Pakistan oppose it and ask for more details, it has to be clarified between the two sides at the level of the Indus Commissioners.
- **Neutral Expert** - If it is not resolved, then the question becomes a difference, which has to be resolved by the Neutral Expert.
- It is at this stage that the World Bank comes into picture.
- **Court of Arbitration -** If it is not resolved by the Neutral Expert or that the issue needs an interpretation of the Treaty, then that difference becomes a dispute.
- It then goes to the Court of Arbitration.

What is the issue over the hydro-electric project?

- **Construction of hydel projects** - New Delhi accuses Pakistan's refusal in implementing the treaty as it repeatedly raises objections to the construction of hydel projects on the Indian side.

  - ***Kishanganga*** (Neelam in Pakistan) hydroelectric project in river ***Jhelum, Jammu & Kashmir.***
  - ***Ratle*** hydroelectric project in river ***Chenab, Jammu & Kashmir***

- **Authority to solve**- India wants to solve the contention with the help of *neutral expert* but Pakistan approached the *Permanent Court of Arbitration*.
- India views that the PCA it is not competent to consider the views of Pakistan.
- Howeer, the court determined that it is competent to consider and determine the disputes set forth in Pakistan's request for arbitration.
- In July 2023, the court unanimously passed a decision which is *binding on both parties without appeal* rejecting each of India's objections.

Why there is a need to revisit IWT?

- **Future water availability-** World Water Council highlights the need to incorporate mechanisms that allow flexibility to changes in the quantity of water available for allocation among the parties.
- **Adopting the principles of water course**-

1. Equitable and Reasonable Utilisation (ERU)
2. No Harm Rule (NHR)

- **ERU** - It represents a *compromise between two extreme and uncompromising positions* regarding the right conferred upon States, by virtue of their territorial sovereignty, to use shared transboundary water resources found within or passing through their territory.

- **N0 Harm Rule**- It is a due *diligence obligation* which requires a riparian state undertaking a project on a shared watercourse having potential transboundary effect to take all appropriate measures.
- ERU and NHR are *binding on both countries* as they are customary international law rule generating the binding obligation to both parties.

Quick facts

Permanent Court Arbitration

- It is an intergovernmental organization established to facilitate arbitration and other forms of *dispute resolution between member states, international organizations, or private parties* arising out of international agreements.
- The cases span a range of legal issues involving territorial and maritime boundaries, sovereignty, human rights, international investment, and international and regional trade.
- PCA has ***no sitting judges***; instead, parties themselves select the arbitrators.
- PCA has 122 Contracting Parties including India, Pakistan, China, Russia, and the US.
- The organization is ***not a United Nations agency*** but has observer status in the UN General Assembly.
- The rulings of PCA are ***binding*** but the tribunal has ***no powers for enforcement.***

References

1. The Hindu| Revisit IWT
2. The Hindu| Court of arbitration ruling

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