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Indus Treaty: Pakistan's Options

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IT is believed that if India starts the construction of any dam or reservoir on the rivers flowing into Pakistan, the only remedy Pakistan has is to resort to dispute-resolution mechanisms under the Indus Waters Treaty (IWT). Actually, Pakistan has the right to protest outside the IWT whenever it feels that the construction of a dam or reservoir by India will threaten its strategic interests.

The IWT consists of only 12 articles and eight annexes. There is no provision in the treaty which expressly 'authorises' India to construct a certain number of dams. Neither is there one that prohibits India from making dams beyond a certain number. Clearly, therefore, the number of dams that India wishes to construct on the western rivers is an issue outside the scope of the treaty.

This means that the decision of how many dams India will construct is a one taken by India unilaterally, outside the treaty, on the basis of political and strategic considerations, without consulting Pakistan. Once the decision to construct a dam or reservoir has been taken by India, the matter enters the framework of the treaty, which only provides technical specifications for building such a dam or reservoir.

The treaty is a regulatory framework giving technical specifications. It is confined to these technicalities and does not address the substantive decision of the number of dams that the Indian government may wish to construct.

Therefore, Pakistan is free to contest such a political decision of India without entering into the dispute-resolution mechanism of the treaty. Pakistan is entitled to launch a diplomatic offensive outside the treaty if it feels threatened due to the excessive construction of dams, reservoirs etc.

Pakistan is well within its rights to argue before the international community that the construction of too many reservoirs and dams on the western rivers by India constitutes

the misuse of the treaty's regulatory framework. Pakistan can raise this issue before any forum in the UN and take this issue to friends such as the US and the European Union. The IWT does not usurp or curtail the right of Pakistan to protest against the construction of too many dams by India.

So far, whenever Pakistan has tried to raise this issue outside the treaty, it has been advised to resort to the mechanism of the treaty. This puts Pakistan on the back foot because the mechanism does not offer the redressal that Pakistan seeks since the neutral expert has no legal competence to stop construction or direct the dismantling of the constructed work.

Whenever India starts construction on the western rivers, Pakistan, instead of protesting diplomatically, invokes the jurisdiction of the neutral expert. After months of neutral experts taking cognisance of the matter, no positive outcome is registered for Pakistan during which time the construction is completed. Pakistan in that sense has 'lost' cases before the neutral experts, whereas the fact is that neutral experts never had the legal competence to grant victory to Pakistan.

In other words, Pakistani officials have been invoking the wrong forum. There was no need to resort to the dispute resolution mechanism under the treaty since the decision being contested — the construction of a dam — was taken outside the treaty mechanism itself. Only when Pakistan has reservations on the technical aspects of a dam's construction should it invoke the IWT's dispute-resolution mechanisms.

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