

TRANSBOUNDARY DISPUTES

Politics and Litigation Play Havoc

Sutlej Yamuna Link Canal

The conflict over sharing of the Beas, Ravi and Sutlej waters began in 1966, when Haryana was carved out of Punjab and the new state demanded a share under the Punjab Reorganisation Act, which itself is not recognised by Punjab. Despite numerous interventions by the centre and the Supreme Court, the Sutlej Yamuna canal remains incomplete and a general stalemate prevails. In the midst of this controversy, the main issues facing farmers in the two states remain unanswered – that of inefficient irrigation policies and practices and increasing cultivation of water intensive crops like paddy and sugar cane.

INDIRA KHURANA

The Sutlej Yamuna Link Canal (SYL) was supposed to bring Beas, Ravi and Sutlej river waters from Punjab to Haryana and Rajasthan. Unfortunately, this canal has been a serious bone of contention between Punjab and Haryana. For decades, the SYL has generated hysterical propaganda against the compulsions that have motivated politicians

to take decisions, leading to unpopular decisions.

In 1960, India and Pakistan signed the Indus Waters Treaty, which reserved waters of the Ravi, Beas and Sutlej exclusively for India. Six years later, when Punjab was reorganised, the new state of Haryana claimed its share of waters. In 1976, the union government announced that both states would receive 3.5 million acre-feet (MAF) of water from the available annual

flow of 15 MAF through the construction of the SYL. This would benefit farmers in southern Haryana who could then use it through lift irrigation schemes.

The source of water for the SYL is the Bhakra dam. The canal starts from the tail end of Anandpur Hydrel canal near Nangal and goes up to the Western Yamuna Canal from where it collects waters of the Ravi and Beas. Currently, Haryana gets only 1.62 MAF of the allotted 3.5 MAF, and the balance is to be made available through the SYL canal.

In 1978, the Punjab government moved the Supreme Court and thus started a series of litigations, with both sides remaining intractable. Meanwhile construction of the canal started in 1981 in both Punjab and Haryana. In Punjab, construction came to a grinding halt in 1990 due to militancy and the killing of a senior officer and labourers. In 1996, the Haryana government went to court and when judgment was awarded in June 2004, a huge drama unfolded. In July 2004, a special session of the Punjab assembly passed a bill – the Punjab Termination of Agreements Bill, 2004 – terminating all agreements relating to sharing of waters of Ravi and Beas with Haryana.

Up to March 1, 2005, approximately Rs 700 crore had already been spent on the canal. Approximately Rs 250 crore is still required for completion. A case is being heard in the Supreme Court pertaining to an act passed by the Punjab government.

On the Offensive

There are several reasons for the conflict over SYL:

- (a) Punjab considers the formation of Haryana under the Punjab Reorganisation Act 1966 illegal.
- (b) The Punjab Reorganisation Act does not mention sharing of the Ravi waters while the 1976 decision of the union government does.
- (c) Dispute over the amount of surplus water actually available based on which the allocations are made.
- (d) Political compulsions of governments at the centre and the state.

Chronology of Events

The conflict over sharing of the Beas, Ravi and Sutlej waters began in 1966, when Haryana was carved out of Punjab and the new state demanded a share under the Punjab Reorganisation Act, which in itself is not recognised by Punjab.

In 1976, the centre intervened – following an impasse between the two states on water sharing – and divided the unutilised water of the Beas and the Ravi between these two states and Rajasthan. Punjab found this unacceptable since this distribution allotted water from the Ravi that the 1966 act had not taken into account. Moreover, the distribution was based on utilisation in 1960, not on actual use in 1976.

When the two states could not come to an agreement, the ministry for water resources issued a notification in 1976, unilaterally apportioning the waters of the three rivers between Punjab, Haryana and Rajasthan. This notification estimated the surplus river waters as 15.85 MAF and allocated 3.5 MAF each to Punjab and Haryana, 8 MAF to Rajasthan, 0.65 MAF to Jammu and Kashmir and 0.2 MAF to Delhi, cutting off irrigation water to about 3.6 lakh ha in Punjab. Until 1966, the area of Punjab, which is now Haryana, got only 0.9 MAF.

The ground realities, however, were different. The surplus water available in Punjab was a mere 1.2 MAF. The then chief minister, Giani Zail Singh asked for a review of the notification. In 1978, the Akali government moved a petition in the Supreme Court challenging the constitutional validity of the notification.

Meanwhile, the first phase of the SYL canal in Haryana, a 75.5 km long stretch from Ismailpur to Karnal which began in 1976 was completed in March 1982 at a cost of Rs 40 crore.

In 1978, Punjab chief minister Prakash Singh Badal green signalled construction in the state. However, the government felt short-changed and moved the Supreme Court. Haryana also went to court demanding implementation of the central government notification.

In 1981, the next chief minister from a different political party, Darbara Singh, withdrew the case and signed an agreement increasing the share of Rajasthan by 8 MAF. An agreement with Haryana and Rajasthan was arrived at, wherein, based on new data, additional water was given to Punjab and Haryana. According to this agreement 3.5 MAF was allocated to Haryana and 8.60 MAF to Rajasthan out of the surplus flow of the Ravi and Beas, then estimated at 17.17 MAF, based on 1921-60 flow data. Punjab got 5.07 MAF from these rivers. This agreement created a furore in Punjab since it was believed to have been signed under pressure.

In 1985, the then prime minister Rajiv Gandhi and Akali Dal leader Harcharan

Singh Longowal, arrived at the historic Punjab accord which recorded the resentment of the people of Punjab; a tribunal under a retired Supreme Court judge was set up. Justice Eradi was appointed to head the Ravi-Beas Tribunal and come to a conclusion on how much water Punjab and Haryana actually used, so that the surplus could be apportioned accordingly. The accord also stated that the SYL canal would be completed by August 15, 1986, allowing Haryana and other downstream states to utilise whatever share of water the tribunal would eventually allot to them. There was one stipulation: the farmers in Punjab would not have to compromise with lesser water. The Akalis thus endorsed the 1976 notification and the 1981 interstate agreement.

Justice Eradi discovered that the use of Ravi-Beas waters by farmers in the three states totalled 9.711 MAF: 3.106 MAF by farmers in Punjab, 9.711 by farmers in Haryana and 4.985 by farmers in Rajasthan. This left some 6.6 MAF surplus water to be divided between these two states. Justice Eradi made an interim award: 5.00 MAF was awarded to Punjab and 3.83 MAF to Haryana. The arithmetic of this award did not add up since 8.83 MAF was allotted against the available 6.6 MAF. The water below the rim stations of the Ravi and Beas, which were the lowest points at which the data was recorded, helped make up the difference. Punjab pointed out that this water was useless since no dam or barrage could be built along the Pakistan border to store it.

In 1987, Punjab thus contested the Eradi tribunal award on grounds that the tribunal had overestimated the free water available and underestimated the use of water by Punjab farmers.

In July 1988, justice Eradi adjourned the tribunal because of violence in the state. The tribunal began functioning again in November 1997, after being ordered by the Supreme Court to do so. With no clear decision having been taken by the tribunal, the Haryana government again approached the apex court.

In January 2002, the Supreme Court ordered that Punjab complete the construction of the SYL within 12 months on the failure of which, the centre would appoint a central agency to complete the work.

In July 2002, the government of Haryana approached the Supreme Court to ensure that the Punjab government kept to the deadline.

On January 15, 2003, the deadline expired. This was the seventh time that the state had missed it.

In January 2004, the Supreme Court rejected the plea of the Punjab government to refer the controversy to a larger bench.

In June 2004, the Supreme Court directed the centre to construct the unfinished part of the SYL canal in Punjab to facilitate the sharing of river waters between the two states. This decision followed the Haryana High Court's petition about the Punjab government's failure to act upon the court order of January 15, 2002. The centre was also directed to take over the project, should the Punjab government fail to keep the deadline.

In December 2004, Rajasthan chief minister Vasundhara Raje met prime minister Manmohan Singh to demand water from Punjab. The Bhakra-Beas Management Board immediately released water as per the requisition for the month. The PM was warned of unrest along the border area due to lack of water for farming.

2004: Escalation of Events

In July 2004, the conflict escalated as a result of steps taken by the Punjab government (July 3, 2004). The Punjab government moved the Supreme Court seeking a review of its June 4 judgment directing construction of the remaining portion of the SYL canal in the state. The government contended that the Court did not have the jurisdiction to decide on the matter, as it was a water dispute under Article 262 of the Constitution, which fell within the exclusive jurisdiction of the Interstate River Waters Disputes Tribunal. The petition came after the centre directed the central public works department to construct the canal on a directive issued by the Supreme Court. Nearly 60 per cent of the 112 km long canal had been constructed before grinding to a halt in 1990.

The Punjab government threatened to stop releasing water to neighbouring states. The Rajasthan assembly passed a resolution authorising the state government to initiate legal and administrative steps to ensure that the state got its full share of water from the Ravi-Beas system as per the 1981 agreement.

Punjab decided to bring a bill in the state assembly to counter the obligation of handing over the SYL project to a central agency in accordance with the Supreme Court directive. The bill was drafted with

the help of former solicitor general, Soli Sorabjee with the aim of nullifying the agreement with retrospective effect.

To retain control over the SYL the chief minister dug up the Northern India Canal and Drainage Act, 1873 for amendment. The amendment proposed would make it mandatory for any work on a canal – maintenance, repair or construction – that ferried water beyond the borders of Punjab to be sanctioned by the assembly.

On July 12, 2004, a special session of the Punjab assembly was held which unanimously passed a bill terminating all agreements relating to sharing of waters of Ravi and Beas with Haryana and Rajasthan, two days ahead of the Supreme Court deadline to the centre to take up construction of the canal in the state. This Punjab Termination of Agreements Bill, 2004 also abrogated the Yamuna Agreement of May 12, 1994 between Punjab, Haryana, Rajasthan, Delhi and Himachal Pradesh and all other accords for sharing river water. Under the Yamuna Agreement, Haryana was allotted 4.6 MAF water, which would further be augmented by the SYL.

The bill decreed that the Indus system that existed before Partition had become irrelevant after the event since only three east flowing rivers – Ravi, Beas and Sutlej – out of the six that constitute the Indus River System remained in India. All these rivers flow through Punjab; neither Haryana nor Rajasthan are part of these river basins. The diversion of these waters was contrary to the national water policy.

Haryana termed the act unconstitutional and lawless. Its implementation would lead to the destruction of cooperative federalism and disintegration of the country.

The centre filed a petition in the Supreme Court on July 15, 2004 saying that fresh directions were needed as a result of the controversial Punjab government act.

On July 20, 2004, the government of Himachal Pradesh also decided to move the Supreme Court against the Punjab Termination of Agreements Act, 2004, to protect the interests of the state in Thien dam and other projects affected by the act.

President Abdul Kalam referred the controversial law passed by the Punjab assembly to the Supreme Court on July 22, 2004.

On August 2, 2004, the Supreme Court agreed to examine the validity of the Punjab act and issued notices to the centre, Punjab, Haryana, Rajasthan, Himachal Pradesh, Jammu and Kashmir and the National

Capital Territory of Delhi to file written submissions on facts and the question of law formulated under the presidential reference under Article 143 (1) of the Constitution, seeking opinion on:

(a) Whether the Punjab Termination of Agreement Act, 2004 and its provisions are constitutionally valid;

(b) Whether the act and the provisions are in accordance with the provisions of the Interstates Water Disputes Act, 1956, Section 78 of the Punjab Reorganisation Act, 1966 and the notification dated March 24, 1976 issued thereof; and

(c) Whether in view of the provisions of the act, the state of Punjab is discharged from its obligations flowing from the judgment and decree dated January 15, 2002, and the judgment and order dated June 4, 2004 of the Supreme Court.

On August 24, 2004, the Supreme Court upheld its June 4, 2004 order directing the centre to construct the remaining portion of the SYL canal in Punjab, dismissing a petition by chief minister Amrinder Singh seeking review. The Punjab government was asked to provide security to the central team.

Chief minister Amrinder Singh claimed that even though the central Congress leadership was annoyed with him for getting the act approved in the assembly without their consent, he would defend it tooth and nail in the apex court.

Evading Firm Decisions

The successive governments, irrespective of which party they belong to, have consistently evaded taking a final decision on the issue. Matters have come to such a stage that no government in power will have the courage to take up the construction.

Since 2002, Punjab has been arguing that it has no surplus water to release. According to them, between 1981 and 2002, river flow data show only 14.37 MAF against the 17.17 MAF believed to be available. The transfer of water would affect nine lakh acres of irrigated land in Ferozepur, Faridkot, Mogha and Muktsar. The recharge of groundwater in Punjab would be affected.

Since 1990, when militancy escalated in the state, the 1,700 strong staff that Punjab has employed to build the canal have not had serious work. The engineers and labourers are unwilling to work on the project ever since militants killed a chief engineer in July 1990, in his office in Chandigarh.

The Punjab part of the canal built during the 1980s at considerable expense has fallen into disuse. The sand clogging the canal will have to be manually removed, a time consuming job. The land needs to be acquired along the path of the canal. An alignment will be a problem since it passes through places of worship in Ropar district.

Since the commencement of the project several deadlines have been missed – December 1983, August 1986, December 1987, March 1988, June 1988, November 1989, January 1991 and January 2003.

Unbearable Burden

Far from being a welfare project, the SYL canal has become a millstone, an unbearable burden no one wants any part of. It has become a tool for politicians, who, depending on which state they belong to, vow to bring/not allow the river waters to leave the state.

The root of the problem lies in the various awards by committees, commissions and other agencies appointed by the centre from time to time. The delay in finding an effective solution has heightened emotions. The Constitution gives full and exclusive powers to the states over water and hydel power. However, when Punjab was bifurcated into Punjab and Haryana, the Punjab Reorganisation Act 1966, gave all powers to the centre ultra vires to the Constitution. While this act makes the waters of these three rivers distributable by the centre, it gives Haryana full control over the Yamuna river water.

Punjab is predominantly an agricultural state and one that has been living off the harvests of a single wave of reform in the 1950s and 1960s, which produced the green revolution. This process is approaching exhaustion as the application of increasing doses of water and fertilisers to land under hybrid cultivation is producing declining returns. Land is a limited commodity and continued fragmentation has reduced land-holding and increased the number of marginal farmers. On the streets, the issue has become ugly and communal.

In the midst of this hullabaloo, the main issues facing farmers in Punjab and Haryana remain unanswered: that of inefficient irrigation policies and practices and increasing cultivation of water intensive crops like paddy and sugar cane. Both states regularly record up to 30 per cent

transmission losses in irrigation canals. In 1955, Punjab had 34.8 MAF of water in all forms. In 2004, the reserve is a mere 12 MAF. The groundwater levels are rapidly falling in areas like Malerkotla and Sangrur in Punjab, owing to excessive groundwater use. The border areas in the state are experiencing water logging due

to seepage from the ill-maintained canal and overuse of water. Neither state is taking water conservation seriously. Nor are they looking ahead and shifting to less water intensive crops that are more suitable to the ecology. **EPW**

Email: indirashok@vsnl.com