

Sindh Case Series -8

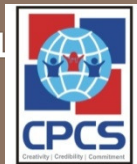
Discussion Paper-VII

Sindh - Punjab Water Dispute

1859 - 2003



RASOOL PALIJO



Sindh-Punjab Water Dispute 1859-2003

By:
Rasool Bux Palijo

Center for Peace & Civil Society

127, Sindhi Muslim Housing Society,
Qasimabad, Hyderabad, Sindh, Pakistan.
Ph: +92 - 22 - 2652401, Fax: +92 - 22 - 2652401
E - Mail: info@cpcs.org.pk
www.cpcs.org.pk

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Rasool Bux Palijo

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(The century-and-a-half long illegal, criminal and conspiratorial plunder of Sindh's share of the Indus Basin Waters, the severe water famine imposed upon Sindh (a province of Pakistan), the ruin of its agro-based economy and the apprehended genocide of Sindhi People)

Most of the great world civilizations have been the gifts of the great rivers of the world. Disputes over waters of rivers have been occurring from time to time in world history.

Thanks to the enormous development and more or less effective implementation of International Law about rights of co-sharers of river waters, most of the present day river-water disputes of the world have been amicably settled. The cardinal principle of the river water law that has emerged out of centuries of intra-national as well as international litigation on the issue, is that the party at the upper side of a river (legally known as upper riparian) has no right to withdraw or divert water from the common river if it causes loss or injury to a party at the lower side (legally known as the lower riparian). Prof: H.A. Simth's famous work "Economic uses of International Rivers", which examines treaties between states since 1785, states that all these treaties proceed with the principle that works executed in the territory of one state, require the consent of another, if they injuriously affect the interests of the latter.

In undivided India, the law of equitable use of common river waters developed steadily with the passage of time.

The river Indus with its five tributaries and the agriculture based upon this river system, has been the mainstay of the economy of the former north-western Indian territories, now constituting Pakistan. Three tributary rivers of Indus, namely Ravi, Bias and Sutlej enter Pakistan from India and the other two viz Jhelum and the Chanab flow into Pakistan along with Indus, from the State of Jamu and Kashmir. The waters of all the above five tributary rivers join that of the Indus at Panjnad, irrigate the province of Sindh and discharge into the Arabian sea in southern Pakistan, at and around Keti Bandar in Sindh.

There were, therefore, two main riparian (co-sharers and beneficiaries) of the waters of the six rivers of the Indus River system in the pre-partition period viz-undivided Punjab and Sindh, since time immemorial. In the latter half of the nineteenth century, the authorities of the province of undivided Punjab started diverting water from this system against the interests and rights of the Sindh province and this started the nearly a century-and-a-half-long, Sind-Punjab water dispute.

"During the last hundred years under the guidance of British engineers, irrigation was greatly extended (in Punjab-RBP) through the construction of head-work weirs on the rivers and through a network of canals. Flourishing colonies were established. Cultivation of cotton, wheat, rice and sugar cane was expanded. New towns sprang into existence. Orchards and well-tended farms covered the countryside. More land is irrigated from the Indus rivers than from any other river system in the world...one (dam) planned before partition was the Bhakra Dam on the Sutlej River in East Punjab...Before it was sanctioned, the downstream Province of Sindh complained that the operation of Bhakra Dam would adversely affect the functioning of its inundation canals."("The Emergence of Pakistan" by Chaudhri Muhammad Ali P: 317). This dispute attracted the intervention of the government of British India from time to

time. It is however, continuing unabated to this day, due to reasons discussed below.

The government of British India constituted in 1901, India Irrigation Commission which ordered Punjab to seek permission from Sindh about any project which it may wish to implement with regard to the waters of Indus river system.

In 1919 the Cotton Committee appointed by the government of India to settle the Sindh-Punjab Water dispute held that Punjab should not be given any waters from Indus river system till the results of the projected Sukkur Barrage do not become evident. The 1919 government of India Act lay it down that the matters regarding Sindh-Punjab water dispute should be decided by no less an authority than the Viceroy of India himself.

The government of India Act 1935 Section 130 and Section 131(6), inter alia laid down the principle that no province can be given an entirely free hand in respect of a common source of water such as an inter-provincial river. Examining the riparian rights, and the claims of the authorities of the (undivided) Punjab, that an upper riparian province in India may take as much water as it needs from rivers flowing through it, the Rao Commission headed by Sir B.W. Rao, of the Calcutta High Court, who latter became a Judge of the International Court of Justice, opined in "the Report of Indus Commission" (Para 49, Page 33), " pushed to its logical conclusion, this means that a province in which the head-waters of a great river are situated, can abstract any quantity of water and make a desert of the provinces or states lower down. We have already pointed out that this view is against the trend of international law and that in any event, so far as India is concerned, it would conflict with the manifest intention of section 130 and the succeeding sections of the government of India Act 1935." Commenting on the principle of "equitable apportionment" of the river waters, laid down by the Rao Commission, the former Prime Minister of Pakistan, Chaudhry Muhammad Ali says, at pages 117-118 of his book " The Emergence of Pakistan":

"The Rao Commission laid down, as the principle governing the respective rights of the parties, "equitable apportionment". This principle, which is internationally recognized as regulating the rights of states having a common river basin, includes the rule that an upper riparian can take no action that will interfere with the existing irrigation of the lower riparian."

The one and a half century old dispute between Sindh, the lower riparian and Punjab the upper riparian, over the sharing of the waters of the Indus and its main tributaries, the five rivers Jhelum, Chenab, Ravi, Bias and Sutlej, is probably the longest surviving unresolved water dispute of recent history. It has culminated in the weaker and lower riparian Sindh coming in the grip of a horrible water famine and economic and social ruin. In the perception of many people of Sindh, there is a real danger of virtual and physical extinction of the people of Sindh in the not too distant future, if the artificially imposed water-famine conditions are perpetuated and/or more dams like the Greater Thal Canal or Kala Bagh Dam take away even the present meager supply of water to Sindh, as every drop of water taken away from the down-ward flow of water of the Indus river system, under any pretext whatsoever (e.g prevention of wastage of water discharging into the sea), will lessen Sindh's already vastly plundered water supply and will accentuate the acute water famine condition in Sindh and accelerate its economic and social ruin.

A deep-rooted apathy about general public concerns and cares dominates the minds of our common men. They are too pre-occupied with and over-burdened, by their day-to-day personal struggles for sheer survival, to care about anything else. They have no means of knowing properly that in human society even one's strictly personal and family interests are inseparably inter-connected with and inter-dependent upon, broader clan, group, ethnic, national, regional and global interests. Very few of us know that despite the entire variety and contradictions of our multi-furious social and other interests, in the last analysis, the most fundamental, the broadest and biggest interests of our

people of all ethnic entities, nationalities and provinces are, in the broadest general sense, more similar and identical than dissimilar and contradictory. We have yet to realize that ultimately, the things which divide us, are not as important, for our collective good life and progress, as those, which unite or at least should unite us. Consequently there may not be too many people in Punjab who may know the fact that whatever grievances the people of Sindh, have, in this matter, are against the ruling classes not only of Punjab but also of Sindh, and not against their brothers, the common people of Punjab, the majority of whom, they believe, are leading a more or less miserable life, like Sindhis and other people of Pakistan and the third world.

It may therefore not be easy for them to realize how absolutely impossible it is for the people of Sindh to have any feelings other than those of fraternal admiration and respect for the people who have given our country and the sub-continent, such unique, grand and fascinating personalities as, to name but a few, Baba Farid, Baba Nanik, Shah Hussain, Waris Shah, Alama Iqbal, Faiz Ahmed Faiz and yes, Nawabzada Nasrullah Khan, whose gigantic contributions to our common culture are a matter of great and just pride for all us.

Under the circumstances, to the uninitiated general public of the country, the present imperiled condition of the endangered human specie, named "the people of Sindh", especially that of its agro-based rural population, dependent wholly and solely on the water of the now dried up Indus, is just one of those unfortunate but inevitable things which keep happening to people in this unhappy world of ours, every now and then.

The situation is hardly better even in the case of well educated and the newspaper reading sections of the public.

Due to a most persistent clever disinformation campaign of the vested interests, the problem of the just settlement of the historic Sindh-Punjab water dispute, for resolving of which the then government of British India appointed three high powered authorities: The Cotton Committee in 1919,

the Anderson Committee in 1935 and the Rao Commission in 1941, and which has defied the efforts of no less than four committees and commissions appointed after the establishment of Pakistan, (Akhtar Hussain Committee 1968, Fazal Akbar Commission 1970, Anwarul Haque commission 1981 and Haleem Commission in 1983) is being merely reduced to questions of superficial and frivolous interpretations of the so-called water "accord" of 1991 foisted through that notorious establishment puppet Jam Sadiq Ali, the lota Chief Minister, which on its very face, does not address, the most fundamental core issues of the Sindh-Punjab water dispute 1859-2003.

It all started in 1859, when the authorities of the undivided Punjab, the upper riparian for Sindh, of Indus and its tributaries, suddenly began diverting the waters, of Indus tributaries without the consent required under International and sub-continental law of river waters, of the lower riparian Sindh, which was sharing the waters of all these rivers since times immemorial. In that year they constructed the central Bari Doab Canal on the Ravi, adversely affecting the water supply of Sindh. This proved to be merely the first shot in the one-and-a-half-century long predatory water-war the authorities of the province of Punjab are waging against its poor and weak neighbor the Sindh. It is an operation for misappropriating and plundering Sindh's share of common waters of the Indus River system by hook or crook, in hundreds of brazen as well as subtle and surreptitious ways. It has continued unabated till today.

The latest shot is the on-going fast-track construction of the Greater-Thal canal project, which is being dug day and night to present Sindh with a fait accompli, under a regime of military "democracy".

After the Central Bari Doab, the upper riparian constructed between 1885 and 1901, three more canals viz Sidhnai, lower Chenab and lower Jhelum canals, all without the consent of the lower riparian Sindh. Paharpur Canal in 1908, upper Swat Canal in 1914 followed in similar fashion. In 1915 they went over to a new stage of water

misappropriation and plunder in the face of international and sub-continental law of common river waters. They started diverting water on a grand scale with multiple canal projects. The first one was the triple canal project for diverting the common waters through three new canals viz Jhelum Canal, Upper Chenab Canal and the Lower Bari Doab Canal.

In spite of their strong imperialistic, anti-people and biased strategies and cynical policies, the British colonial government in India did have some irreducibly minimum administrative decencies and moral restraints which, by and large, they firmly held to, in the face of other strategic and tactical considerations which indicated purely tactical and opportunistic courses of action.

They never utterly deserted that great banner of good-government, inherited by them from the Greco-Roman civilization, the rule of law and not of persons.

The ruling class of the Punjab was the ally of the British since 1807 treaty of Amritsar with them. It was their junior partner in their war of subjugation of surrounding Muslim areas and Afghanistan and later on, became the most loyal swordsman of the British empire, having proved its super-loyalty to the empire, by helping it in a big way, in the suppression of the 1st Indian War of Independence in 1857, for which it had been royally rewarded, besides other bounties, by the then greatest irrigation system of Asia, the Indus rivers irrigation system in Punjab.

"For Punjab - the (British) imperialists and empire-builders devised an entirely different scheme of exploitation. Punjab was not naturally fertile and rich in water resources as Bengal.

"Unlike Bengal, where large land holdings of the Muslims were broken and parceled out to petty cultivators, in Punjab the imperialists bestowed their patronage, in huge parcels of canal-irrigated and thus perennially fertile land, to a new breed of landed Muslim aristocracy they had conjured up for their convenience. a century-and-a-half hence, we in Pakistan are still contending with that imperialist legacy

and paying a colossal premium in national disarray and political chaos for that 19th century 'convenience' . "The wounds of the Sepoy mutiny were still fresh. They (the British-RBP) had succeeded in putting it down with the help of Punjabi mercenary soldiers recruited for them by petty Muslim middlemen. So they showered their favors in spades on these middlemen when virgin land became cultivable, thanks to the canals. Petty middlemen became aristocrats, overnight. Naturally they were beholden to their masters and readily became their pawns in the imperial game of rapacious plunder."("The Punjab Under Imperialism:1885-1947", by Imran Ali - Review by Karamatullah K. Ghorii)

Sindh was then the step-child of the Bombay presidency whose advanced and prosperous Hindu majority was loath to allow itself to be unduly perturbed by the woes of a far off piece of land, with a backward rural Muslim majority, like Sindh.

In spite of their obvious imperialist bias in favor of the Punjab, the British did not view the grave injustice being done to Sindh like a spectator, nay, as an undeclared partisan of the aggressive, stronger side, as the pseudo-federal government authorities of Pakistan have been and are doing.

In the matter of historic Sindh-Punjab water dispute, the British Indian central government tried to do justice and to ensure that it be seen by the world that the central government of India was really a central, non-partisan and impartial central government and that justice was being done between the big and small entities of the empire without fear or favor, in matters of fundamental importance to the common people. In the meantime, the authorities of the (undivided) Punjab did not keep sitting idle. In 1919, they started the huge Sutlej Valley project for construction of 11 canals and 4 head works on the Sutlej river at one stroke. A complaint was lodged with the central government of India, which appointed in the same year, a committee headed by Mr. Cotton. The (undivided) Punjab government adopted the stand that it had the right to use the waters of rivers that pass through their province to the extent it is needed by them.

"Cotton Committee reported the same year that (undivided) Punjab should not be allocated water from Indus till the effects of construction of the proposed Sukkur Barrage had not become evident."

In September 1919 government of Punjab presented Thal project as against Sindh's Sukkur Barrage project. The Viceroy Lord Chelmsford rejected the Thal project.

According to Dispatch No. 3-Public Works dated 2nd June, 1927, from the Government of India to the Secretary of State for India.(P.1), in April 1923, the Sukkur Barrage Project was sanctioned by the Secretary of State for India (See "Indus Water Allocation" by G. K. Soomro p.1). Within a month of this, the Government of the Punjab protested against what they regarded as a preference to Sindh and raised for the first time, the question of duties adopted for the Sukkur Project. The Govt. of Bombay strongly objected to this attitude on the part of the Punjab Government and contended that the Punjab had more than their share of the water of the Indus System for its schemes of perennial irrigation, while Sindh which at the time was a part of Bombay Presidency, had not commenced a single one. They also complained against the Thal Project, and considered it to be of the greatest danger to Sindh.

The Government of India fully considered the two protests in a letter addressed by the Government of India to the two Provinces on 21st August 1923.

It was pointed out that the Sukkur Barrage and Canals Project had been designed for the benefit of the region that was fully entitled to the water, which was proposed to allot to it, and that its supplies must obviously be assured. It was also stated that the duties adopted in the Sukkur Project had been accepted, after careful consideration, as reasonable regard being had to the peculiar conditions and scanty rainfall obtaining in Sind. The Government of India said that they were not prepared to re-open the subject.(P.2)

To establish some sort of claim on Indus Waters the Government of the undivided Punjab, in November 1924, again re-opened the question of Thal Project, this time with a proposal to construct a small experimental Canal

involving 750 cusecs. While the Government of India were negotiating with the Govt: of Bombay, regarding this request, they received, in September 1925, a communication from the Government of the Punjab stating that they had decided to drop the proposal for the experimental Canal and were desirous of proceeding with a bigger Thal Scheme. In the following month the Government of India, which contemplated irrigating 8, 80,000 acres, with a withdrawal of 3085 cusecs from the Indus in the cold season, received the Thal Canal Lesser Project from the Punjab. In February, 1926, Lord Reading's Government found themselves forced, on grounds of equity, to support the stand-point adopted by the Bombay Govt: and announced their final decision as follows:-

(a) That until such time as Sukkur Barrage Scheme comes into operation, and further experience of perennial Irrigation in Sindh is available, the question of the volume of water required for that scheme cannot be re-opened.

(b) That, faced as they are with the unknown effect of the withdrawals which will be necessary for the supply of the Sutlej Valley Canals in the Punjab, the Government of Bombay have the right to object to further withdrawals from the Indus or its tributaries unless & until definite proof can be given that the supplies necessary for the Sukkur Barrage Project will not be endangered thereby.

(c) That such proof must be based upon the result of more accurate gauging of the river and its tributaries, which were instituted as a result of Sir Thomas Ward's note of the 10th December 1929. In spite of the above, the Punjab Government continued to protest against the Sindh Allocations. The Government of India then referred the matter to the Secretary of State and asked for his instructions. The Secretary of State replied that he agreed with the conclusions of the Government of India, and that nothing but experience could show exactly what value should be taken for those duties, and having regard to the fact that Sukkur Canals have not yet even begun to irrigate, no reason had been shown for reconsideration of the duties, and it would be unreasonable in itself, and unfair to the

Govt: of Bombay to re-open the question of the duties at that time and that the Government of Punjab should accordingly be informed that he regretted that after full consideration he was unable to accede to their request.(P.2-3) The water dispute between Sindh and Punjab had by this time reached such proportions that government of India was forced to constitute an eight member committee, under the Chief Engineer of UP, Mr. Anderson, with the clear and express direction that no fresh withdrawals (by the upper riparian, the province of Punjab) be recommended which may be detrimental to the other riparian or may adversely affect not only the existing but also the future rights of such riparian over the waters of the Indus waters. "(One of) the terms of reference of Anderson Committee (was)... (2) "There is a possibility of finding such supplies [without detriment to the parties interested in the waters of the Indus and its tributaries and the effect upon the existing or prospective rights of those parties of any fresh withdrawals,] the authorization of which the committee may recommend." In the meantime the (undivided) Punjab authorities, [who seem to have made mass manufacture of schemes and projects for taking away as much water from the Indus system as possible, their permanent occupation or rather an eternal passion, which continues till to-day and promises to continue as long as there is even a single cusec of water left in the system, for going down-stream to the lower riparian,] produced yet another massive project for the purpose, the Bhakhra Dam project.

Since the Punjab authorities thus continued to plan for further extensive withdrawals and storages, the Government of Sind was compelled to lodge a complaint, in 1939, before the Govt: of India, under the provisions of Government of India Act, 1935, regarding the apprehended effects of the Punjab Projects on the canals in Sindh. The complaint in its final form was submitted to the Governor General of India on 7th June 1941. The Governor General appointed a Commission on 11th Sep, 1941, to investigate the complaint. This commission had three members, with Justice B. M. Rau, a Judge of the Calcutta High Court as its

Chairman, by whose name, the Commission has subsequently come to be known.

The Commission concluded that the withdrawals necessary for the Punjab Projects mentioned in the complaint, when super-imposed upon the requirements of other Projects already in operation or about to be completed, were likely to cause material injury to Sindh inundation canals particularly in the month of September.

The Commission recommended that the only satisfactory way of preventing such injury was the construction of two new Barrages one in upper Sind and the other in lower Sind costing about Rs. 16 Crores. The Commission further found that Sind would not be able to finance these two Projects without borrowing, even on the assumption that the Punjab would make a contribution of Rs. 2 Crores, which the Commission considered to be a not unreasonable sum for her to pay as compensation for the damage to Sind Irrigation she was likely to do. (P.6)

The Commission directed Punjab authorities not to take any action on their proposed project up to October 1945 and in the meantime it directed both the governments of Sindh and Punjab to come to an agreement. In the meantime status quo was ordered with regard to the distribution of water between Punjab and Sindh. On the orders of government of India, the Chief Engineers of Sindh and Punjab started negotiations under the guidance and supervision of Sir Claude Angles, the director of central irrigation and Hydro Dinlock Research at Poona, Bombay Presidency.

At last on 28 September 1945, the Sindh-Punjab draft Agreement was finalized which was signed by the Chief Engineers of both the provinces. According to that agreement, at Ghazi Ghat Punjab was to take one share from the Indus and Sindh was to get three shares. Article 8 of the agreement laid down that in future Punjab could not construct any dam on river Indus or on any of its tributaries without the consent of the government of Sindh.

The Sindh-Punjab Agreement fixes priorities and provides the framework for sharing all the waters of the Indus main

and the five Punjab rivers for canals, which existed in 1945 as well as for all those, planned or projected. The Agreement gives detailed schedules for sharing of supplies when the availability of water in the river was less than the allocation. The Agreement also provides the framework for all future projects and sharing of all surplus supplies in the rivers beyond the needs of the then present and the projected scheme.

As a result of this Agreement, the Punjab asked for a postponement of the reference to his Majesty-in-Council by six months to enable the financial agreement to be reached. Obviously the Punjab signified their acceptance of the Agreement on the Water Clauses to the Governor General. In reply to this, vide Secretary to the Governor General (Public's) D.O. No. 204/41-G.G.-(A) of October 1945, the Viceroy refused the requested deferment, as this would have delayed the construction work in both Provinces, and suggested that a clause be inserted providing for arbitration on the financial issue. Sindh agreed entirely with this stand-point, vide Secretary to Governor's D.O. No.1001 dated 7th November 1945. Former Chief Engineer and Irrigation Secretary of Punjab Mr: Pir Mohammad Ibrahim in his book "Water rights of West Pakistan" wrote in 1948, at page 66 of his book, "The draft agreement between the Sindh and United Punjab on the clauses of which the Agreement was arrived at after very careful consideration, Gives the fairest possible distribution of Indus waters between the Sindh and Punjab..."

The united Punjab government duly confirmed the agreement. Its only reservations were about the amount payable by it under the agreement to Sindh. Its letter dt.13.10.1945 to Sindh Government on the subject makes it abundantly clear that the Punjab government fully agreed, without any reservation whatsoever, with the terms of distribution of water between the two provinces under the agreement. The letter states inter alia:-

"From

E.L. Protheroe, Esquire, I.S.E.,
Secretary to the Government, Punjab,
Public Works Department, Irrigation Branch.

To,
The Secretary to the Government of Sindh,
Finance Department, Karachi.
No.013 Cn. Dated Lahore, the 13th October 1945.

SINDH PUNJAB INDUS DISPUTE

Sir,

I am directed to acknowledge receipt of your letter No.1442-W. And S., dated 2nd October 1945, regarding the above and to say that the contents thereof have received the careful attention of the Punjab Government.

2. I am to confirm that the tentative agreements reached by the engineer representatives of the two governments in their recent discussions at Karachi is acceptable to the Punjab government, provided it is accompanied by a satisfactory solution of the financial issue." "This Agreement has been followed, both in letter and spirit, right up to the break-up of One Unit. This can be seen from the fact that all actual distribution of supplies during the period was made on the basis of this Agreement.

"When the Government of the Punjab proceeded to construct a large capacity B.S Link, it evoked a protest from the Government of Sindh and the Punjab Government had to limit the size of link within the capacity permitted by the Sind-Punjab Agreement, Similarly, the Sind Government proceeded to construct the G.M. and Gudu Barrages as envisaged in the Agreement, without any protest from the Punjab. When the late Mr. Gazdar, Member of the Central Legislature, and himself a competent Engineer, protested against the Punjab proposals for various links on the floor of the Central Legislature, the Government of Pakistan gave a positive assurance to the Sind Government that no works outside the Sind-Punjab Agreement would be allowed to be constructed, without full consultation of the Government of Sind. (See the Government of Pakistan D.G Letter No. P-19 (67)/53 dated 26th March, quoted by G.K. Soomro, "Indus Water Allocation", History of the Case, P.144)." "Messrs Hunting Technical Services Ltd., which prepared the Lower

Indus Report under the guidance of West Pakistan WAPDA dealt with Sind-Punjab Agreement in their 1966 Report. In this "Lower Indus Report Part 1, Chapter 3.5 at Page 47 the company has stated:-

"For many years prior to Independence, the Sind Government was very concerned that lest excessive quantities of water be diverted in the Punjab and Sind in the process deprived of its rightful share.

"It was not until 1945 that an equitable solution was found when the 'Sind-Punjab Agreement' regarding the sharing of the waters of the Indus and the five Punjab rivers' was signed. Although the Governments making this Agreement have now passed into history, yet, the Agreement is still operated." (P.146)

"This Agreement was the first of its kind, in the known history of sub-continent when sensitive riparian, problems has been solved by mutual agreement and acted upon mutual agreement for a very long time. Sind-Punjab Agreement of 1945 is thus an instrument of great significance and cannot be brushed aside as advocated by the Punjab (authorities). In fact by distribution of waters for all these years on the basis of Sind Punjab Agreement, the Punjab has established its rights only up to the allocations, contained in the Agreement.(G.K. Soomro, ibid, P.53) No life-processes can proceed in an absolute vacuum. Besides the Sindh-Punjab water dispute, there were many other inter-connected inter-dependent and inter-penetrating socio-political processes in India which were not at all at a stand-still at all this time. The intensely religious and revivalist well-wisher and supporter of the British empire and the great freedom fighter Mahatma Gandhi had taken-over the Congress from the slow-going moderate liberal and secular Parsi group of Bombay long ago. The impetus given to efforts for Indian national unity by the 1916 Lucknow Pact had become a thing of the past. The 1928 All Parties Conference for Indian unity at Calcutta had miserably failed. In his presidential address to the 1930 Allahabad Conference of the Muslim League, Allama Iqbal gave a call for the administrative grouping of Muslim majority

provinces / regions viz Punjab, Frontier, Sindh and Baluchistan within British India. But the proposal met a cold response from the Muslims of Frontier, Sindh and Baluchistan.

There were weighty historical reasons and grounds for the same. The rest of Muslims of India especially those of the Muslim majority neighboring territories of Punjab viz NWFP, Baluchistan, and Sindh, were not exactly happy with what they perceived as the aggressively collaborationist role of the Muslim elites of Punjab under the Sikh and British rules. As for Sindh, it could not be forgot that during the Sikh rule Punjab elites kept constantly menacing Sindh and trying to subjugate it. Besides its obvious weakness as compared to the British might, it was the constant, ruthless pressure of Punjab rulers, which made Sindh absolutely helpless before the British machinations leading to its eventual subjugation by the British in 1843 (see "Sindh Since Centuries"- Ranjit Singh's relations with Amirs of Sindh, P. 260). During British rule, Punjab elites and bureaucracies did not give up attempts to get Sindh annexed to British Punjab. Besides as mentioned above, Sindh had the longest and bitterest experience of the extremely negative attitude of the elites of Punjab in the matter of the wholesale plunder of its share of the water of the Indus system of rivers. Hence it did not trust the elite of the most powerful Muslim majority province of united India and could not afford to throw the fate of their resources, rights and liberties at the mercy of a united province totally dominated by those most favored elite of the British Indian Empire.

For the preponderant majority of the Third World Countries, independence, unfortunately, is almost a myth. In most of such countries the direct rule of the British, French, Dutch, Portuguese, Spanish and American imperialists was replaced by the indirect rule of US imperialism, through the old imperialist elites and bureaucracies of these formally liberated countries. There has been no dearth of people in the Pakistan ruling class who, judging by their entire attitude to Pakistan and their

haughty behavior with its peoples, apparently regard themselves as the virtual authorized agents and successors to the British Raj directly inheriting the state of Pakistan along with its powers and resources from that Raj, as a reward, for past services to the Raj in and beyond India.

Incidentally, not a few Punjab elites and authorities, rather than dissociate themselves from the high-handed, aggressive doings of the Sikh State against its neighbors, lost no opportunity of proudly owning them as their national heritage, going to the extent that they sometimes are known to have reckoned sub-continental history from the time of Ranjit Singh only, forgetting all that was and went before him in the preceding centuries. Consequently in the historic, basic document of Pakistan, the 1940 Lahore Resolution, subsequently named the Pakistan Resolution, there was absolutely no mention of Pakistan or for that matter of any single, united state of the Muslims of undivided India.

Through this historic 1940 resolution, therefore, the crores of Muslims of undivided India voiced their unanimous historic demand that the Muslim majority provinces of India viz Bengal, Punjab, Sindh, NWFP and the territory of Baluchistan, the homelands of Bengalis, Punjabis, Sindhis, Pashtoons and Baloch Muslims of India should be made independent and sovereign states.

It was happened for the achievement of the above five independent and sovereign Muslim states in the Indian sub-continent that after the passage of the 1940 Lahore Resolution and the fixation of the above grand goal the crores of Muslims of the sub-continent waged a historic valiant struggle for independence which along with other political forces of the country shook the foundation of the British Empire.

In the mean time, All India elections were announced for 1946. The Muslims of India duly seized this opportunity and massively voted for the Quaid-e-Azam and Muslim League who promised them these independent and sovereign homelands and thus compelled the British Government and the Congress to recognize Muslim League as the sole

representative of the Muslims of India and a power to be reckoned with, for deciding the future fate of India. As it happened, the elected Muslim representatives of India after their elections in 1946 did not honor this electoral mandate. They decided to substitute a single state for the proposed five independent and sovereign states. Incidentally this was the first major historic and fateful violation of the declared mandate given by Muslims of the Indo-Pak Sub-continent to their elected representatives through their massive vote, which tradition has been regularly followed in later times till today, with fatal results like the debacle and betrayal of East Pakistan by military usurpers and their puppet politicians.

To allay the well-founded grave apprehensions of the four provinces and Baluchistan, it was declared that the proposed single state would not be a unitary but a genuine federal state, consisting of five autonomous provinces with real equal rights for all provinces. It was judged that the presence of the preponderant numerical superiority of Bengali Muslims would never allow any one to dominate the whole country or its western half in the periphery of Punjab. This totally unexpected new prospect of a single Muslim state brought a sudden veritable sea- change in the thinking of the Punjab elites and authorities.

The Punjab elites and authorities who, because of their stead-fast and powerful military and political support to the British Empire dating back to 1807 Amritsar Punjab-British Treaty, were closer to the imperial government than those of any other province, possibly soon sensed, after the above change in the prospects of the Muslims of India, that the British rule might not last very long and partition may not be far off. They seemed to have surmised that after the end of the period of the relatively fair and impartial legal supervision and protection of the British rule, Sindh was bound to succumb to the future unrestrained and irresistible pressure of the elites and authorities of Punjab as in the radically changed post-partition circumstances, Punjab was, instead of remaining the respondent and accused in the dispute, as before, most likely, overnight, to become

virtually the owner and master of the newly established Muslim state of Pakistan and all its resources, including the common waters of the Indus river system. They seem to have guessed that on this old, old vital issue, they would soon be able to out-wit, out-maneuver and brow-beat Sindh, bring it on its knees and, in due course, misappropriate the bulk of the waters of the Indus and its tributaries. In any case they took a sudden U turn and one-sidedly refused to ratify the 1945 Punjab-Sindh Water Agreement, so painstakingly hammered out, after prolonged negotiations under the constant prodding of the British Indian central government.

The Punjab authorities non-chalantly dismissed their historical U turn, in a couple of innocuous and innocent sentences.

"The two Chief Engineers of the Irrigation Department of the Punjab and Sindh started discussions prepared a draft in 1945. (Which) could not be ratified?" (Indus Water Committee, January 1971, The Punjab Brief P. 54) Whenever there is a partition between countries, new arrangements for the division of the common assets have to be made.

In 1947, at the time of partition between India and Pakistan, a committee was constituted by the government of India named committee B, for making arrangements for the division of the waters of Indus basin rivers between the two countries.

The governments of India and Pakistan were required to place their problems regarding the distribution of water before this committee. If any side was to be dissatisfied with the decision of this committee, it could appeal to the Arbitral Tribunal, which was headed by the Chief Justice of India, Sir Patrick Spence. The Tribunal's tenure was up to 31st March 1948. As stated above, the then West Punjab province and Sindh both were getting water from all the rivers of the Indus system.

In the case of matters regarding these waters, before partition, both these provinces were respectively the upper

and lower riparian, co-sharers and beneficiaries of these waters. Because of the partition of India and Punjab and constitution of the new provinces of West and East Punjab from the pre-partition united province of Punjab, the Indian province of East Punjab is now the first and upper-most co-sharer (riparian) of Indus tributaries, Ravi, Bias and Sutlej. Similarly, the Pakistani provinces of Punjab and Sindh are co-sharers No 2 and 3 respectively. Pakistani Punjab is the lower riparian of Indian Punjab and Sindh is the lower riparian and co-sharer of both the Indian and Pakistani provinces of Punjab. Thus as between these two provinces, both Pakistani Punjab and Sindh are equally interested, affected and necessary parties in all questions, matters and disputes, both internal and external, pertaining to the waters of the Indus river system. Consequently as between these two provinces, without prejudice to the rights and interests of any other interested and entitled party, all such questions, matters and disputes were/are legally and morally, under international law as well as the law of the sub-continent, the equal common concerns of both the above riparian, co-shares, beneficiaries and interested and affected parties viz the then province of West Punjab (now Punjab) and Sindh. As such, none of them, neither West Punjab/Punjab nor Sindh by itself and alone, had any right under any law, whether national or international, to negotiate or decide such questions with a third party behind the back of the other.

If any negotiations were carried on and decision were made in such matters, under the circumstances, with any third party with the participation of only one interested and affected party without and behind the back, of the other interested and affected party, whether Punjab and Sindh or any one else, such negotiations and such a decision had and has to be regarded, under all civilized legal systems throughout the world, as illegal, without jurisdiction, of no legal effect and void ab-initio i.e. as having no legal existence from the very beginning. It could not be binding on the party deprived of participation and representation whether it be Punjab and Sindh or any one else.

More than twenty centuries back, the Roman law declared all adverse decisions taken behind the back of concerned and affected parties, as illegal. Their law said in Latin "Audi alteram partem" or "hear the other (affected and concerned) party."

The British law says the same thing in a different phrase, "No one should be condemned unheard". Is it Islamic or any other civilized legal system, you simply cannot take any valid decision behind the back of the other interested, concerned and affected parties. It will be illegal and immoral and not binding at all upon the party against whose rights and interests such illegal decision is taken.

The law of India and Pakistan is absolutely clear on this vital and fundamental point of administration of justice. It calls this principle viz that no valid and binding decision can be legally taken against the interests of any one, without giving him a full opportunity to present his own point of view, as a principle of natural Justice. No matter whether a law does or does not say so, it has been a superior law recognized by all civilized judicial systems of the entire humanity, it is binding on all decision-makers, with or without any express legislation to that effect by any legislature.

To mention only a few decisions of the superior courts of Pakistan, in 1959 in the case of Chief Commissioner Karachi and another (PLD 1959 SC 45) the Supreme Court of Pakistan observed: -

"The above rule of natural justice (that an adverse decision behind the back of a concerned party has no legal validity-Rasool Bux Palijo) is not confined to proceedings before courts but extends to all proceedings, by whosoever held which may affect the person or property or other rights of the parties concerned in the dispute. As a just decision in such controversies is possible only if the parties are given the opportunity of being heard..." [1994 S.C.M.R 2232 (2238)].

In the case of Maryam Tousif (PLD 1990 SC 666) the Supreme Court of Pakistan observed:-

"From the above stated cases, it is evident that there is judicial consensus that the Maxim "audi alteram partem" is applicable to judicial as well as to non-judicial proceedings.

In the case of Dr: Nusratullah Chaudhry [PLD 1994 Lah 353 (358)] the Lahore High Court has said:

"It is an established principle of law that no man shall be condemned unheard. It has been repeatedly held by the Superior Courts that the rule of natural justice embodied in the maxim "audi alteram partem" is not confined to proceedings before courts but extends to all proceedings by whosoever held which may affect the person or property or other rights of the parties concerned in a dispute".

In the case of Mst: Qaisra Illahi (PLD 1995 Peshawar 22) the Peshawar High Court decided that if any decision is made behind the back of an affected party, the law will treat such a decision as having no existence at all. The Court has said:

"It is a well-settled legal proposition that any order passed in violation of "audi alteram partem" (no body is to be condemned unheard) would be a nullity."

In order to deal with the matter of fair and equitable division of water assets of undivided India, after the partition of the sub-continent, between the new states of India and Pakistan, each country had to appoint its team of representatives to negotiate a settlement. In view of the above factual and legal position, Pakistan had to appoint a team of negotiators from both of the Pakistani riparian, and co-sharers of these waters viz the provinces of West Punjab and Sindh, which had to represent, not technically and formally only, but in fact and genuinely, the interests and view-points of both the riparian sides, who had remained locked in conflict for nearly a century over this very vital and crucial matter and further, which had to reconcile these opposing interests and view-points in the larger interests of the good of the whole country.

Thus, in order to be just and proper, valid and legally binding, all negotiations with India regarding the commonly owned and used common waters of the Indus river system viz Indus, Jhelum, Chanab, Ravi, Bias and Sutlej, affecting the respective interests of the two provinces at dispute, were necessarily to be held by all the three riparians viz the province of East Punjab on Indian side and West Punjab and

Sindh on Pakistan side. But the federal government of Pakistan appointed Ministers and Officials of West Punjab, riparian No.2, as the sole representatives of Pakistan to negotiate and decide with India, the riparian No.1, behind the back of Sindh, riparian No.3, matters of the division of waters of Indus basin between India and Pakistan.

Thus with a single ruthless stroke of the pen a long historical chapter, that of the tradition of the British imperial rule over India in which all provinces had approximately equal rights, could look up-to the central government for redress and protection against the high-handed actions of more powerful neighboring provinces, was to be closed. The times when the Punjab authorities' almost permanent and regular plunder of common waters could be regularly challenged, when that central government stayed further adverse action and got hammered out mutually beneficial compromises and agreements like that of the 1945 agreement, had gone for good, making a keen and sensitive observer of Indo-Pakistan history commiserate, in spite of all other just negative observations and sentiments to the contrary, with the Poet:-

Like the dew on the mountain,
Like the bubble in the fountain,
Thou art gone and gone for ever!

The people of all the smaller/weaker provinces of Pakistan have, through their bitter experience over the last half a century, come to know now, to their great sorrow and pain, that Pakistan state is a democracy and a federation only in name, is being virtually run as one unit and as a colonial autocracy and that where and when, there is any conflict of interests between the vested interests of the neo-colonial masters and their local representatives the ruling classes of the dominant province, on the one hand and those of the people of the rest of the provinces on the other, there and then, the so-called Federal Government of Pakistan, dominated by what-ever civilian or non-civilian sub-servant, autocratic and dictatorial clique, would, in utter disregard of the common permanent and fundamental interests of all the deprived and oppressed people of the whole country, including those of the vast majority of the people of the

province of Punjab, throw off their federal disguise, wipe out the democratic make up and appearing in their true partisan colors and shouting slogans of "Solidarity of Pakistan" "Glory of Islam" or "Save Pakistan from internal and external dangers" or would pounce upon the weak and helpless common people of the dominated, nominally autonomous provinces and throttle them into submission and silence.

But at the time, not all people fully understood this sad and tragic reality or the sordid motives and sinister implications of the above preposterously illegal and abhorrently unjust decision of the federal government of the time. No body could have any inkling as to what havoc of what gigantic proportions was intended to be played, stage by stage, in the coming years and decades, with the people of the province, which gave India the freedom fighter, the Muslims of India the leader and Pakistan the founder like Quaid-e-Azam.

"The partition of Punjab cut across the rivers and canals of the Indus Basin irrigation system, making India the upper and Pakistan the lower riparian. Among the official committees appointed to deal with the various problems arising out of the partition of the Punjab was committee B. This committee consisted of an equal number of officials from East Punjab and from West Punjab, and was charged with settling questions of the future management of joint assets, the division of other physical assets and their valuation. The report of committee B came up before the Punjab partition committee, presided over by the Governor and consisting of ministerial representatives of East Punjab and West Punjab. The partition committee accepted the matters on which committee B was in agreement, namely that the pre-partition shares of West Punjab and East Punjab in the canal waters would be maintained. The partition committee, like committee B, was, however, unable to agree on the valuation of the canal system, and it was decided to refer this question, to the Arbitral Tribunal." (Chaudhry Muhammad Ali "The Emergence of Pakistan" P.318)

But strange to say, this most sensitive and grave matter of most vital national interest was not pursued in the Arbitral

Tribunal at all, no stay order was obtained from it till the tenure of the Tribunal expired and as a result, India, which had become, in the meantime, thanks to the Radcliffe Award, the owner of two head-works of Pakistani canals, was enabled to stop from Indian side, the flow of the water from the eastern Indus basin rivers into two canals of Pakistan.

Thus the representatives of the then West Punjab, one of the two affected and adverse lower riparian sides (Sindh and Punjab), whose water supply had been put in danger by the Radcliffe Award, did not take the normal elementary precautions which even a muffusil lawyer of Tahsil level would have been expected to take, under the circumstances. Of course, their legal representative before the high-powered Tribunal, presided over by the Chief Justice of India, was no muffusil lawyer of Tahsil level. He happened to be none other than the Attorney General of Pakistan, the highest law officer of the State of Pakistan.

Choudhry Mohammad Ali observes in his above-mentioned book: "Despite the fact that the Radcliffe Award had placed the control of head-works vital for Pakistan in the hands of India, the west Punjab government remained content because of the agreement reached by committee B and the Punjab partition committee, that the pre-partition shares of water would not be varied. No formal document specifying the precise shares of East Punjab and West Punjab in irrigation waters was drawn up and signed. The West Punjab ministers and officials felt assured by the repeated declarations of their counterparts in East Punjab that there was no question of any change in the pre-partition arrangements for canal waters. The East Punjab representatives before the Arbitral Tribunal also made the same declarations, when the disputed question of the valuation of the canal system came up for a hearing. Actually, as events showed, the East Punjab ministers and officials were planning a deadly blow against Pakistan and were lulling the West Punjab government to sleep with sweet words. They were waiting for the day when the life of Arbitral Tribunal had to come to an end on March 31, 1948.

"On April 1, 1948, the day after the Arbitral Tribunal ceased to exist, the East Punjab government cut off the water supplies in every canal crossing into Pakistan. These consisted of the central Bari Doab Canal System, the Dipalpur Canal System, and the Bahawalpur State distributaries. "Of this action, Sir Patrick Spens, Chairman of the Arbitral Tribunal, said before the joint meeting in London of the East India Association and the Overseas League of February 23, 1955: 'I remember very well suggesting whether it was not desirable that some order should be made about the continued flow of water. But we were invited by both the Attorney-Generals [of India and Pakistan] to come to our decision on the basis that there would be no interference whatsoever with the then existing flow of water, and the award which my colleagues made, in which I had no part, they made on that basis. Our awards were published at the end of March 1948. I am going to say nothing more about it except that I was very much upset that almost within a day or two there was a grave interference with the flow of water on the basis of which our awards had been made.'

".East Punjab now contended that Pakistan had no right to any water and demanded seigniorage charges as a condition for reopening the canals. There was acute distress, which, with every day that passed, became more intolerable. In large areas where the subsoil water is brackish there was no drinking water. Millions of people faced the ruin of their crops, the loss of their herds, and eventual starvation due to lack of water." (Incidentally the existing situation in Sindh created by the artificial water-famine imposed upon Sindh, is a hundred times more severe and disastrous than described above but this time the people facing " the ruin of their crops, the loss of their herds and eventual starvation due to lack of water" are merely the people of poor Sindh.)

Indian Punjab adopted the posture of an aggressive bully and Pakistani Punjab adopted that of village simpletons, trudging home on foot, after being robbed by big-city cheats of the last penny of their back-fare, the latter duly raised an anguished hue and cry, promptly marched to Delhi, instantly acknowledged India as the master of Ravi and

Bias and Sutlej, abjectly signed an strange agreement literally and admittedly dictated by India, obediently paid seigniorage money, thereby legally acknowledged India as the legal owner of these rivers and got temporary restoration of the supply of water on the explicit condition that the supply will be gradually decreased and finally stopped after some time!

"Under the distressful circumstances, a delegation was sent from Pakistan to Delhi in the beginning of May, 1948, to seek a solution to the problem. The delegation was led by Ghulam Muhammad, the Finance Minister of Pakistan and included two ministers from West Punjab- Shaukat Hayat Khan and Mumtaz Daultana. At the meetings in Delhi, East Punjab representatives insisted that they would not restore the flow of water to the canals unless West Punjab acknowledged that it had no right to the water. To this the representatives of West Punjab could not agree. The Pakistan proposal that the two governments should submit their differences to the arbitration of the International Court of Justice was not acceptable to India. There was an impasse. Ghulam Mohd appealed to Mountbatten who consulted with Nehru. A statement was then placed before Ghulam Mohd, and he was asked to sign it without changing a word or a comma - a condition for restoring the flow of water.

"On May 4, 1948, the statement was signed by Ghulam Mohd and two West Punjab ministers on the one hand and by Nehru and two East Punjab ministers on the other.

"Though India restored the flow of water to the Dipalpur canal and the principal branches of the Central Bari Doab canals, water was still withheld from the Bahawalpur state distributary and nine lesser distributaries of the Central Bari Doab system. Eventually, considerable areas in Bahawalpur State reverted to desert. Notwithstanding the compulsion under which the arrangement was signed, Pakistan performed its part and deposited in escrow the sums specified by the Prime Minister of India."(P.318-321) But Sardar Soukat Hayat Khan, the then Minister of the government of West Punjab, who was among the members of

the team of West Punjab which negotiated with the East Punjab authorities about division of common water assets between India and Pakistan, expressly admits that the Pakistani West Punjab authorities deliberately decided to by pass the Arbitral Tribunal, entered into direct negotiations and made an undeclared deal with the authorities of the East Punjab at the meeting of the two sides at Jallandhar and arrived at an unspecified agreement, the terms of which he does not choose to reveal.

"The Division of Assets Committee had been in East and West Punjab and met alternately at Lahore and Jallandhar, the temporary capital of East Punjab. The rules were that, in case of difference between us, the case would be referred to the Arbitral Tribunal headed by the chief Justice of India, Sir Patrick Spens. "The question of division of water between India and Pakistani Punjab was to be decided at a meeting to be held in Jallandhar. I attended this particular meeting along with the secretary-cum-Chief Engineer of the Irrigation Department Mr: Abdul Hameed, and the Chief Secretary, Hafiz Abdul Majeed ICS. The next day we had to tackle the matter of the division of water on which our economy entirely depended. We discussed it amongst our own party and came to the conclusion that even if we took this problem to the Arbitral Tribunal and got a favorable decision, how were we going to get it implemented when the Head works had been unfairly allotted to India, in the so-called Radcliffe Award. Therefore, we decided that we should find a via media to share the expenses of running the Head works and part of the canal system located in the East Punjab... The Hindus, after long discussion, came to an agreement." ("The Nation That Lost its Soul" by Sirdar Shaukat Hayat Khan-P: 202-203).

"Thereafter the Government of India called a Conference at New Delhi. Mr. Ghulam Mohammad, who was on fairly good terms with the Indians, was to lead the Pakistan delegation; Mian Mumtaz Daultana and I were the other members of the Pakistan Team. Pandit Nehru took up a stiff attitude but both of us from the Punjab refused to budge from the Agreement we had arrived at Jallandhar.(Italics mine-

RBP)"(ibid, p.204) Pakistani west Punjab authorities not only did not utilize the bilateral legal avenue of recourse to the Arbitral Tribunal in order to prevent the stoppage of water by India, but also took no recourse to the international legal forum of the World Court at Hague after the stoppage of water though it was claimed that no such court could refuse to give relief under International Law in such a clear case as that of Pakistan. Various half-hearted and superficial efforts have been made to pass off this secretive and mysterious, apparently and admittedly disastrous series of misconduct by the concerned authorities as innocent errors of judgments, undue credulity and misplaced trust, rather than to identify, recognize, condemn and punish it as an ingenious, deep and dark intra-Punjab conspiracy to deprive, their traditional adversary, the lower riparian of the Indus rivers, the province of Sindh, of its remaining share of the waters of the rivers of the Indus system and divide the loot among the two sister Punjab provinces viz provinces of West and East Punjab.

Mr. Muhammad Ali tries to take the acts of all those responsible for this disaster very lightly and explain away the sordid and heinous affairs and the hand-made "disastrous consequences for Pakistan" created by the West Pakistan authorities by attributing them to such categories of petty wrong-doing as mere "neglect of duty", "complacency" and "lack of prudence" on the part of Pakistani West Punjab authorities on the one hand and to the Machiavellian duplicity of the Indian East Punjab authorities on the other, in keeping up with our well-tried and tested and brilliantly successful policy of portraying ourselves, to our entire satisfaction, as innocent "Babes in the woods", after committing every conceivable inhuman and treasonable act against the nation and the people and every crime against Man and God e.g. debacles in Kashmir, 1965 and 1971 wars, massacres of our own citizens in East Pakistan and our continuing and unending disastrous adventures in Afghanistan.

"On the side of East Punjab there was Machiavellian duplicity. On the part of West Punjab there was neglect of

duty, complacency, and lack of common prudence which had disastrous consequences for Pakistan." [The Emergence of Pakistan" p.319 by Chaudhary Mohd Ali].

This apparently strange attitude is not confined to Mr. Muhammad Ali alone. The other stalwart of Punjab Government at the time, Sardar Shaukat Hayat Khan also dismisses the grave dimensions of the disaster and the unpardonable culpability of all those responsible for it in a few formal lines, as if, such occurrences can only be regretted as unavoidable though unfortunate mistakes.

"Alas, in keeping with their (Chanakien) philosophy, they (the East Punjab Government authorities) reneged later, a day after the end of the Arbitral tribunal. They stopped our share of the water...From the headwork at Madhavpur...and Ferozpur headwork. This came as a deep shock to me." ('The Nation That Lost Its Soul' P.203)

Malik Feroze Khan Noon the ex-Chief Minister of West Pakistan and ex-Prime Minister of Pakistan also justifies indirectly, in his book "From Memory" the secretive and undeclared practical by-passing of the Arbitral Tribunal by the authorities of both provinces of Punjab which (a) enabled them to avoid and prevent the issuance of stay order against possible stoppage of water flow to Pakistan (b) provided the excuses which both sides needed to fulfill the requirements of their common criminal conspiracy against the people of Sindh and Pakistan in the matter i.e. to the Indian East Punjab side the planned excuse for stopping the flow of water to Pakistan and to the Pakistani West Punjab side the planned excuse for raising a hue and cry about devastated fields and cattle dying of thirst etc, thus totally side tracking and practically eliminating from the agenda of division of common waters, the above mentioned 1887-1948 Sindh-Punjab water dispute and Sindh's rights on the common waters and setting up a totally new stage and scenario for misappropriating and dividing among themselves alone the common waters of Pakistan (c) provided an excuse for treasonable implementation of the terms of the secret conspiratorial Jullandhar deal under the cover of helpless unavoidable surrender by West Punjab authorities under

the pretended compulsions of the circumstances in order to save West Punjab from a most terrible catastrophe. Mr. Noon rules out, as useless, the other legal and then available, highest forum for settling disputes about division of waters between India and Pakistan in the normal course viz the International Court at Hague, though he concedes that, that forum was bound to rule in favor of Pakistan under the clear international law upholding the rights of lower riparians. Referring to the "sudden" stoppage of water supply to West Punjab from East Punjab in April 1948 by Indians, Mr. Noon says: "The water dispute though not as important as Kashmir, has now been settled. In 1947, when India stopped the water from the Ravi and Beas, a large number of our cattle died of thirst and fields remained uncultivated. The magnitude of our dependence on these rivers was brought home to us. It was one of the most illegal and crude methods that India could have tried, to bring us to heel. India always resisted any suggestion of ours to go to the International Court of Justice at the Hague, because no Court could have denied us our riparian rights of the waters of the Eastern Rivers. But what is the use of winning suits in Court, if such a decision cannot be backed up by the physical power to enforce it..."("From Memory" by Feroz Khan Noon, p. 263)

It is the contention and the case of the people of Sindh that the authorities of the upper/middle riparian, the Pakistani province of West Punjab (the upper and lower riparian after partition, being Indian province of East Punjab and Sindh province of Pakistan respectively), took the following among other, malicious, illegal actions in furtherance of their criminal conspiracy among themselves and with their former fellow-provincial Indian authorities of East Punjab to misappropriate the bulk of the waters of the rivers of the Indus river system to the virtual exclusion of Sindh, the lower riparian, the lawful co-sharer and beneficiary of these common waters.

1. Behind the back of Sindh, they illegally and wrongfully entered into a colossal, undeclared, secret and surreptitious collusive deal with the above-mentioned authorities of the

eastern Indian fellow inhabitants of former undivided Punjab, treating the international Indo-Pak problem of the just and equitable division of Indus basin water between India and Pakistan as an exclusively internal family affair of the inhabitants of the old province of pre-partition, undivided Punjab to the exclusion and detriment of the fundamental rights and interests of Sindh and the whole of Pakistan.

2. The totality of their behavior and actions subsequent to this illegal, secret, fraudulent and collusive deal irrefutably proves that as per the requirements of the success of the above conspiracy, their object was to create an artificial major water crisis between India and Pakistan and a consequent artificial serious threat to regional and world peace, hence under the pretext of averting the above artificially created fictitious threat, the Indian accomplice in the above conspiracy, the authorities of the East Punjab illegally and unjustly got among other things, three entire rivers of the Indus system just for pea-nuts and the other accomplice the authorities of the then West Punjab, got among other things, the control and virtual ownership of the three remaining rivers to the virtual exclusion of Sindh and billions worth of engineering works constructed ostensibly for the whole of West Pakistan but in reality for itself exclusively at the expense of whole of Pakistan.

3. In accordance with that deal, they did not present the just case of Pakistan as against that of India with regard to these waters before the competent legal authority i.e. the Arbitral Tribunal which had been set up for the purpose by mutual agreement of both the states of India and Pakistan.

4. They did not theretofore apply for an stay order to guard against the imminent danger of stoppage of the flow of the waters to Pakistani canals from their head-works, now left in India, by Radcliffe Award, after 1st April 1948 when the interim arrangements were to come to an end.

5. With similar illegal and fraudulent object they refused to accept the suggested offer of the Chairman of the Arbitral Tribunal Sir Patrick Spence, the former Chief Justice of

India, for a stay order to ensure continued flow of the then existing supply of waters to Pakistan pending final decision of the whole matter.

6. They never revealed the agreement that they had admittedly arrived at secretly with the East Punjab authorities at Jullundher about the division of water assets between India and Pakistan.

7. In order to provide a fig-leaf cover for their conspiratorial, anti-Sind, Anti-Pakistan Actions, they invented and obliquely peddled a fictitious excuse expressed through seemingly incidental remarks of different leaders trying to explain the reasons for their authorities for not taking the normal, proper and agreed course of action of putting their case properly before the officially created Indo-Pak Arbitral Tribunal, and for not obtaining from it a proper stay order against possible sudden stoppage of water by India.

8. This obliquely and impliedly offered excuse was that it was useless to go to the Arbitral Tribunal because its decision could not be implemented against powerful India.

9. Every one knows that India had not suddenly become far bigger and stronger than Pakistan over-night, in the beginning of the year 1948. The land, people and resources of the territories comprising the new states of India and Pakistan were never equal. Those of the territories comprising the present state of India were always greater than those of the territories comprising the present state of Pakistan. This obvious fact was known by all when Pakistan was demanded as well as when arrangements for partition including the constitution of partition committee and Arbitral Tribunal were agreed upon by both the India and Pakistan sides. No new revelation about the relative strength of India and Pakistan had suddenly descended from the heavens upon the West Punjab authorities to necessitate and justify their suddenly boycotting the mutually agreed forum of Arbitral Tribunal and entering into a super-secret, deliberately unwritten and undeclared, private, intra-Punjab deal in the darkness, behind the back of the other people and provinces of Pakistan and declining

the almost express offer of an stay order from the Arbitral Tribunal to protect the continued flow of water to the concerned Pakistani canals. The actual purpose was setting the stage for the pre-arranged stoppage of water by India, raising of hue and cry by West Punjab authorities about Hindu Chanakian betrayal and impending destruction of Pakistan and ultimately facilitating and resulting in the distribution of the bulk of the water of all six Indus system rivers by the new provinces of the Punjab viz West and East Punjab among themselves, to the virtual exclusion of Sindh.

10. Struggling peoples and emerging countries like those of Pakistan do not face their national problems and challenges in the way the West Pakistan authorities are shown to have done as the representatives of Quid-e-Azam's Pakistan. The initially weak peoples and their emancipation movements, like those of Angola, Mozambique, Namibia, South Africa, Algeria, Cuba, Laos, Cambodia, Korea, Palestine etc, do not desist from their struggle because of the overwhelming strength of their adversaries. Even Pakistan itself, in subsequent encounters with its powerful neighbor, in spite of its relative weakness, never boycotted the notoriously weak and practically worthless international settlement forum of United Nations, never knuckled under India and never entered into any secret undeclarable, shabby dark deals with it, because of its superior strength.

11. The authorities of West Punjab, the famous erstwhile swords-man of the British Empire, had not suddenly become transformed into frightened lambs, trembling with terror at a glance at the mighty lion, India. They could only have been gambling and play-acting for very sounds, very selfish and highest-ever stakes. Subsequent march of events has proved that they were indeed busy in big game hunting and stooping to the above pathetic role only in order to conquer.

12. What they had created the artificial crisis for, was not the mere restoration of water supply for their two affected canals, of course. They wanted to use the managed discontinuation of water supply for building dams and link canals in Punjab, in order to siphon away the bulk of all the Pakistani waters for Punjab alone.

"I was firmly of the view that the sooner we build our own dams and link canals the better for our future. When I became Chief Minister in 1953, I expressed this view to the Central Government and to Mr. Mueenuddin, C.S.P., who was one of the delegate's in charge of these negotiations on behalf of Pakistan. And I am glade to say that ultimately my views prevailed." ("From Memory", by Firoz Khan Noon, P: 264)

13. They were laying a death trap for catching and enslaving the mighty Indus, the world-famous Lion River and for thus desertifying and destroying their century-long adversary. Sindh, incidentally the first gate-way of Islam, the first to pass the Pakistan resolution through its Provincial Assembly and to give its Provincial Capital as a gift to Pakistan and the Quid for being made the first official home of the Quid and the Capital of Pakistan.

14. As soon as the first scene of drama was successfully enacted, the cat started coming out of the bag. Even the need for keeping up appearance and some how maintaining the facade of federation and respect for the rights of federated provinces was brushed aside. They straightaway went for Indus and started behind the back of Sindh, the survey and planning for misappropriating its water.

"Soon after the Indians stopped the flow of canal waters. I asked West Punjab engineers to survey sites for storage dams on the Jhelum and Indus rivers. Of these sites Mangla, on the Jhelum, was the most promising. On the Indus River a site at Darband was at first favored, but later studies showed Tarbela to be more suitable." ("The Emergence of Pakistan", by Chaudhri Mohd Ali, P: 325)

With the benefit of the hind-sight of the diabolic conspiratorial doings of our criminalized political system and of the suicidal antics of its neo-colonial, autocratic and oppressive state apparatus, it is no longer necessary to possess divine powers in order to guess that the Pakistani West Punjab authorities of the time appear to have taken a firm decision to take the fullest possible advantage of the rare historic opportunity of the formation of a brand new state expected to fall under the total hegemony of their

dominant province and the permanent elimination of those constant irritants, the continuous interventions by that busy-body, the central government of British India and to:

(a) Treat and use the multi-people, federal, democratic and liberal state of Pakistan envisaged by Mohammad Ali Jinnah, as their conquered territory and make it essentially a unitary, autocratic and hegemonistic state of greater Punjab under a euphemistic name-plate and to use and treat the nominal federal government and its civilian and non-civilian forces and authorities as the servants and guardians of the vested interests of the ruling class of Greater Punjab, and:

(b) Whenever necessary for protecting and advancing the above vested interests, to ruthlessly resort to draconian laws, dictatorial regimes and pure terror and armed actions.

The first stage of the vision apparently was the economic conquest of the new country of which the first and main item was water.

It appears that these adventurous elements conceived a very thorough and comprehensive long-term multi-dimensional and multi-stage plan along with an extremely clever set of strategy, tactics and policies to achieve their object. The subsequent march of events goes clearly indicating that they planned to proceed step by step some-what along the following lines:

1. Use the occasion of the post-partition division of water assets between India and Pakistan to:

(1) Pretend and have it believed that the international laws of river water rights and liabilities and the concepts of the upper and lower riparian and their rights and liabilities do not exist or at least do not apply within Pakistan.

(2) Pretend that, as between India and Pakistan, the lower riparian is one and not two, only Punjab and not Sindh.

(3) Treat the common waters of Pakistan, passing through Punjab and Sindh to wards the sea, as the sole property of undivided Punjab divided between its newly created

Western and Eastern parts viz the new provinces of the East and West Punjab.

(4) On the basis of these premises, through the instrumentality of their subservient central authorities, to bestow the sole right and authority to negotiate with India for the decision of the common water assets upon the representatives of the province of West Punjab only, as the sole owner and master of these Pakistani waters.

2. Strike a secret deal with the authorities of the Indian province of East Punjab for dividing the entire water resources of the Indus basin among themselves. Relying upon the fact that the Western and Eastern portions of the united Punjab had existed as a single entity for centuries and were, as that single entity, co-accused in the complaints lodged by Sindh with the government of India against united Punjab regarding illegal appropriation of common waters. Their interests in the water dispute were thus to a very great extent, identical visa vis Sindh, their common historical adversary. Despite the pangs and blood-letting of partition, both sides appear to have realized that this was the easiest, and the most profitable and opportune thing for both to do. If they so desired and chose to exploit to the full the rare favorable combination of circumstances provided by that very partition.

3. Under the terms of such a secret deal artificially to create a water dispute between the co-conspirators, the eastern and western parts of the former united Punjab, by Pakistani western side fore-going the obtaining of the necessary stay order against stoppage of water supply to Pakistani canals by India and the eastern side going along with the pre-arranged stoppage of water of Pakistani canals. Indian Punjab assuming the pose of intransigence and Pakistani Punjab assuming the pose of helpless and injured innocence.

4. Raise a vociferous hue and cry about the so-called fatal adverse effects of such pre-arranged stoppage of water and under the pretext of a doomsday-like emergency situation; sell away to India three common rivers of the Indus system

for pea-nuts obviously as a part performance of the secret deal with India.

5. Magnify the artificially created water-stoppage into a burning international dispute threatening international peace and security.

6. Utilize the cold war world environment to involve the western countries and world Bank in so-called negotiations for the so-called settlement, at the expenses of Sindh, of the so-called burning international dispute.

7. Ultimately shut the mouth of Sindh by imposing one-unit through administrative terror, thus eliminating the very existence of Sindh as an autonomous provincial entity which it had achieved by decades-long valiant struggle under the leadership of the Quid-e-Azam, as a litigant party and as a complainant in the historical water dispute with the former province of united Punjab, now conspiratorially operating against their adversary as two separate and antagonistic provinces of West and East Punjab.

8. Hiding behind administrative technicalities and in utter violation of the principles of natural justice, illegally throw out Sindhi representatives from the negotiating team and act as the sole master of the waters of Pakistan.

9. If necessary have a Martial law imposed as a tool to carry out the unholy work of the real masters. It is the firm conviction, contention and case of the Sindhi people that the series of actions from the day in 1947, Sindh, the lower riparian and the co-sharer of the waters of the Indus river system was wrongfully, maliciously and illegally excluded from the Pakistan delegation which negotiated the settlement of the division of Indus rivers system waters between India and Pakistan to the latest imposition of artificial water famine and Greater Thal Canal and other devices to rob Sindh of the last drop of water are parts of a diabolic anti-Pakistan, anti-Sindh criminal conspiracy spread over the entire period of the existence of Pakistan up to this day.

Needless to say, the above decision of the Federal Government was totally illegal, without jurisdiction, without

any legal effect and void ab initio i.e. as some thing, which never had come into existence. All agreements and decisions, emanating from the entire edifice founded upon the illegal and void foundation of this illegal and void decision of the federal government excluding Sindh the lower riparian, not to mention the rest of the provincial interested parties, from the process of negotiations and decisions were void and of no legal effect in the eyes of the law of the land and the civilized world.

Of course there is no eyewitness to testify and support the above charges. So how do you prove such charges without eyewitnesses?

The question is, are crimes to go unpunished because no one can swear and say "I saw this crime being committed?" As a full Bench of the Supreme Court of Pakistan has said in Faku Mia's case (1969 P.Cr.L.J 1193) "when murderers discuss a criminal plan in home, they do not shout the conspiracy to outsiders to make them eaves-droppers" (P: 1194).

It has been laid down by the Supreme Court of Pakistan that in cases where there is no direct evidence to show in what manner the offense was committed, the courts must examine the probabilities in the light of indirect evidence or circumstantial evidence, which once found to have been established, may well furnish a better basis of decision than any other kind of evidence. [2000 SCMR 1969 (2046)].

In the case of Amiruddin (PLD 1967 Lah 1190) the Lahore High Court has laid down:

"The offense of conspiracy by its very nature is secretive and surreptitious, and if a rule of evidence is laid down to the effect that an agreement (about conspiracy). is to be positively proved, the proof of conspiracy would become impossible".

In the case of Syed Qaim Ali Shah (1992 P.Cr.L.J 242) the Sindh High Court has reiterated the above legal position and added, "If several steps are taken by several persons, tending towards one obvious purpose, it can be presumed

that these persons had combined together to bring that end which their conduct obviously appears to attain."(P: 249-50).

In the case of Mukhtar Ahmed (2000 MLD 77) the Lahore High Court has held: " Conspiracy is an intrigue or scheme which germinates in the dark alleys of sinister minds and comes to light only when its external results are known...it would be seen that happening of an event or existence of state of affairs is one thing and proving at subsequent stage the particular manner in which it had happened or had prevailed are altogether different things. Non-proving of conspiracy through sufficient evidence of acceptable legal standard would never mean that such an event had not taken place . conspiracy is not easy to prove". (P: 80-81).

In the case of State V. Manzoor Ahmed (PLD 1966 SC 664) a full Bench of Supreme Court of Pakistan consisting of M/S Justice A.R. Cornelius C.J Hamoodur Rehman and Muhammad Yaqoob, all three former Chief Justices of Pakistan, laid the law regarding the importance of indirect and circumstantial evidence as under:

"In case where there is no direct evidence it is not sufficient. To say that since there is no direct evidence to connect any one with the felonious act, the guilt cannot be fixed."

In the case of Afzal Hussain (1991 P.Cr.L.J 113) the Lahore High Court has said, "The law has always considered the circumstantial evidence as a lawful guide in the administration of criminal justice, and circumstances established beyond reasonable doubt could furnish a basis for decision, better than any other kind of evidence.. If some inculpatory circumstances were found to be incompatible with the total innocence of the accused or were incapable of any explanation upon any reasonable hypothesis other than his guilt, then such circumstances could form a valid foundation for the conviction of the person accused of charge".

In the light of above position, let us try to find out if the conduct of the concerned authorities in the above matter is throughout normal and above board or not? And if not, whether there is any plausible and reasonable explanation

for these abnormalities. The following are some of the important questions that arise from the way this matter has been dealt with by the Punjab authorities:-

1. Whether the above mentioned acts of omission and commission of West Punjab authorities, individual and collective were in accord with the usual and normal procedure of transacting official state business and was the behavior and conduct of the West Punjab authorities in accord with the normal and proper behavior and conduct of similarly placed public and state authorities of a federation in similar circumstances?

2. Whether all these strange actions individually and/or collectively can be taken as merely accidental, individual and isolated acts of several individuals acting thoughtlessly and haphazardly on their own without any common motive, object, concert and design?

3. Whether as soon as partition of India was decided upon and necessary preparations for implementing it, including arrangements for dividing water assets among the two states, were started, those in responsible positions on the Pakistan side really suffered a sudden attack of amnesia and total loss of memory and whether, as a result they instantly forgot: -

(1) That Pakistan consisted at the time, of five provinces including Sindh and not one only one viz West Punjab.

(2) That there are such things as Indian, Islamic and International laws of river waters.

(3) That such laws have clearly laid down the rights and responsibilities of the parties called riparian benefiting from the water of rivers known as upper riparian, middle riparian and lower riparian.

(4) That East Punjab is/was the upper riparian of the eastern rivers of the Indus river system?

(5) That West Punjab and Sindh are the two lower riparians of the above river system?

(6) That no decision can/could be validly taken in the absence of a concerned or co-sharer party under any legal system of the whole civilized world?

(7) That participation in the process of the division of water assets between India and Pakistan, therefore had not to be confined to East and West Punjab only, but also to be necessarily extended to Sindh the lower most riparian?

(8) That official talks negotiations and agreements are not to be confined to whisperings in secret hideouts but recorded properly in official and legal language not only for the use of those living but also for State and public record and for those yet to be born in posterity?

(9) That the Indian authorities by whom they claim to have been suddenly overawed into signing away the three tributary rivers after 1st April 1948 were not total strangers to them and were the very same people whom their people and leadership were dealing with for the last nine centuries including the two centuries of British rule, upto that very date?

(10) That according to the entire world-historic practice of sensible and self-respecting peoples and nations of the world, if some little area of your vast land is not cultivated and some cattle suffer dearth of water due to hostile action all that you can and should do, is not immediately to sell away your entire rivers and get a little water for a while, to be stopped entirely after some time and not to provide proof of the said sale as proper legal and complete, by paying money in token of your surrender of your rivers and temporary purchase of a little water from them?

4. Whether the Pakistani West Punjab representatives appointed for settling water distribution problem with India had been given the normal written instructions regarding what they could and could not do?

5. If so, whether these instructions empowered them to enter into secret verbal agreements with the authorities of East Punjab without reducing them into writing?

6. If so, whether under those instructions, the terms of such verbal agreements were not to be communicated to their principals' i.e. the governments of West Punjab and other provinces and of Pakistan?

7. If so, whether these terms were communicated in writing to those governments and were available on the record of these governments for all these decades?

8. Whether these terms were ever made public during all these decades in order to enable the people of Pakistan, to judge for themselves, whether these were just and fair to all parties concerned, including Sindh, the lower riparian? If not whether any reasons were ever given or can be given even now, to the people for keeping them secret for ever? Can these be disclosed and published to day for public information?

9. Whether any competent higher authority took a proper decision practically to by-pass the Arbitral Tribunal, decline the available vital stay order, thus endangering the continued supply of water to the affected Pakistani Canals, and creating an international crisis? If so, which was that authority and on what date was this fateful decision taken? Whether that decision is available on the record? Can it be made available and published for general public information?

10. Was the Attorney General of Pakistan concerned authorized not only not to obtain an stay order but even to decline the express offer of Sir Patric Spense, the head of the Tribunal about an stay order?

11. Whether, in case no such instruction was given to him and he acted in violation of the letter and spirit of his instructions from the concerned governments or without instructions, on his own was any action taken against him for acting in the manner he had acted, leading to such "disastrous consequences for Pakistan?"

12. Whether any proper instructions authorized the Central and West Punjab authorities to agree to the Indian orders to them virtually to sell away the common eastern rivers and

pay seigniorage money for the temporary resumption of supply of water?

13. Whether, in case none of such actions were covered by the instructions given, were the perpetrators of such monstrous violations of their specific instructions stopped in their tracks at the very first intimation of such violations?

14. Whether any explanations from the guilty authorities were called for and submitted by them? If so where that record is and what exactly does it say?

15. Whether any disciplinary action was taken against those found responsible for what has been judged by the former Prime Minister of Pakistan, Chaudhry Mohd Ali as at least "neglect of duty, complacency and lack of common prudence" which had caused "disastrous consequences for Pakistan"?

16. The minimum punishment that could be given under the circumstances for acting contrary to instructions, insubordination and disobedience in such a matter of life and death of the nation, in the case of public servant, being dismissal, discharge or at least transfer to some other duty, was any of these punishments given to those found responsible for the above disastrous consequences for Pakistan?

17. Whether it is a fact that Khan Bahadur Hafiz Abdul Hamid was the main West Punjab officer who played the star role in the above-mentioned shady secret deal with the Indian Punjab authorities which caused "disastrous consequences for Pakistan"?

18. Whether this same worthy officer was again entrusted with a leading role on behalf of Pakistan in the negotiations at the second stage viz those with the World Bank and other countries of the World which culminated, so far as one of the main interested and affected parties, Sindh, is concerned, were in the exparte, one-sided, illegal and void abinitio, the Indus Basin Treaty of 1960?

19. Whether there was any special reason or justification for not only not taking any action in the matter against anyone but continuing to employ the very same officers who played

such admitted havoc in the very first stage of the talks, in the next stage of the talks also viz the stage of multi-national talks culminating in the Indus Waters Treaty 1960? Let any honest, sensible and prudent man look at and ponder over the above mentioned acts and conducts of concerned West Punjab ministers and high officials, in the light of the above and other relevant questions and decide for himself whether all the above-mentioned acts and conducts of the West Punjab authorities could, by any stretch of imagination, be taken as the above-board acts and conducts of honest and upright men and or conscientious and scrupulous high functionaries and leaders of a civilized state or on the contrary the secretive doings of conspiratorial groups of men silently hatching-up, planning and perfecting in darkness, an elaborate fraud of Himalayan proportions, to stab in the back an entire fraternal people, under the cloak of performing routine and normal federal state functions and defrauding it of its very life-blood, its water, the source of the life and sustenance of each and every one of the crores of its men, women and children?

It is the well considered contention and case of the Sindh people that none of the strange, abnormal, unnatural, illegal and high-handed acts of omission and commission of the Pakistani Punjab authorities mentioned herein before and herein after can be believed by any stretch of imagination, to be fortuitous, accidental, un-intentional or un-premeditated. On proper examination and evaluation of all the relevant facts and circumstances, it will be found that there can not be any reasonable credible lawful and innocent explanation for them as a whole and that these are totally inconsistent with the probability of the innocence of the above authorities. Consequently, apart from technicalities which the Superior Courts of Pakistan, who "lean in favor of substantive justice" [Mohd Ali 1997 CLC 768 (773 E)] and who "have consistently ruled in favor of the principle that adjudication of disputes should be premised on merits rather than technicalities" [Mohd Afzal 1997 CLC 1080(1083)], do not regard with much favor, applying the ultimate test of the concept of proof [Article:2(4) Qanun-e- Shahadat] if an honest, sensible and prudent person were told the story which is related in these

pages, of how the Punjab authorities and the federal authorities of Pakistan have dealt with the question of the waters of the Indus basin visa-vis the rights and interests of Sindh, the lower riparian, since the days Pakistan came into existence, he would be fully convinced, without any reasonable doubt, that Sindh has been made the victim of one of the greatest and longest continuing criminal conspiracies of world history, aimed at defrauding it and resulting in, misappropriation, of the bulk of its lawful share as a lower riparian, in the common waters of the Indus river basin.

Indo-Pak talks for resolving the "water dispute" started in March 1952 under the auspices of the World Bank. Initially engineers from Sindh, N.W.F.P and Bahawalpur and Khairpur States besides Punjab were included in the Pakistani team.

The engineers from Punjab reportedly behaved as if they owned all the waters of Pakistan. Their objectives appeared to be (1) To keep the Indian side happy. (2) To stick to their secret deal with Indian Punjab, and get its terms approved by hook or crook. (3) To get a dam and link canals on Indus for plundering its water on the pretext of replacing the "losses suffered by Punjab" due to having deliberately, unauthorizedly and illegally sold out the common rivers Ravi, Bias and Sutlej to India under the secret deal (4) To enlist Bahawalpur state engineers against Sindh by offering the bribe of Indus water for Bahawalpur State. (5) To deprive Sindh of its previous allocations of water. (6) To brow-beat Sindhi engineers into acquiescing to their above high-handed anti-Sindh, unpatriotic projects. (7) To misrepresent, to their advantage, the facts and figures regarding the waters and water-supply of Pakistan.

When the negotiation was taken up in Washington, Mr: M.S.Qureshi, the member from Sindh complained to the government of Sindh regarding the above negative attitude. He wrote, "Provincial considerations were allowed to influence judgment and actions. Indus link (i.e a link canal on the Indus for siphoning away its waters to Punjab to the detriment of Sind rights-RBP) was at first recommended to government without even a mention to any of the senior

members of the delegation. Mr. Hameed went to the extent of offering a bait to Mr. Hassan, representative of Bahawalpur that through such a link Bahawalpur canals at Sullemanki would receive Rabi supplies from the Indus. Mr. Hassan knew the position of supplies and as a matter of principle he refused to support him saying that he was there to fight the case of Pakistan and not of a particular province or state. Internal disputes were best left over to the future.

"In the same manner every attempt was made to throw out Sindh's uses from the western tributaries. Incorrect calculations were embodied in the Pakistan plan to the effect that not only the allocations of the new barrages on the Indus would be met in April, May but that there would be surplus left over for development. Both Mr.Hassan and myself disagreed and Mr. Tipton's calculations supported our conclusion that in actuality in most of the years there would be shortages.

"Mr. Hameed regarded Pakistan's waters as though they were his personal property. At first his secretary Mr. Khalilur Rehman who is supposed to be the custodian of his inner feelings, started belittling allocations and saying that ultimately these rights would be given up. I protested to Mr. Hameed against this loose talk and made it very clear that not a single drop of allocated supplies will be parted with.

"Later Mr. Hameed told Mr. Sarwar Jan Khan that for sake of an agreement he would even give up allocations and the same day he told Mr. Hassan that he would even agree to Marhu

Tunnel if Pakistan was given control over that strip of land. It did not bother Mr. Hammed whether this additional diversion of water by India did any damage to Pakistan.

"There was thus a difference in outlook which was not very conducive to good team work

"Mr. Naseer's pleading with General Wheeler that they could not afford to go back without an agreement only convince the bank that Pakistan would accept anything for the sake of agreement.

"Even this most detrimental proposal seemed most palatable to Mr. Hameed. His secretary (Mr. Khalilur Rehman) and he himself agreed with Mr. Sarwar Jan Khan (member from N.W.F.P) on about the 1st April 1954 that no decision could be expected from a government that was tottering.

"Decision might as well be taken in Washington and the responsibility would not be that of Engineers but of someone else."

It was obvious to the Punjab leadership and its followers from other provinces / regions from the very beginning, that as long as the then prevalent political system following, even though crudely, the British pattern, with its parliamentary rule, Constitutional Assembly, the vexatious Bengali majority, the irksome federation and its numerous provinces etc, existed, they may not find it too easy to reach their political and economic goals specially the goal of appropriating the entire waters of Pakistan for Punjab. They seem to have concluded that much needed to be changed in the system of governance so that it could respond fully to their wishes. How these changes were effected and how these chimed in with and thoroughly facilitated the Punjab authorities' ruthless exertions for grabbing all Pakistani waters is quite a dramatic and politically instructive story which is not sufficiently known to many people in this our blessed and blissfully unaware land of the pure.

Judging by Pakistan's 56 years's, chequered history, quite a few of Mr. Jinnah 's followers and most of his successors, specially those from the warrior province of Punjab, never had too much liking for Mr. Jinnah or his Pakistan as conceived by him. Their known political instincts and mind-sets tended to place them rather closer to authoritarian worthies of the past, like Timur, Nadir Shah, Maharajah Ranjit Singh and Lawrence brothers and their ideals of super-strength, natural right of conquest, ruthless subjugation of subjects and iron rule, than to modern, enlightened and sensitive people like Muhammad Ali Jinnah and his ideals of liberal democracy, rule of law, fair play, equal opportunities for all, strict, impartial and equal

treatment of all manners of people before the law, compassionate and generous treatment of all kinds of minorities and other weaker and more disadvantaged sections of the population etc.

Their entire efforts were concentrated upon lifting Pakistan from the inhibitions and uncertainties of governance in the present to the autocratic and ruthless latitudes of ruling in the past, where -in every whim and wish of the rulers would be treated as the ultimate law of the land. They zealously hurried on upon their journey to that golden past of their dreams. And over a period of time they achieved remarkable success.

By skillful maneuvering of the socio-economic and political time-machine and their age-old loyal alliances and cozy ties with the mighty West, they landed Pakistan back in the pre-British era so that in many respects it descended far behind the British times.

This rapid journey in time to the past, has much more to do with the radical evil turn in the prospects of resolving fairly and justly, the centuries old Sindh-Punjab water dispute, than many people in this country know or even care to know. Very few in the country know that this backward journey had started from the very first days of coming into existence of Pakistan. Mountbatten once spitefully referred Mr. Jinnah as "the dying Muslim leader". The description was not very far from the truth, however. Along with his terminal disease, the hostile schemes and actions of Indian authorities and Mountbatten, he was plagued by the wily intrigues of his "loyal followers". No nation on earth could have treated its "Father" in a more brazenly shameless way than the way Mohd Ali Jinnah was treated by some of the petty-minded, pygmies basking around him in the reflected glory of his gigantic personality.

"The complex and intricate task (of setting up the new state of Pakistan) could only be tackled by the Quid-e-Azam. The challenge was beyond the limited capacities and mental horizons of the lieutenants who, while he lived, could only

shine in his reflected glory". ('Government and Politics in Pakistan'-Mushtaq Ahmad, P.20)

The 1953-54 coups of Governor General Ghulam Mohd against Prime Minister Khuwaja Nazimudin and the Constitutional Assembly etc are commonly regarded as the first series of coups against Quaid-e-Azam's Pakistan. In fact those were the third and fourth such coups. The first and second were against the founder of Pakistan and the father of the nation, Quaid-e-Azam Mohd Ali Jinnah himself and his party, when he was virtually "dismissed" from the leadership of Pakistan Muslim League and the league was high jacked by his "loyal followers.

"The first meeting of the new Pakistan Muslim League was held in Karachi in February, 1948 to consider the new constitution and the Rules, an amendment was moved that no Minister or other office holder in the Government should become an office bearer in the League, exception being made in the case of the Quaid Azam. The amendment was passed in spite of his advice against it. He declined to accept the exception in his case and remain the President and left the meeting. Chaudhry Khaliqzaman was asked to organize the League and later he was elected its first President."(Voyage Through History- vol:2, by Masarrat Husain Zuberi, P.144).

Soon after Mohd Ali Jinnah's death the amendment was duly deleted and the then Prime Minister became the President of the Muslim League also!(Zuberi-vol:2 ibid, P.196)

The Quaid was kept in the dark even about such crucial life and death state matters as the ill-fated tribal invasion of Kashmir.(See K.H. Khurshid "Memoirs of Jinnah" PP.59,82)

"The Punjab was Jinnah's Achilles' heel, time and again."(Ayesha Jalal "The Sole Spokesman", P.14)

"Jinnah did not get his mandate. He left the Punjab swearing: 'I shall never come to the Punjab again; it is such a hopeless place.'(Ayesha Jalal, ibid P.22)

'He called Mamdot and Governor Mudie to Karachi in May and told Mamdot. "He was useless as a Prime Minister, which," Mudie reported, "was only too true. He [Jinnah], therefore, nominated Mian Mumtaz Daultana" to take control of the Punjab ministry, but Daultana "refused Jinnah was very angry and the meeting was adjourned. I then asked what his advice to me would be as a friend. He replied 'Wash your hands of them, as I am going to do'.(Stanley Wolpert "Jinnah of Pakistan" P.360-361)

"Did not his Military Secretary, an Englishman, say that "when he left for Lahore he looked sixty and he returned a very old looking man of eighty". After his return a queer apathy gripped him" (Zuberi-vol:2 ibid, P.158) Quaid Azam's following most meaningful introspective observation during his 11th August 1947 speech in the Constitutional Assembly of Pakistan at Karachi clearly indicates that though he was always full of hope and determined to succeed, he had absolutely no illusions about the then existing state of affairs and was fully aware of the formidable obstacles, pitfalls and deep-going uncertainties as embodied by internal rot and treachery and foreign menace, around and ahead of him and Pakistan: "It was almost as if he was thinking aloud, when affirming that partition was the only solution to India's constitutional problem, he added, 'May be that view is correct, may be it is not, that remains to be seen.'(From Quaid Azam's speech in the Constitutional Assembly of Pakistan at Karachi, on 11th August 1947, quoted in Iqbal Akhund "Memoirs of a Bystander" P.24) In February 1948, General Messervy the then British Commander-in Chief of the Pakistan Army visited Delhi at the end of his service and briefed Mountbatten and Pandit Nehru at a luncheon given by Mountbatten. Mountbatten says, "Prior to the P.M's (Nehru's) arrival.. General Messervy said that Jinnah had become more and more impossible and was afraid he was in an advanced stage of megalomania. It was generally felt in Pakistan (and had even been expressed by Mr. Liaquat Ali Khan) that Mr. Jinnah's usefulness had more than expired and that he was now an obstacle and positively a menace, but nobody could see any way of getting rid of him".('Mountbatten and Independent India'-Larry Collins & Dominique Lapiere, P.258)

On the last day of his life, the Government of Pakistan could not spare even a single ambulance in working order for the return journey of the ailing founder of the country from Ziarat:-

"We had hardly gone four miles (from Mauripur Airport to Governor General's House) when the ambulance stopped. There had been a breakdown. The driver fiddled with the engine for about twenty minutes and the ambulance could not start. Miss Fatima Jinnah sent the Military Secretary to fetch another ambulance.. It was very oppressive in the ambulance and the Quaid-i-Azam was perspiring. I kept on looking distractedly towards the town but there was no sign of an ambulance. I felt utterly forlorn and hopeless. After an excruciatingly prolonged interval, the ambulance appeared at last.. Nobody knew that the Quaid-i-Azam was being taken in critical condition through the streets of Karachi." ("With the Quide-i-Azam During his Last days" Lt. Col. Dr. Ilahi Bakhsh, ibid P.47-48)

"Quaidi Azam fought all his battles single handed. He suffered patiently and alone." (Miss. Fatima Jinnah preface to Lt. Col. Elahi Bakhsh's "Quide Azam during his last days" P.32)

He died as an utterly abandoned, betrayed and broken-hearted man in pitiable and mysterious circumstances.

Soon most of the Pakistan Muslim League stalwarts received their golden-hand-shake.

Almost the entire working committee of the Pakistan Muslim League was 'rewarded for their services to the nation' and got rid off, with Ambassadorships and governorships. (Zuberi, ibid, P 197)..

"After the assassination of Liaquat Ali Khan (in 1951) the effective and operational power in Pakistan passed to the higher echelons of civil and military bureaucracies." ("Pakistan the Unstable state"-Hassan Gardezi and Jamil Rashid, P.102)

These events culminated in the state governance further descending into an abysmal pit of medieval intrigue, and plain criminality. Lawlessness, despotism and tyranny

became the order of the day, ever since these early days of the state of Pakistan.

This was exactly the ideal negative Socio-Political and legal-ethical environment required for the commission, with absolute immunity, of all kinds of acts of brigandage and plunder, especially of the common national waters, by the ruling elites and self-imposed authorities of Pakistan. All theoretical obstacles and road-blocks in the country e.g the concepts of the rule of law, federalism, constitutionalism, division and balance of power etc in the path of neo-colonial masters and their local satraps were to be swiftly broken down and thrown to the way side. Ruthlessness was to be the magic word for subjugating and keeping Jinnah's Pakistan in perpetual bondage of the neo-colonialists and their native stooges, amid the loud chorus of the slogans of "Quide-Azam Zindabad", "Pakistan Zindabad", "Islam Zindabad". Things started moving, historically speaking, at a supersonic speed.

Governor General Ghulam Mohd dismissed the elected Bengali Prime Minister Nazimuddin on 17.4.1953. Again the United Front government of Fazalul Haque in East Pakistan which swept into power with an over whelming majority in the February 1954 elections was dismissed only 2 months after taking office, placing the province under General Iskandar Mirza's Governor's rule. After five months, on 24.10.1954, Governor General Ghulam Mohd dissolved the Constitutional Assembly, in a truly James Bond setting:

"The coterie. (Secretary General Chaudhry Mohd Ali, Governor General Ghulam Mohd, Defence Secretary Iskandar Mirza and C-in-C, Army, Ayub Khan--RBP) could be termed the "gang of four."(Zuberi, ibid, P.222)

The (Bengali) Prime Minister Mohd Ali Bogra, Ayub Khan and Iskandar Mirza were urgently summoned from USA and Britain.

"The Military Secretary met the V.I.P. arrivals at the airport and the Prime Minister, accompanied by the two Generals, was whisked straight to the Governor General's

House. Governor General roundly abused the Prime Minister and asked the two General's to take him away. Lahore dungeon with muscled jailers, torturing him with their jibes and mocking smiles, crossed his mind.. After a long huddle between the two Generals and the Governor-General, the Prime Minister was informed that the arrant Constituent Assembly was being dissolved. He would remain Prime Minister." (Zuberi, ibid, P.223-224)

The act was ratified by the Federal Court of Pakistan headed by Mr. Justice Munir.

"Chief Justice Munir himself admitted 'the mental anguish caused to the Judges by these cases was beyond description and no-where else in the world had the Judges to pass through what may be described as judicial torture.'" (Justice Munir's speech in the Lahore high Court Bar Association April 22, 1960 quoted by Mushtaq Ahmed in his "Government and Politics in Pakistan" P.33)

"Thus ended with a bang the Parliamentary System."(Zuberi, II, P.146) "As M.J. Akbar says in his book "India: The Siege Within, ".It was open house for schemers. After the coup from above, policies (in Pakistan-R.B.P) degenerated into scramble for power in which the winner was to be backed." (Burhanuddin Ahmed: "The generals of Pakistan and Bangladesh" P.3) Thus the way was cleared for destroying the federal foundation of Quid-e-Azam's Pakistan and for transforming the homelands of Pashtoons, Sindhis and Balochis which had agreed to constitute Pakistan as a group of independent and sovereign fraternal states as envisaged by the 1940 resolution and subsequently allowed themselves to be persuaded to join and constitute Pakistan as a single fraternal federation of equal partners, into captive pieces of conquered territory, their resources, chiefly water, land and jobs being ear-marked for loot and plunder as a "war booty". One-unit was to be imposed.

"Daultana had prepared his "Document" (for eliminating provincial autonomy) in September 1954. General Mohd Ayub Khan had on 4th October 1954 sent his detailed proposals....There been not much time left to loose."(Zuberi vol:II P.222-223)

"Speed, if possible, supersonic speed, was needed." cried Mohd Ali Bogra, the puppet Prime Minister. For the Punjab leaders turned historians, all history began with the advent of Sikh State in Punjab.

"The Provinces in West Pakistan were of recent 20th century creation-N.W.F.P.was separated from Punjab in 1901 only, Sind became a separate province only in 1937 as a result of the Muslim demand of common nationhood and in any case would have become part of the Punjab, had its conquest by the British not preceded final defeat of the Sikhs.

Administrative boundaries depending on timing of alien conquest had no sanctity and the Provinces as constituted in 1947, had no linguistic or ethnic unity." [Speech of Punjab leader Nawab Mushtaq Ahmed Gurmani, in the Constituent Assembly of Pakistan C.A.P., Vol.1, Part 1 of 1955 (pp.784-809) quoted in "Voyage Through History"- Masarrat Husain Zuberi, Vol:1, P.240). "Barring the Punjab Muslims, over whom ruled Ranjit Singh and his European General, like Avitabile, the Italian General at Peshawar (who used to hang six Pathans outside his porch before breakfast and before receiving any visitors) if the British had not come, Ranjit's five European Generals, with their armies trained under them, would have conquered Kabul as well as Sindh and Baluchistan. The arrival of the British saved the Muslims of north-western India." ("From Memory", by Firoz Khan Noon, P: 9-10) "There is no justification either politically or administratively for maintaining the existing Provincial divisions in West Pakistan. They are not warranted by geographic, ethnic, cultural or economic consideration. Both West and East Pakistan are placed on a footing of equality promoting a feeling of partnership. These two units will then go forward in an Honorable, mutual, beneficial, complimentary and enduring partnership, thus advancing the prosperity of the country as a one whole", declared Mohd Ali Bogra. (Zuberi, Vol. II, P.242-243),

A reign of terror was let loose on members of the Assemblies of the provinces marked for elimination.

One-unit was imposed on 15.10.1955. The first thing that needed to be done was to ensure unhindered criminal

manipulation and misappropriation of the entire water of the Indus River System. "The team negotiating with India and World Bank regarding these waters which included representatives of Sindh and N.W.F.P. was disbanded and a fresh negotiating team constituted. All members from smaller provinces were dropped and following members, all, without exception, from Punjab, included:- Mr. G. Mueenudin, K.B.M. Abdul Hameed-C.E Punjab, Mr. Khalil-ur-Rehman, Mr. S. Kirmani, Mr. S.I. Mehboob, Mr. S.M. Niaz, Mr. Altaf Hussain".("Kalabagh Dam",by Abrar Kazi,P:29-32). It may be pointed out that there was no dearth of senior and competent engineers in Sindh, Frontier, Balochistan or Bahawalpur to present the case of Pakistan. Among them was Sindhi senior Engineer Mr. A.R. Kazi S.Q.A former Chief Engineering Adviser to the government of Pakistan who was at that very time serving as Chief Engineer (water) WAPDA. But he was not taken on the Pakistan negotiating team.

On 8th October 1958 President Iskandar Mirza imposed Martial law in league with General Ayub Khan and provincial Cabinets and Central Cabinet were dismissed. After about two weeks, "on the night of 27/28 October, Ayub Khan sent three Generals - Burki, Azam and Shaikh to the President to ask him to resign. Mirza first resisted. But General Azam pulled out his pistol, upon which he signed the letter of resignation."(Lt. General Jahan Dad Khan "Pakistan- Leadership challenges" P.38). Ayub Khan appointed himself the President of Pakistan.

"The new regime won the approval of the West although it was the abnegation of the values of the free world. As Charles Burton Marshall observed, the debacle was presented "in terms of accomplishment, as if some thing fine and constructive had taken place when the political institutions were overturned and thrown aside."("Generals of Pakistan & Bangladesh", Borhanuddin Ahmed, P.10)

At this stage one is tempted to ask "How come that, unlike their Hindu compatriots, the Muslims of India, specially those of the Muslim majority provinces, instead of going forward after achieving freedom from foreign yoke, and

winning social, cultural, political and economic progress in the world through unity, fairplay, democracy, up-lifting the masses, releasing their vast un-tapped energies and through nation building in all fields, reverted to the blatantly reactionary, exploitive and oppressive ways of governance typical of the darkest periods of their medieval history?" The answer is to be found in both the old and recent past of the history of the Muslims of India.

(1) The vast majority of the Muslim masses in these areas were living since centuries under the out-model, reactionary, anti-people and oppressive tribal, feudal and imperial systems in a state of abject poverty, illiteracy, superstition and rightlessness.

(2) The British were mortally afraid of the re-awakening of the masses of the Muslim world in view of the past history of Arab conquests, six crusades, Ottoman Empire in eastern Europe, European conquests of the Muslim world and the fact that Muslim territories were strategically spread from the Atlantic to the Pacific Oceans and it was known that once they attained the capitalist socio-economic mode of life and production, they were bound seriously to threaten the Western hegemony over the world. Therefore the British wanted them to remain away from enlightenment, political consciousness and mass power in the same, weak, backward, helpless and wild state in which they were living in the grip of reactionary tyrannical and oppressive social forces since many centuries.

"The provinces of Punjab, Frontier and Baluchistan, had also been isolated from the political influences of the nationalist movements as a matter of deliberate imperial policy due to the strategic significance of these areas and their value as a source of recruitment for the army." ('PAKISTAN_ A STUDY OF POLITICAL DEVELOPMENTS-1947-97', Hamid Yousuf, P: 26) "..The limited reforms of the 19th century were not extended to the Muslim majority areas of the West, the process remained the same. Till 1947 Baluchistan was denied all the reforms of self Government introduced in other Provinces."('Voyage Through History'- Masarrat Hussain Zuberi, P.112)

"Britain's administration of the (Muslim majority-RBP) north-west region of the subcontinent had been different from that in the other parts of India. ('THE DESTRUCTION OF PAKISTAN'S DEMOCRACY'- Allen McGrath,P:6-7) (3) During the 700 years long Muslim rule over India, the role of Muslim ruling elites was mostly that of privileged parasites who lived mostly by the sword, monopolizing all wealth and power, without having to learn too many hard skills. The common Hindus had to do the meaner jobs and learn all kinds of skills and professions merely to survive. Their turn came after the advent of the British power to employ those skills and professions and to become the favorite subjects and junior partners of the new rulers, whereas Muslims refused to awaken from the dreams of the past.

"After the unsuccessful Indian Mutiny of 1857 against the British "the Muslims..could not...find themselves willing to adapt themselves to the change... They had been rulers and soldiers and very few of them had taken to trade or professions..

As against this, the Hindus welcomed the change. The memory of 700 years rule by Muslims was rankling in their heart.

The Hindu has a remarkable capacity for adaptability. They learnt English avidly as they had learnt Persian so that they easily found posts. In the new administrations. But the Muslims could not get over their superiority complex and the English language and Western Civilization continued to be anathema to them..they were looked down upon with contempt (by the British) their position had become in fact pitiable."('FROM JINNAH TO ZIA'- Muhammad Munir Chief Justice of Pakistan (retd) P: 3-4)

"Hindus were the readier and more willing to take to western education and learning, which brought into existence "a new integrated all-India class with a varied back ground but a common foreground of knowledge, ideas and values." From the political aspirations of this class was born modern Indian nationalism."(PAKISTAN- A Study of Political Developments 1947-97, Hamid Yousif, P:2)

".The traumatic turn of events made them (the Muslims) looks inwards for religious purification to meet the new challenge. The so-called Wahabi movements could not gather political support." (ibid, P:9)

"..the opportunities made available during British rule for participation in government had been refused out of fear, suspicion, or pride. Many religious leaders felt they must remain uncontaminated by Western ideas for fear that the religious way of life of the people would be subverted.."('The Destruction of Pakistan's democracy'- Allen McGrath, P: 8)

".. (The Muslims) despised the infiltration of western influence and culture, including the language of the new rulers of India."('Government and Politics in Pakistan'- Mushtaq Ahmad, P: 1)

"They (Hindus) adapted themselves more readily to the new order and took full advantage of the economic opportunities in the field of industry and administration. The result was that, generally speaking, they forged ahead of the Muslims who were smarting under a sense of frustration and defeat. "The Hindus not only prospered economically but also acquired a new consciousness as a separate political entity."(Ibid, P: 2)

(5) In the next phase, when thanks to the heroic, pioneering, enlightening and civilizing role of people like Sir Syed Ahmad Khan, Syed Ameer Ali, Hassan Ali Effandi and a few others, Muslim educated strata was created and the fairly well-educated politically active Hindu strata, having gained sufficient political skills and self-confidence, advanced to the stage of demanding their rights with some force, the British took alarm and started looking for fresh battalions of henchmen, this a number of Muslim feudal-elites and servicemen took a U-turn from their previous aloofness and became ultra-loyalist and mercenary pillars of imperialist rule. They were rewarded royally and semi-officially established as parasitic bullies over their own poor people. They lived by white-collar and "gentlemanly" social, economic and political lawlessness and crime. Toadyism, exploitation and oppression became the semi-officially encouraged and socially tolerated and expected way of their life.

Many a politician and official who usurped and exploited political power in Pakistan through lawlessness and political crimes belonged to the above category: -

"a form of government was installed in the Punjab different from that in Bengal. Government in the Punjab was to be by individuals rather than by regulations

"What need or room for written laws, politicians and assemblies, or haggling lawyers? This tradition was part of the background of such British trained men as Ghulam Mohd, Ayub Khan, Iskandar Mirza, Chaudhri Mohd Ali, and Mohd Munir, who were to play important roles in Pakistan in the years after independence. They were all from the Punjab, and all were former members of the civil, military, and judicial bureaucracies which administered the machinery of government under the British."("The Destruction of Pakistan's Democracy"- Allen Mcgrath, P:7) "Resistance to usurpers is not part of our culture nor in accordance with the best traditions of our society."("Pakistan a Dream Gone Sour"- Roadad Khan, P: 42)

By a notification dt: 10th June 1959, the military government of Ayub Khan constituted a body named Indus Basin Advisory Board (IBAB) to evolve the best plan for meeting the water shortage caused by the sale to India of Ravi, Bias and Sutlej. No representative from Sindh or any other region / province other than Punjab was taken on this Board. Thus the IBAB plans, decisions and the International negotiations based on the above plans and decisions were purely a Punjab affair.

At that time the Sindh engineer mentioned earlier, Mr. A.R. Kazi, S.Q.A (later Chief Engineer adviser to Government of Pakistan) who was the senior-most Civil Engineer serving in Pakistan was Chief Engineer (water) WAPDA, but was not included in the IBAB although it was WAPDA which had to get the proposed works constructed.

The core issues involved in the negotiations leading to the 1960 Treaty, were intertwined with and over-lapped the core issues of the Sindh-Punjab Water Dispute 1857-1960 (now 1857-2003). The treaty negotiations, though formally and apparently confined to the points at issue between Pakistan

on the one hand and India and the donor countries on the other, provided an excellent and ideal opportunity and cover to the Punjab authorities, suddenly to transform themselves from being accused for a century of excessive appropriation of common waters, in the historical matter of Sindh-Punjab Indus Basin water dispute, to becoming the virtual sole owners and disposers of the case property viz the water resources of Pakistan. They forthwith set themselves up as the self-appointed judges in their own cause. The IBAB, waving the flag of an impartial federal national planning body of the Islamic Republic of Pakistan, under the garb of "planners" for the greatest national good to the greatest number of the people of the whole of West Pakistan including Sindh, simply dismissed, without taking any notice of Sindh's century-old case against Punjab authorities by the simple, stratagem of "planning" it out of existence through a "national plan" for negotiation where by the entire flow waters of Jhelum and Chenab, stored water of Mangla Dam and the bulk of Tarbela dam on Indus were allotted to Punjab under one or the other pretext.

All complaints, principles, previous decisions and arguments were quietly and impliedly, thrown into the dustbin of history under the smokescreen of national planning and international negotiations.

"As One Unit Administration had come into being from October 14, 1955, the Punjab found it expedient to push through its own proposals for the full development of the Punjab through the proposed system of works (exclusively in Punjab-RBP) required under the Treaty, and this it proceeded to do, by making the IBAB co-ordinate all planning within the country on the one hand, and provide the sole link with the Treaty Delegation and the Bank Consultants on the other." ('Indus Water Allocation-History of the Case', G.K Soomro, P.139)

"The purpose of the IBAB proposals mainly was the obtaining of the maximum amount of funds for enabling as big a system of works to be constructed (in Punjab-RBP) as possible. In this objective they succeeded by getting, in addition to the fixed contribution of India of \$175 million, a

free grant of \$ 175 million from the Consortium Countries, and a loan of \$ 150 million. The Supplemental Agreement of April 1964 got Pakistan an additional \$ 315 million in foreign exchange for the Projects. "The IBAB succeeded in doing on the home front, what all previous Governments in the Punjab could not do, simply by the device of providing the construction of Storages and Links (in Punjab only), completely un-connected with the strict function of replacement. A situation which could never have materialized, had the Sind Government been in existence, or had the interest of the peasantry of Sind been kept in view. This became possible for them by keeping Sind's representation out of IBAB, and by not raising any protest from any quarter interested in Sind. The Irrigation Department of West Pakistan was also headed, at that time, by an officer from the Punjab (Mr. Mahbub). To prevent any individual from raising any issue, strict secret instructions were issued to all to keep silent about all the decisions." (ibid, P.140)

It may be emphasized once again that the order of the government of Pakistan constituting such a Board without any representative of Sindh, along with all the proposals and plans and all decisions made and agreements signed by this Board adversely affecting the rights and interests of Sindh, was under the circumstances to that extent, violation of the binding principles of natural justice, illegal, of no legal effect and void from the very beginning. In order properly to understand the callousness, chicanery and high handedness employed by vested interests against the smaller provinces specially the people of Sindh in the matter of fair allocation of water resources, it will be helpful to bear in mind the following facts and circumstances:

(1) Being unrepresented in the 1948 Indo-Pak ostensible negotiations, much less, in the surreptitious and secret Jullander deal, between West and East Punjab authorities, regarding the waters of Pakistan viz those of the Indus River System, the smaller provinces were not and are not morally, politically or legally bound by the decisions in the above dealings behind their back and to their disadvantage.

(2) These provinces, including Sindh, could not and cannot be held responsible for the losses deliberately incurred by the province which sold such common rivers behind the back of the other co-sharers.

(3) The said provinces including Sindh, cannot be morally or legally punished and burdened with any compensation to the affected Punjab canals for any losses caused by the authorities of that province by their unilateral, conspiratorial and malafide wrong-doing.

(4) On the other hand, the water losses suffered by Pakistan were not confined to one province viz Punjab. Other provinces, chiefly Sindh, also suffered considerable water-loss due to the illegal sale of the three-tributary rivers of the system. The authorities of Punjab were and are morally and legally bound to compensate adequately the deprived province, Sindh, to the extent of its actual loss of supply of 1.92 MAF in Rabi and 29.36 MAF in Kharif which it received at Panjnad. This is the average of the 10 years prior to partition i.e. 1936-37 to 1945-46 from the illegally sold rivers.

(5) The compensation obtained from India and the loans obtained from the World Bank and from Canada, Germany, Australia etc were obtained for not only Punjab region / Province but for the entire West Pakistan including Sindh, N.W.F.P and Balochistan regions / Provinces and were payable by all of them plus East Pakistan.

Under annexure D to the "Indus Basin Development Fund Agreement" 1960 prepared and got approved by IBAB itself, the "System of works to be constructed by Pakistan" was for entire West Pakistan and not for Punjab alone and it had to,

(a) Provide substantial additional irrigation in West Pakistan.

(b) Make an important contribution to soil reclamation and drainage in West Pakistan by lowering down water levels in water-logged and saline areas.

(c) Afford a measure of flood protection in West Pakistan."

Hence these funds were required to be spent and works to be constructed in other regions / provinces as per their entitlement as co-riparian and not just in the one region / province, Punjab.

(6) Punjab has / had lots of under ground water, "The total ground water being used only in tube-wells in the Punjab was, in 1971, many times more than the combined total capacity of Mangla and Tarbela Dams."(Abdul Wahab-"Sindh Water Case" P.47). Its average annual rain water quantity is the highest in the former West Pakistan / present Pakistan. In Sindh both these sources of water supply are negligible.

(7) That fairness, justice and equity demand that the term "waters of Pakistan" should be held to include (a) flowing (b) storage (c) under ground and (d) rain waters in the country and its provinces.

(8) In view of the agreement of Punjab authorities for their self-serving purposes, in 1948, to pay seigniorage charges to India for the waters used by Pakistan after partition, thus recognizing the right of India to cut off waters from the date of partition, the Indus water Treaty 1960 gave the right to India to the three Eastern Rivers from the date of partition, and not the date of signing the Treaty.

(9) Any level of uses higher than the one enjoyed up to the 15th of August, which may have been developed subsequently, after the partition of the Sub-Continent, could not be the level for the purpose of replacement under Article IV (i) of the Treaty. Thus what were lost by Pakistan were the water supplies that this country was getting from the Eastern Rivers up to the 15th of August, 1947 and the level of uses which these particular canals had attained by 15.8.1947.

(10) While deciding the quantum of replacement supplies, it had to be determined as to what was the dependable availability in the Eastern Rivers flowing down to Pakistan on the cut off date. This availability had to be determined on the normal basis viz 3 to 4 year basis. Thus when it was claimed by Punjab authorities that supplies of 24 MAF were

coming to Pakistan on the relevant date, the dependable supplies on the 3 to 4 years basis came down to 17 MAF. Again there may be a quantum of dependable availability, which may not be fully utilizable due to a variety of reasons. Hence quantum of actual losses had to be calculated as per the quantum of actual utilizability out of the total quantum of dependable availability.

(11) This level of utilizable supplies determined the top level exceeding which would have meant exceeding the rational and equitable boundaries of proper "replacement".

(12) It would have been found that the justly due replacement supplies so far as the affected Punjab canals were concerned, were 3.12 MAF during Rabi and 10.67 MAF during Kharif. Against this quantum of replacement supplies, Punjab was demanding replacement supplies of the order of 21.12 MAF and even more at the cost of N.W.F.P, Sind, Baluchistan and East Pakistan. Thus without spending anything Punjab was demanding development at the cost of other provinces of Pakistan. ('Wahab Shaikh'-Sindh Case, P.88) (13) When Punjab authorities talked about replacement supplies, it should have been understood that their demand over and above the real replacement demand was for development of Punjab and not for replacement supplies to the old canals. It was therefore necessary that a line of demarcation was drawn between the replacement component and the development component as available from the total system of works.

(14) If Punjab had to develop water potential, it had to spend huge sums of money and that would have been borne by the Punjab and not by the other provinces of Pakistan for the Punjab. Therefore the real question of true replacement supplies had to be determined, keeping in view all the above aspects.(ibid, P.89)

(15) Since all the provinces of Pakistan had to bear the burden of replacement supplies, it was necessary that limits of replacement were not exceeded and Punjab should not have got more water for its own development at the cost of others on the plea of replacement supplies.(P.90) (16) The

development supplies made available by carrying out of works under system of works had to be equitably shared between all canals in West Pakistan keeping in view the availability of ground water.(P.93) It is the contention and the case of the people of Sindh that having set themselves up as the sole owners, dealers and distributors of the waters of Pakistan, the Punjab authorities, through IBAB, in violation of even the biased terms of the appointment of the Board, purported to apportion these waters according to their sweet will:- (1)For this Board, Pakistan was the other name of Punjab. While talking about Pakistan, it generally meant only the province of Punjab. (2) It paraded Punjab authorities avaricious and never ending demands for more and more water at the cost of other riparian specially Sindh, as "the essential needs of Pakistan" in the working paper it prepared for Ayub Khan, the then President of Pakistan on the eve of the World Bank Mission's visit to Pakistan in May 1959. This paper was included in the Pakistan Government Report on the negotiations with the World Bank Group on 16th to 18th May 1959. Specifying "Pakistan's essential needs" the Board said " The Pakistan's essential needs are increased uses of the linked canals (of Punjab-R.B.P)"(para 4(b) P:15 of the Report). "On the Tributary Rivers (of Punjab-R.B.P) alone 23 MAF is required for the eventual control of salinity and that immediate requirement is 3.5 MAF."(3) It practiced jugglery with facts and figures and invented its own concepts and terminology e.g. Zoning, Indus Basin Settlement Plan and Indus Basin Project etc to serve its partisan objects. (4) It did the planning in such a way that in the case of Punjab instead of using the allocations for the developed projects, it adopted their increased developed uses up to 1956, where as in the case of Sindh projects, the proposed Provision was made less than what was already allocated to them under the Sindh Punjab draft agreement 1945 which had been followed in practice long years after Punjab refused to ratify it. (5) The planned system of works had a lot of development components. These substantial additional supplies were reserved for the Punjab canals for reclamation requirements over and above their developed uses, leaving nothing for the

other provinces including Sindh where the salinity problem and reclamation requirements are more serious. (6)Whereas no reclamation supplies were provided for Sindh canals. As much as 5.5 MAF additional water, which is more than Mangla Dam capacity, was provided only for the Punjab canals.(7)The canal uses as conceived by the Board were much higher than their allocations even in the case of developing projects. On the other hand, the concept of IBAB uses, so far Sindh canals were concerned, was even less than their historic rights i.e. allocations. (8) The un-usable flood flows of Chenab and Jhelum were added to the Indus flows, there by creating artificial shortage in the Tributary zone and justifying the transfer of Trimmu, Punjnad and Islam to the Indus. Commenting on the high-handed, insatiable and limitless demands of Punjab authorities over the common waters, Sindh's representative before the Fazal Akbar Indus Water Committee, Mr:A.W. Shaikh said 32 years ago in 1971:-

"The demand of water by the Punjab has no limit. It is not the allocations or the existing higher uses for which the Punjab is demanding water but they also demand that further development component should also be added. If such demands are accepted then the level of uses of the Punjab Canals will become almost double the previous allocations and hardly anything will be left from the existing flow waters, storages or future storages to pass down to Sindh as these Punjab requirements intents will first have to be met. If all that water goes to the Punjab canals, the ruination of Sindh Agriculture is certain. The signs of increase in the salinity have already started showing up in Sind due to shortage of canal water."("Presentation of Sindh Case Before The Indus Water Committee" P: 10).

After unilaterally selling away 3 out of its 5 rivers, Punjab authorities still had Chenab and Jhelum, plus abundant rain water as well as ground water, the quantum of which is under stood to be far in excess of the combined total water of Mangla and Tarbela dams. During the Indus treaty negotiations, Punjab authorities demanded further water works as part of replacement supplies, through foreign aid, at the cost of all the provinces of Pakistan including East

Pakistan. The World Bank, which had to arrange the loan, at last agreed.

"...the Bank has provided two storages, Mangla 4.75 MAF and Rohtas 2.1 MAF. They claim that these two storages apart from complete replacement will provide at least 2.0 MAF for reclamation and development."(Report on the negotiations with the World Bank, P.17, Para 13)

Thus the authorities of Punjab, the upper riparian, managed thoroughly to exploit their unique, although illegal position, as the sole representatives of Pakistan, to the exclusion of the other affected provinces, to do whatever they liked to the detriment of their century-long co-sharers and adversaries in the over-a-century long water-dispute. They were going ahead to get not only more than required replacement supplies in the shape of flow water of Jhelum and Chenab and stored water of Mangla dam but further very substantial development supply in the shape of Rohtas dam.

But they were not satisfied with mere replacement. On the pretext of having been forcibly deprived of 3 of their rivers and consequently being in dire need of replacement supplies, they wanted to capture the mighty Indus, stage by stage and to steal and plunder the last drop of its waters, even if it resulted in turning the lower and weakest riparian virtually into a desert. So they demanded Tarbela dam on Indus.

"Tarbela should be included in the plan even if it means excluding Rohtas for the present Rohtas is an easy storage to build and Pakistan can take it in hand later.(ibid Para 17[d])

Expecting resistance from the donors for such an extravagant demand, Ayub Khan suggested, that, even if the World Bank and other donor countries do not agree to give aid for construction of Tarbela on Indus at that time, Tarbela should be kept on the demand list for construction at some later time.

"..the President told the Bank that if it does not agree with Tarbela, the Bank should at least take note of it and recognize the necessity of Tarbela being built at an early stage."(Mr. Wahab, ibid, P.61)

It was the policy of the Pakistan side regarding the negotiations with World Bank, India and other international donor countries, that in the process of international negotiations, the opportunity for getting maximum benefits for Pakistan in the form of maximum amount of foreign aid and maximum number of replacement and development works, should not be lost merely because no immediate internal agreement was in existence or easily achievable, as to which works for which precise purpose should be constructed where. It was given to understand that it was immaterial what precise reasons and particulars were given in justification for obtaining foreign aid for a particular project, so long as these yielded maximum amount of such aid for constructing maximum projects, for not only replacement purposes but also for development purposes. The idea was that not only the actual losses due to sale of 3 rivers should be covered but irrigation water should be made available for cultivating new lands in West Pakistan.

Consequently as guaranteed by the central government, through the Secretary of Industries, Government of Pakistan D.O letter NO Secy (Ind) 8735/54 dated 6th Nov 1954, addressed to all Provincial Governments, extract given below, all plans and schemes prepared and positions taken by the central government in connection with the negotiations with India and other foreign powers were to be, so to say, for foreign consumption, without prejudice and not to be binding, as between the co-sharer parties in the Indus Basin viz Sindh, Punjab etc:

"To facilitate the negotiations on the Indus Basin Water Dispute and position as among various units of West Pakistan, I would like to confirm that all material supplied to the Central Govt. by the various units and all arguments advanced, material prepared or positions taken by the Central Govt. in it's negotiations with India are completely without prejudice as to the legal rights of any of the units. It is essential in the national interest to present a unified point of view for Pakistan as a whole. Any point of dispute between the Units in Pakistan will be resolved in a fair and equitable manner if necessary by the appointment of an impartial commission by the Central Government'."

This solemn legal guarantee was repeated and reiterated from time to time by the highest authorities of the country.

"It would be pertinent to mention that a presentation on the Zoning Concept was made by the Sindh Representative in the proceedings of the Commission for Apportionment of Indus Waters during its session held from 20th to 30th April 1980, and the Chairman of the Commission, Justice Anwar-ul-Haq was pleased to remark:

'Whatever may have been adopted in negotiations with India, it is quite obvious that it is not to prejudice the rights of the provinces. That would be my understanding of the whole thing. For negotiations with India you can take various positions.' (Abrar Qazi "Kala Bagh Dam" P:72-73)

"..the fact is that we were given assurance that whatever is being put in the Plan is for external consumption and that we need not worry. This assurance was again repeated and discussed in the West Pakistan Government Cabinet meeting held on 13. 11. 55 of which the copy of the Minutes has not so far been supplied to us inspite of our best efforts. The fact remains that we were always told that Tarbela Dam is for Sind. (Wahab Shaikh-'Sindh Case' P.17)

Hence the terminology and conceptual frame-work unilaterally adopted by Punjab engineers in IBAB and elsewhere, during international negotiations e.g. the terms Zoning system, Indus Basin Settlement Plan, Indus Basin Project etc were not legally binding for a number of reasons and could not be imposed upon Sindh to its detriment.

Once decision was taken to get massive structures constructed through foreign help and assistance, Pakistan had to justify the construction of huge dams like Tarbela Dam on Indus. If any replacement burden was shown to be put on Indus in the IBAB plan and consequently in other papers, it was purely for justifying the construction of Tarbela Dam and not for legally and practically binding Sindh to acquiesce in Indus's actually shouldering the unjust burden.

Mangla was to be the replacement dam for the canals affected by the sold three rivers, not any other.

In the 1960 Indus Water Treaty it was stipulated that the construction of the works for replacement supplies would be

completed by Pakistan expeditiously. If within a transition period of up to 31st March 1970, the same were not completed, Pakistan would have had to obtain extension of 3 years more for the completion of the same on the payment of a specified sum. Pakistan however completed all the works for replacement supplies including Mangla dam 2 years before the specified time limit.

Hence it did not ask for any extension, permitted by the Treaty for any non-completion of the replacement part of the System of Works, clearly establishing that all replacement in the Tributary Zone could now be met without Tarbela.

Hence Engineer Mr. Kirmani's observations, at page 14 in I.B.P 265, which was published on the completion of Mangla Dam by the end of 1968: "Thus by March 1968, two years ahead of the deadline specified in the Treaty, replacement works east of Jhelum costing 1107 million dollars, were completed enabling Pakistan to stand on its own, without the fear of any action by India on the Eastern Rivers."

When the former Prime Minister of Pakistan Mr. Feroze Khan Noon visited the site of the Mangla Dam when this replacement work was still in progress, he was glad that "with this replacement, Pakistan is going ahead in securing herself more independence", but he was sad that it was not a development dam but merely a replacement dam i.e, a dam for making good the loss of three rivers by feeding the affected canals including Trimu, Islam and Panjnad. He observed "the sad part today is when one visits the site of Mangla dam and sees this mighty engineering feat in progress, when one has to remind him self that all the money is being spent not on the development but merely on replacement."(Sir Feroze Khan Noon "From Memory" P.264)

Thus Mangla being a replacement dam was constructed at top priority. It was not a development dam and irrigating new lands was basically not its job. Its main job was to feed canals including Islam, Trimu and Panjnad previously fed by the three illegally sold rivers. When the construction of all the replacement works including Mangla replacement dam were completed around 1968, the Tarbela dam was non-existent. It

was not a dam meant for top priority construction like replacement works, which had to be completed within the stipulated transitional period as required by the Treaty, as stated above.

This reflects the fact that there was no hurry for another dam, other than Mangla, as what were urgently needed were the replacement supplies for the effected canals which were to be provided in full by flow waters of Chenab and Jhelum plus a portion only of the stored water from the Mangla dam.

As stated earlier, Punjab authorities, through their subservient central government, invoking national interests and sentiments of patriotism, called upon all concerned parties including Sindh, not to be unduly, perturbed if any argument, arrangement, plan, project or other bargaining tactic or strategy which was formulated and presented during the negotiations with foreign authorities, appeared to conflict with their specific positions and interests. It was a national necessity they declared in effect, to prepare and present for foreign consumption only, of course, apparently appropriate and convincing details, particulars and arguments to the international donor community, in order to provide to them necessary justification for getting maximum possible foreign aid sanctioned for Pakistan. They planned all kinds of projects for providing replacement supplies, specifying all kinds of supply burdens from here and there, making them appear logical, rational, fully justified by ground realities and what not and as absolutely indispensable for the progress and prosperity, nay, the very existence of the whole of Pakistan.

As evidenced by the government of Pakistan letter No: Secy (Ind) 8735/54 dt: 6-11-1954 referred to above, all this was supposed to be meant for foreign consumption only, without any prejudice to and not binding any of the affected parties including Sindh. But as soon as the negotiations were over and the foreigners went home, the Punjab authorities and their subservient central government mouth-pieces, staged a 180 degrees turn, and declared that every word of all their plans, positions, pronouncements, classifications and

schemes which originally were solemnly declared to be only for foreign consumption, were now, after the completion of the Punjab versus the foreign countries and institutions negotiations to the total advantage of Punjab and total disadvantage of other provinces specially that of Sindh, to be binding on all concerned, including Sindh.

One item of their pride of "impartial national planning" performance was the creation of two illogical and artificial water zones in Pakistan, the Indus zone and the tributary zone separated by the Chinese wall of opposite and contradictory functions. The functions the Indus zone was assigned were to get not even a single drop of its share from the common waters in the other zone but give away every thing it had to the other zone even, if necessary, at the cost of starving the big family of its own canals solely dependent upon its life-giving waters for the very lives of the crores of people of the concerned areas. On the contrary, the functions assigned to the other, the so-called tributary zone was not only not to part with a single drop of the so-called Indus zone's share of common waters within it but to obtain the bulk of waters from the other zone through leech-like robber canals including Chashma-Jhelum and Taunsa-Panjnad link canals. So one so-called zone was to be a solely giver zone and the other was to be solely the taker zone. Sindh was placed in the solely giver zone and the Punjab in the solely taker zone.

The stand of the Sindhi people is that the ex-parte proceedings of negotiations regarding the artificially created Pak-India water dispute in furtherance of the Jullunder conspiracy between the representatives of both the post-Partition parts of the former undivided Punjab, the subsequent appointment of IBAB and all its plans, schemes and final decisions adversely affecting the fundamental legal and constitutional rights and interests of the lower riparian Sindh, were and are ex-parte, illegal, in utter violation of the universally recognized natural rights, without jurisdiction, of no legal effect and void abinitio.

This totally arbitrary, malafide, self-serving, transparently fraudulent zone system which, incidentally, is not mentioned in any of the three international documents

concerning the 1960 Industrial Treaty, imposed ex-parte and maliciously by IBAB to defraud Sindh of its vital rights and interests, is totally unacceptable, illegal, of no legal effect as against the historic life and death interests of the people of Sindh. It has been regretfully observed by the people of the smaller and weaker provinces, that since, in view of the undeclared but practical unitary instead of federal, form of government in operation in Pakistan from the very beginning, any ruler from provinces other than the Punjab, like Liaquat Ali Khan, Hussain Shaheed Suhrawardi, Iskandar Mirza, Ayub Khan, Yahya Khan, Zulfikar Ali Bhutto etc, publicly paraded on the national and international stage as iron men, dictators, great leaders, Generals and field Martials and what not, could remain in power and some times even alive, only while they slavishly served the anti-democratic, anti-people anti national and hegemonic vested interests of the Punjab elites and authorities.

Ayub Khan was no exception. So far as slavishly serving the above hegemonic vested interests was concerned, he allowed himself to be led by the nose, there by laying down the foundation of Bangladesh debacle etc. He abjectly abandoned all pretense of ruling as an impartial President of all Pakistanis with fairness and equity and allowed himself to be lorded over by the Punjab authorities, not caring a hoot for the long term interests of justice, national unity and solidarity. He became a willing tool in the hands of the Punjab engineers surrounding him. He allowed Punjab authorities to pocket all the foreign aid billions obtained on the pretext of replacement and development for all of West Pakistan. He hand over virtually all the waters of Pakistan, to save its share of which, Sindh had struggled during much of the twentieth century, to the dominant province. He went to the adventurous extent of threatening a war with India if foreign aid for constructing the Tarbela dam for siphoning off and plundering the Indus waters in their entirety, was not furnished.

"The sharing of the waters of the Indus system had been a matter of dispute for many years. Before Partition, there

were water claims continuously in dispute between the Sindh and Punjab provinces of undivided India. Partition drew the border between India and Pakistan right across the Indus system. Pakistan became the downstream riparian, and the headwork of two of the main irrigation canals in Pakistan were left on the Indian side of the border. I knew very little about the problem, so I asked for elucidation. The West Pakistan government sent two engineers (Both belonging to Punjab- RBP) who explained the case in great detail to me.

"The World Bank conceded our demand for the construction of a system of replacement works. The World Bank team, headed by its President, Eugene Black, offered us the Mangla Dam plus certain headworks and the diversionary and link canals. They also offered a dam at Rohtas near Jhelum. ".before I write of the negotiations with Eugene Black, I should like to describe the confrontation I had with our own technical experts and administrators.(All belonging to Punjab- RBP) I sensed that they did not fully realize the gravity of the situation and were asking for the moon...They were.. trying to dictate policy and were taking up extreme positions. Some thirty or forty of them were assembled in Governor House, Lahore.

"...they were firmly of the view that in addition to a dam on the river Jhelum at Mangla, we should need a dam at Tarbela to store the surplus flow of the Indus River. The difference in cost was of the order of about 200 million dollars. This was a staggering figure, and I knew that when Eugene heard it he would hit the roof. And so he did. But I told him, and I quote the words as I recall using them: 'I have been around these areas which are going to be affected by the withdrawal of waters by India. People have told me very plainly that if they have to die through thirst and hunger they would prefer to die in battle and they expected me to give them that chance. Our Jawans and the rest of the people feel the same way. So this country is on the point of blowing up if you don't lend a helping hand.'"(Ayub Khan "Friends not Masters"P.108-110)

It may be noted that only the Surplus flow of Indus was to be stored at Tarbela.

Needless to reiterate that under the sub-continental, international and Indo-Pakistan law before sanctioning such a potentially controversial gigantic project like the Tarbela, the rights and interests of all the concerned co-sharers specially Sindh had to be taken into consideration properly in advance just as it was done in days of the British Raj. "One of the terms of reference of the Anderson Committee appointed in 1935, was " the possibility of finding such supplies, without detriment to the parties interested in the waters of the Indus and its Tributaries and the effect upon the existing rights of these parties, of any fresh withdrawal, the authorization of which, the committee may recommend."

"The Rau Commission, specifically recognized the damage to Sind Canals by the construction by the Punjab of the Dam at Bhakra on Beas and not only provided that two new projects in Sindh be constructed to give an assured supply of water to its Canals but that a portion of the cost of these works amounting to Rs.2 crores be borne by the Punjab for that purpose. (Wahab Shaikh 'Sindh Case', P.15)

But for usurper generals and dictators like Ayub Khan, the country they succeed in getting into their clutches with its resources, becomes their personal Jagir and property, its population their slaves and their sweet will the supreme law of that unfortunate land.

There is a lot of money for the rulers, in fact billions, in the business of constructing national dams, canals etc. Every body including the present rulers, know that Ayub Khan did not become any poorer through such building activity. They, in fact, want to gain from his experience.

"Ayub needed a guarantee against personal degradation which was given to him by me personally. Ayub had made a lot of money and he genuinely wanted time to enjoy it. No one knows better than me why Ayub had quit." (General Yahya quoted in "The Breaking of Pakistan" by A. Basit, P.120)

As for the Punjab authorities who during the course of Pakistan's chequered history of repression of the deprived sectors and weaker entities and peoples, usurpation of state

authority and its autocratic willful, and reckless exercise, had learnt from experience that they were the real masters of Pakistan and owners of all its resources and sources of life and livelihood, had no use for fair apportionment, equity and justice. After completing the lawless misappropriation of all the waters of all the five Punjab rivers, the Indus tributaries, they straight-away proceeded to loot and plunder the waters of the Indus the last remaining source of the life of the lower-riparian Sindh, through the link canals ostensibly constructed for conveying only surplus waters of Indus to Punjab canals known in Sindh as robber canals, on all kinds of phony pretexts, thereby intensifying the desertification of Sindh which has now reached alarming proportions. "The perception of the people of Sindh about the modus operandi of WAPDA and the Government of Punjab works out as under:

- i. Allow the civil works or the canal system to be constructed as projects of national survival.
- ii. Request for surplus water for staunching, leak testing, saving the link from choking or whatever.
- iii. Run the surplus water for a few years to establish precedent and to develop water users who will then apply tremendous pressure to keep the water supply running.
- iv. Force the lower riparian (or don't even ask) to accept the fait accomli and keep the water supply running since the tap is always in the hands of the upper riparian. (Kazi Abrar Ahmed, 'Kala Bagh Dam',P:80) As soon as the "robber" canal, the Chashma-Jhelum link canal was completed in 1973, Punjab authorities came out with their pretext for getting it opened for plunder.

In a "summary" for the Chief Minister, Mr. A.W. Shaikh, S.K secretary for Irrigation and power, Government of Sindh, wrote, under the subject "Opening of Chashma link. During Kharif 1973":

"A proposal for opening Chashma-Jhelum Link for the current Kharif, has been received under WAPDA's NO CE/WMC-49/259 dated 18.6.1973 (Flag A) with the objects of:

i. Meeting the operating needs of the safety of banks against sloughing.

ii. To save the link from choking in the lower part due to wind blown sand and,

iii. To monitor the seepage losses from the link at various discharges required to draw anti-water logging schemes along the link canals. In this connection it may be pointed out that a similar request to run the Chashma-Jhelum Link during Kharif 1972 was received last year which was not accepted by the government of Sindh.

As regards the fresh arguments nos.(i) and (ii) the same are not valid as the link has been constructed mostly in cutting and whenever it is in embankment, it has been constructed on international standards. Moreover the link has been fully tested for 134 days (from 26.5.71 to 6.10.71) and 83 days (from 5.7.72 to 25.9.72) which is by no means a short duration...(P: 76)

As regards argument No.(iii) in asking for opening of the link to monitor the seepage losses to draw anti-water logging schemes, both the WAPDA and Punjab Government have asked the Central Government to finance this project terming it as consequential work to the Indus Basin Project. In case of the Taunsa-Punjad Link, the Punjab Irrigation department has succeeded in creating artificial water-logging on both sides of the Link by running it at full capacity even when not a drop of water is required for transference to Punjab Canals (presently over 130,000 cusecs are escaping below Punjad and yet the Taunsa-Punjad Link running at a discharge of 5000 cusecs). Likewise, the Punjab Irrigation Department desires to flow the Chashma-Jhelum Link, as without it's flowing, it will be difficult for them to justify the anti-water logging project.

It is evident that they want to open it (the C.J Link) on ad-hoc basis now and then continue to run it by emphasizing "status quo" later on. The Sindh canals have already experienced great damage to the sustenance of their agriculture by unilateral operation of Taunsa-Punjad Link, both in Kharif and Rabi, even at times of acute shortage of

supplies in Indus, although this Link was only opened for staunching and testing purposes for meeting the contractual obligations purely as an ad-hoc arrangement."

The Secretary Irrigation Government of Sindh was apprehensive, as far back as 1973, that C.J link canal would, much like the T.P link canal earlier, be requested to be opened for technical reasons which would set a precedent. After a few years it will be kept permanently open as a matter of right. Following is the reproduction of the Interim Accord between Sindh and Punjab, signed on 3rd July 1973:

MINISTRY OF PROVINCIAL COORDINATION
GOVERNMENT OF PAKISTAN
LAHORE

INTERIM ACCORD

OPENING OF THE CHASHMA-JEHLUM LINK DURING
THE 1972

Pending a final decision by the president of Pakistan on apportionment of waters of the Indus System which inter-alia would also ascertain the operational criteria of Indus links, a joint meeting of Sindh and Punjab Irrigation Ministers convened by Control Minister for Provincial Coordination, Mr. Abdul Hafees Pirzada, reached interim accord in Lahore today.

Governor Punjab; Central Minister for finance; Central Minister for Information and Chief Minister Sindh were present.

In the month of July, there is more water available in the Indus system than the requirements of its Canals. In fact there are escapades to the sea, both from the Indus Main and the Tributary Rivers and therefore there is no need to transfer Indus surplus water through the Chashma-Jhelum Link. Nevertheless it has been decided to allow a flow of water in the Chashma-Jhelum Link. This meets the request of the Punjab Government whose object is to keep the lower section of the Link alive. It has also been agreed that this flow will be on a purely ad-hoc basis and will not create any right for subsequent flowing.

In the event of a request made by the Chief Minister Sindh on the erratic behavior of the River Indus, the WAPDA shall immediately close the Chashma-Jhelum Link.

July 3, 1973

Sd/- Sd/-
(ABDUL HAFEEZ PIRZADA) (GHULAM MUSTAFA KHAR)
Minister for Provincial Co-ordination. Governor Punjab

Sd/-
(MUMTAZ ALI BHUTTO)
Chief Minister Sindh.

The points to note this Accord are:

- i. The plea of Punjab to open the C-J Link was "to keep the lower section of the link alive".
- ii. It was agreed that the flow of July, 72 will be on a purely ad-hoc basis and will not create any right for subsequent flowing.
- iii. In the event of erratic behavior of river Indus, on the request of Chief Minister Sindh, WAPDA shall immediately close the C-J Link.

But only three months after this solemn accord, by October 1973, the position had drastically changed and Mr. Ghulam Mustafa Khar, then Governor Punjab, wrote to the Governor Sindh, vide letter No. GS/B/173, dated Oct 16, 1973:

"It has been stated that this link (Chashma-Jhelum link canal) was a pipeline to operate intermittently for transfer of surplus water under certain conditions. I regret to point out that this is not the correct position. The link has been constructed for continuous operation, like all other canals, to meet the requirement of the Haveli canals and Lower Sutlej Vally Canals. It will have to be so operated on the completion of Tarbela Dam. Of course I know that the government of Sindh has somewhat different view on the subject. I am confident that these differences will be soon resolved."(P.71)

The Punjab authorities were at their old game of signing accords when needed and tearing them off, at the earliest available opportunity, when no longer advantageous.

Still the permission of Sindh Government kept on being sought every year till 1985, an acute year of water shortage, when the total flow in the Indus River System was a subnormal 118 MAF. That year General Ghulam Jilani, Governor of Punjab and Safdar Butt, Chairman WAPDA, especially flew out to Chashma and got the C-J link canal opened. Since then even the facade of asking the Chief Minister of Sindh was dropped and the T-P and C-J link canals continue to operate at maximum capacity, even in times of sever shortage in Sindh.

Throughout the history of Pakistan, the policies of the Pakistan establishment, dominated by Punjab elites and authorities, has all along been to impose its peculiar hegemonist demands and decisions through autocratic means. Whenever it finds that it cannot get its way under a "normal democratic rule", such as it is ordained by the world powers that be, in the neo-colonies of the third world, it resorts to draconian laws, mutilation and destruction of state and government institutions and structures such as dismissal of governments, dissolution of legislatures and subversion and manipulation of political, electoral, administrative and judicial processes, civil and military dictatorships, military actions etc. As per the central government assurances in the fifties, mentioned above, that the respective claims and interests of the provinces / units would not be allowed to be adversely affected by the policies and positions adopted by Pakistan for external consumption, during the international negotiations about the Indo-Pak water dispute, but would be adjudicated by special commissions appointed for the purpose, one Committee viz Akhtar Hussain Committee (in 1968) and three Commissions viz Fazal Akbar (in 1970), Anwarul Haque (in 1981) and Haleem (in 1983) Commissions were appointed for the purpose but Punjab authorities refused to budge an inch and continued to retain all the huge illegal, immoral gains they had obtained through illegal and void abinitio decisions of the central government including those under the cover of the undemocratic and repressive One-unit and Martial law regimes.

In an attempt to close for all times, the door for any further proper and just adjudication of all the injustices done to Sindh in the matter of its share of Pakistani waters, during

so many decades, they resorted to a very simple and crude new stratagem.

In 1991, a PPP feudal Quisling, Jam Sadique Ali, who was earlier involved in political murder cases, was imposed as the Chief Minister of Sindh through a reign of terror reminiscent of the terror resorted to for imposing One-unit in the fifties, and made to sign a brief paper purporting to decide the over-a-century long Sindh-Punjab water dispute which seven Indo-Pak Committees and Commissions with their voluminous deliberations, lengthy reports and awards had failed to resolve. It was very simple. All the loot and plunder from Sindh's share of Indus System-water during the 1859-1991 Sindh-Punjab water dispute, were simply ignored. Seven more MAFs equal to about half the combined capacity (14.6 MAF) of both Mangla (5.3 MAF) and Tarbela (9.3 MAF) were given to Punjab over and above the 1945 allocations with nothing more for Sindh.

This was the much-heralded 1991 accord. After three years a forgery in the minutes of a ministerial meeting reduced even that allocation of Sindh. This was the notorious 1994 ministerial meeting "accord".

To sum up: -

The present illegal and void abinitio position of the apportionment of Pakistani waters of the Indus river system, is built on the illegal, foundations of the following illegal acts:-

1. The decision of the central Government of Pakistan in 1947 at the time of the partition appointing a negotiating body solely comprising the officials of one only of the several Pakistani riparian of the rivers of the Indus System viz the then West Punjab, for settling the matter of the apportioning of the Indus River System waters between India and Pakistan.
2. The 1948 illegal secret and yet to be officially disclosed, Settlement Agreement arrived at with the Indian side at Jullander by the authorities of that one of the Pakistan riparian, behind the back of the others including the over-a-century long aggrieved riparian Sindh.

3. The illegal, unilateral and exparte sale of the three common Pakistani rivers Ravi, Bias and Sutlej to India and payment of signiorage money to it, to make the deal fool-proof by West Punjab, behind the back of Sindh, apparently in pursuance of the Jullander secret deal.

4. The undeclared boycott of the Arbitral Tribunal by both sides apparently in pursuance of the Jullander agreement, facilitating the stoppage of water by the Indian side to the dependent Pakistani canals at the expiry of the interim period.

5. The matter being manipulated by both sides as per Jullander agreement and artificially blown up as an International crisis.

6. The Constitutional Assembly was dissolved, East Pakistan was deprived of representative government, provincial and autonomous, status of Sindh, N.W.F.P., Baluchistan and Bahawalpur was done away with and Martial Law was imposed thereby creating for all practical purposes a state of total lawlessness, ultimately dominated by the unholy alliance of foreign powers and the elites and authorities of the dominating province and its nominee rulers for the time being, including military and civil strong men from provinces / regions outside Punjab.

7. Indo-Pak negotiations for settling the artificially created dispute was illegally held behind the back of the lower riparian No.3, Sindh and others.

8. Ayub Khan illegally and immorally created a planning body named IBAB, as the virtual sole owner and distributor of all Pakistan waters of the Indus river system to the exclusion of other co-riparian, co-sharers and co-owners including Sindh.

9. The illegal malafide and immoral plan of the IBAB was prepared and illegally and immorally approved by Ayub Khan government whereby, by false and bogus figures the loss of water suffered by West Punjab due to its own authorities illegal, unilateral and conspirational sale of the three common Pakistani rivers to India was inflated and

that by Sindh was reduced, thus illegally and wrongfully allotting Punjab almost double the quantum it deserved to be allotted and Sindh almost none.

10. Billions of dollars were obtained from India, World Bank and other western countries on account of whole of Pakistan for the construction of works for the replacement of the above mentioned self-created losses and further development of the whole of West Pakistan but not a penny of it was spent on any other province / region of Pakistan except Punjab and not a single work or project of any kind was constructed or commenced in any province / region other than Punjab though every penny of the loan was to be paid by all the provinces / regions of Pakistan including East Pakistan and not by Punjab alone.

11. That the Pakistan government by its letter mentioned above, expressly made a decision to have a plan (and all that goes with such plans viz schemes, classifications, systems, terminological and conceptual frame work etc) for external consumption, i.e a plan only to satisfy the foreign donors that their aid was well-justified and they were granting / lending money for well-thoughtout and well-planned specified and feasible projects for specified purposes, without binding any Pakistani interested parties viz riparian's. But when the above purpose was served and the required money was assured and such agreements finalized, the Punjab authorities turned back and insisted that the "plan" of IBAB was to be implemented as a legally binding document arising from and intrinsic to the 1960 Indus Water Treaty entered into by the Punjab authorities and the central government behind the backs of the smaller provinces / regions. The Pakistan government authorities acted accordingly, thus defrauding the smaller provinces including Sindh of great quantities of water of their share.

12. Sindh was all along told by the central authorities that Tarbela was being constructed to make-up for its water losses due to the sale of three common rivers and for development of lands of Sindh and that the provision in the so-called plan of IBAB that Tarbela would also feed Trimu, Panjnad and Islam canals which were formerly supplied by

the illegally sold-out eastern rivers was merely a make-believe formality to satisfy the requirements of the satisfaction of the donor countries, that each work constructed with their money would satisfy specific basic needs of the recipient country.

13. The world Bank had determined after proper evaluation of the situation, that, all that was needed for the Punjab Canals including Trimu, Panjnad and Islam, affected by the illegal and conspiratorial sale of three common Pakistani rivers by Punjab authorities, besides the supply to them of the flow water of Chenab and Jhelum, would be a portion of the waters of the dam specifically built for the purpose viz Mangla on Jhelum with a capacity of 5.3 MAF which incidentally fulfilled the requirements of expedition and economy demanded by the 1960 Treaty in as much as it was a 100 miles nearer to the affected canals than, say, the proposed Tarbela dam and hence was liable to suffer a far less quantum of system losses than the other proposed dam viz the Tarbela which of course was not in existence at the relevant time i.e the time of the expiry of the period stipulated in the Treaty for the completion of all works for providing replacement supplies to the affected canals of Punjab.

14. Mangla dam was accordingly constructed quite some time before the expiry of the period given in the 1960 Treaty for the expeditious and economical completion of all works for providing replacement supplies including Mangla dam.

15. In fact even the other dam proposed by the world Bank viz Rohtas dam was not needed for the replacement supplies proper as it was specifically stated by the World Bank that these two dams would provide 2 MAF for development viz for irrigating new lands in the whole of Pakistan.

16. But under the pressure of Punjab authorities exerted on Ayub Khan and his consequent threats to the World Bank at the very last moments of the last meeting. that if a bigger dam like Tarbela was not constructed with the aid of World Bank and others, Pakistan would be compelled to resort to war with India so as to die fighting rather than starving for

lack of water, the World Bank, an institution known to be under the influence of U.S.A and intrinsically connected with its global interests, in view of the close American-Pakistan ties at the time felt obliged to agree.

17. That under the circumstances involving Tarbela on Indus by Punjab authorities in replacement supplies for the eastern canals Trimmu, Panjnad and Islam on the pretext of their self-invented zoning system, in any manner whatsoever was absolutely unjust, improper and malafide. This high-handed act of virtual brigandage neither had then nor has now, therefore, any legal sanctity or effect.

Inflating the figures of water availability in the Indus System has been the traditional favorite pastime of the Engineers of the upper riparian of the Indus System. They fix an imaginary figure of availability by playing statistical games and say "this much will be taken by us. The rest will be for the rest of you, the other riparian." Most of the time, what remains for the rest, after they have taken their lion's share, turns out to be merely a fraction of what was very generously allotted to them.

This was done by IBAB and is being followed by WAPDA, a federal body in name and an extension of the Punjab Irrigation Department in practice. On proper investigation it would be found that the 1991 accord, the Kalabagh dam project and almost all projects of the WAPDA are based on this permanent, never decreasing miraculously high availability of water in the Indus System, which some how vanishes, as soon as the Indus enters Sindh and almost dries up ruining its agriculture. Today lower Sindh stands totally ruined by continuous acute water-famine since many years.

General Mushraf's military government does not feel obliged to respect the law of the land regarding the respective rights of the riparian. All generals were and are, of course, more wise, more power full and more patriotic than other mortals, by definition and by virtue of their uniform. General Mushraf seems, however, bent upon proving that he is wiser, more powerful and more patriotic than his entire

predecessor Generals. He is constructing the Greater Thal Canal day and night for his generals and colonels. He also wants to build the Kalabagh dam, and several other dams and canals to prove to the people of Punjab that he can do for Punjab's vested interests what Punjabi leaders like Nawaz Sharif and other popular leaders like Bhutto and Benazir did not wish to do or could not dare to do. There are, of course, the little matters, of there being no spare water in the Indus System for any dam building and canal constructing and there being a raging water-famine in the province at the tail, the Sindh province. Then there are a few other slightly in-convenient facts e.g that there are people in the three smaller provinces in Pakistan who do not see all those enormous quantities of water in the Indus System which General Mushraf has been shown by the WAPDA general-on-extension, General Zulfiqar, through the statistical mirages specially created by WAPDA for the purpose. They are coming on the streets to protest against what they regard as a planned genocide of crores of Pakistani citizens.

Genghis Khan of the Gobi desert did not like cities. He ordered the conquered cities to be vacated, plowed and turned into grasslands for his horses and the citizens to be beheaded and buried in graves dug by them.

Hitler did not much like Russia, the Russians and Russians society, as it existed in the forties of the last century. So he ordered a few changes, to be made in the Russian socio-economic and cultural system, if and when they were conquered by the Germans in the Second World War. The Russians were to have no colleges and universities, no industries and no cities. He ordered the re-making of Russia once again into a primitive pastoral and agricultural society producing and providing food and raw materials for Germany.

General Mushraf appears to want to change a few things about the geography and economy of Pakistan. He wants a beautiful desert on the Seacoast, on the southern side of Pakistan, in Sindh. In this Sindh desert, he wants the people to return to the idyllic pastoral life of their distant fore fathers, rear cattle

and other livestock and produce healthy milk, butter and meat for cities. In the Thal desert, he wants to build a dream-land of an oasis for the generals, who, he hopes will soon become billionaire land lords of the famous Prussian junker type and will rule Pakistan for ever and ever and make it a World Power.

General Mushraf is, indeed, not an ordinary general. He is a General of Commandos. And a Commando general is a Commando general and orders are orders. He seems to believe that since he has announced his orders about building more dams and canals, there is nothing for the people of Pakistan but to obey.

There is not to reason why
There is but to do and die
Into the valley of death;
Rode the six hundred.

(Alfred Lord Tennyson)

But the matter is not so simple. If wars are too serious matters to be left to the discretion of Generals, fair and equitable distribution of national water among the provinces being a thousand times more complicated and sensitive matter than any war, even a war like Iraq war, cannot be settled by the orders of even a Commando general. For, Iraq war's destruction will remain for a decade or two. Man can some how survive for some time without peace but never without water. Judging by the past history, the locking up of Indus at Kalabagh will turn Sindh into a desert and destroy the lives of crores of people in Sindh and many more in NWFP. Sindhis and Pashtoons will have no where to go, except to fight for their existence. This is going to have consequences for the whole of Pakistan which could go far beyond the longest possible rule of the present rulers and may prove to be worse than those of the East Pakistan debacles. This cancer-like situation has to be stopped from developing at all costs. Pakistan has already suffered enough from the adventures of Ayub Khan, Yahya Khan and Ziaul Haques. It cannot afford any more adventures.

Each and every sensible man and woman, throughout Pakistani must do all they can to stop this.

The era of tyranny of rulers and forcibly imposed decisions has gone on for too long. A new era of real democracy, genuine federalism, equality, fair-play and consensus building is long over-due.

The bulk of Sindh's share of waters had already been illegally plundered, especially after the establishment of Pakistan and long before the 1991 accord, as stated above.

Mangla dam, built at the expense of all Pakistanis, as the replacement dam for the illegally sold rivers, has been totally misappropriated and transformed from a replacement to a basically development dam for irrigating new lands of Punjab. Tarbela, the development dam declared to be meant for ".development and feeding of Sindh canals" has been forcibly captured by Punjab authorities who are using it as their exclusive property. As the first charge upon it has been imposed the providing of replacement and development supply of Punjab, no matter whether the minimum requirements of the Sindh barrages are satisfied or not. This is internal colonial high handedness, exploitation and terrorism in its most naked, blatant and cruel form.

Every further drop or cusec of water, that is being taken now or will be taken hereafter, from the Indus System, for any canal or dam, will to that extent, reduce the flow of Indus System Water towards the province at the tail viz Sindh and intensify its ruin and desertification.

Justice demands that the above enormous injustices to Sindh from the first days of the establishment of Pakistan be rectified before any further loose talk about further dams and canals. The alleged wrong doers in this respect include Prime Ministers, Presidents and federal and provincial governments of the country. So what is needed is an impartial and powerful, international judicial forum of the UN, OIC and SARC level to decide the matter. Justice delayed is Justice denied.

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