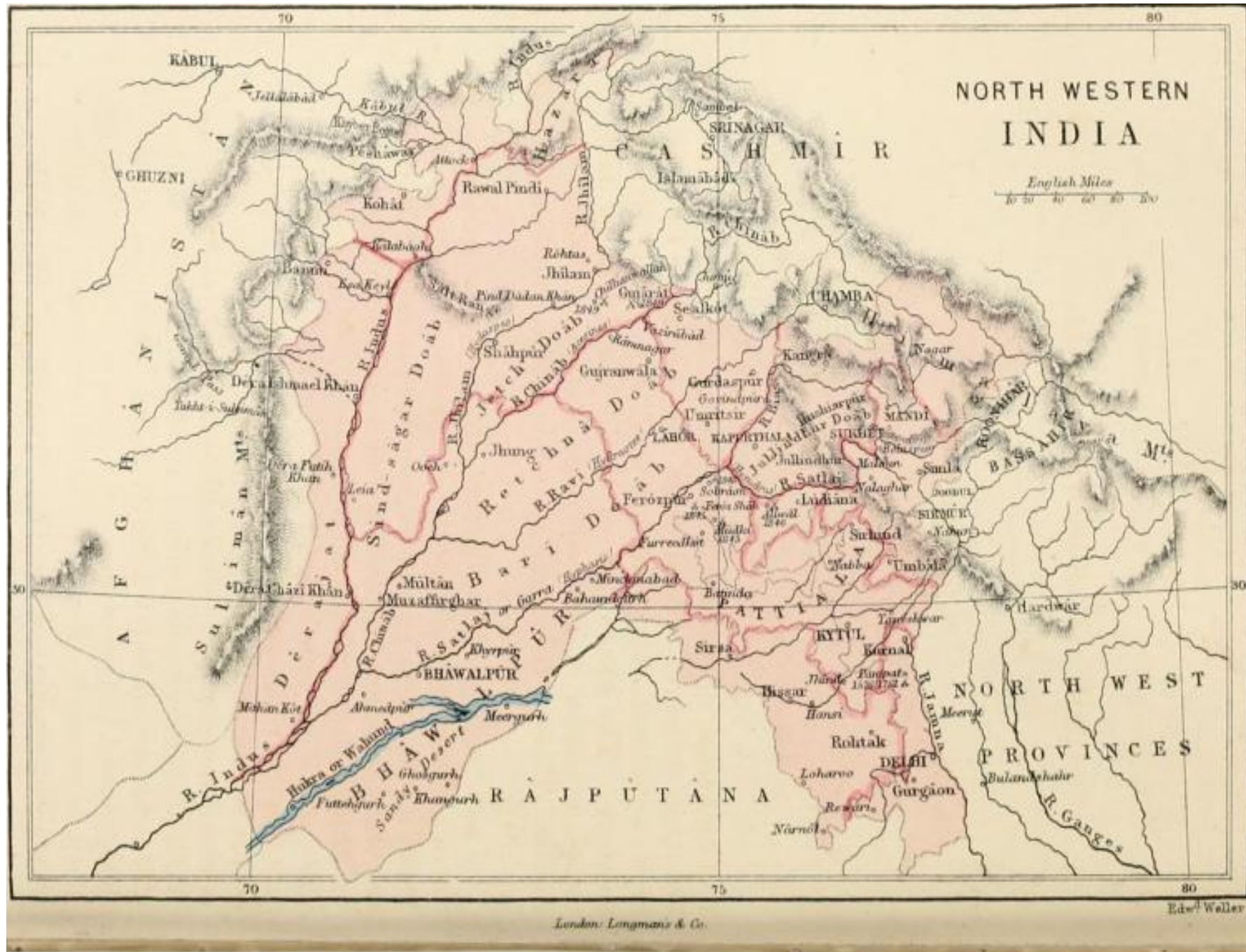


Pakistani Water Law

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Water and the Constitution

- Article 9 of the Constitution

“No person shall be deprived of life or liberty save in accordance with law”

- Interpretation of Environmental Rights by Superior Courts

- Shehla Zia vs. WAPDA PLD 1994 Supreme Court 693

Right to life included the right to a clean and healthy environment

- General Secretary Salt Miners Labour Union (CBA) Khewra, Jhelum v The Director, Industries and Mineral Development, Punjab, Lahore 1994 SCMR 2061:

“The right to have unpolluted water is the right of every person wherever he lives”.

- SUIT vs. Nestle Milkpak, 2005 CLC 424 (Sindh High Court)

“No civilized society shall permit the unfettered exploitation of its natural resources, particularly in respect of water.”

Outline

- Federal Laws
 - Constitution, IRSA Act, Easements Act
- Provincial laws
 - Irrigation and Drainage laws
 - PIDA laws
 - Balochistan Groundwater Ordinance
- Local Government laws
 - Local Government Ordinances

The Constitution - Federalism

97. Extent of executive authority of the Federation.

Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shura (Parliament) has power to make laws, including exercising of rights and jurisdiction in relation to areas outside Pakistan.

137. Extent of executive authority of the Province

Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws.

144. Power of Majlis-e-Shoora (Parliament) to legislate for [one] of more Provinces by consent.

If [one] or more Provincial Assemblies pass resolutions to the effect that Majlis-e-Shoora (Parliament) may by law regulate any matter not enumerated [the Federal Legislative List] in the Fourth Schedule, it shall be lawful for Majlis-e-Shoora (Parliament) to pass an Act for regulating that matter accordingly, but any act so passed may, as respects any Province to which it applies, be amended or repealed by Act of the Assembly of that Province.

Federalism - II

Pre-18th Amendment

142. Subject matter of Federal and Provincial Laws.

Subject to the Constitution-

- a) Majlis-e-Shura (Parliament) shall have exclusive power to make laws with respect of any matter in the Federal Legislative List;
- b) **Majlis-e-Shura (Parliament), and a Provincial Assembly also, shall have power to make laws with respect to any matter in the Concurrent Legislative List.**
- c) **A Provincial Assembly shall, and Majlis-e-Shura (Parliament) shall not, have power to make any laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative Lists; and**
- d) Majlis-e-Shura (Parliament) shall have exclusive power to make laws with respect to matters not enumerated in either of the Lists for such areas of Pakistan as are not included in any Province.

Post-18th Amendment

142. Subject matter of Federal and Provincial Laws.

Subject to the Constitution-

- a) Majlis-e-Shura (Parliament) shall have exclusive power to make laws with respect of any matter in the Federal Legislative List;
- b) **Majlis-e-Shura (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence.**
- c) **Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shura (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List.**
- d) Majlis-e-Shura (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.

The Constitution – Inter Provincial Matters

153. Council of Common Interests

- PM, 4 CMs & 3 members of Federal Government (nominated by PM)
- Responsible to Parliament; to present annual report

154. Functions and Rules of Procedure

- (1) The Council shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over related institutions

No. 3 of Part II of FLL:

Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest; institutions, establishments, bodies and corporations administered or managed by the Federal Government immediately before the commencing day, including the [Pakistan Water and Power Development Authority and the Pakistan Industrial Development Corporation]; all undertakings, projects and schemes of such institutions, establishments, bodies and corporations, industries, projects and undertakings owned wholly or partially by the Federation or by a corporation set up by the Federation.

→ CCI formulates and regulates policies for WAPDA

The Constitution, CCI & Water

155. Complaints as to interference with water supplies

- 1) If the interests of a Province, the Federal Capital or the Federally Administered Tribal Areas, or any of the inhabitants thereof, in water from any natural source of supply or reservoir have been or are likely to be affected prejudicially by-
 - a) any executive act or legislation taken or passed or proposed to be taken or passed; or
 - b) the failure of any authority to exercise any of its powers with respect to the use and distribution or control over water from that source,the Federal Government or the Provincial Government concerned may make a complaint in writing to the Council.
- 2) Upon receiving such a complaint, the Council shall, after having considered the matter, either give its decision or request the President to appoint a commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he may think fit, hereinafter referred to as the Commission.
- ...
- 4) After considering the report and supplementary report, if any, of the Commission, the Council shall record its decisions on all matters referred to the Commission.

The Constitution -Hydropower Benefit Sharing

162. Natural gas and hydroelectric power

The net profits earned by the Federal Government, or any undertaking established or administered by the Federal Government from the bulk generation of power at a hydro-electric station shall be paid to the Province in which the hydro-electric station is situated.

Explanation – For the purposes of this clause "net profits" shall be computed by deducting from the revenues accruing from the bulk supply of power from the bus-bars of a hydro-electric station at a rate to be determined by the Council of Common Interests, the operating expenses of the station, which shall include any sums payable as taxes, duties, interest or return on investment, and depreciations and element of obsolescence, and over-heads, and provision for reserves.

- CCI approved A.G.N. Kazi Formula in 1991
- WAPDA and KPK dispute
- Will improved water sharing reduce inter provincial tensions regarding hydropower development?

Federal Laws

WAPDA Act, 1958 (amended in 1994)

8. General powers and duties of the Authority and framing of schemes.— (1) The Authority shall prepare, for the approval of the Government, a comprehensive plan for the development and utilization of the water and power resources of [Pakistan] on a unified and multi-purpose basis

(2) The Authority may frame a scheme or schemes for [a Province] or any part thereof providing for all or any of the following matters, namely—

- (i) irrigation, water-supply and drainage; and recreational use of water resources;
- (ii) the generation, transmission and distribution of power; and the construction, maintenance and operation of power houses and grids;
- (iii) flood control;
- (iv) the prevention of waterlogging and reclamation of waterlogged and salted lands;
- (v) inland navigation;
- (vi) the prevention of any ill-effects on public health resulting from the operations of the Authority [; and]
- [(vii) Privatise or otherwise restructure any operation of the Authority except the hydel generating power stations and the National Transmission Grid.]

WAPDA Act, 1958

11. Control over waters, power houses and grids.— (1) Subject to the provisions of any other law for the time being in force, the Authority—

(i) shall have control over the—

(a) underground water resources of any region in [a Province];

(b) operation of [its] power houses and grids, including such ancillary works as may be considered necessary for their proper operation;

(ii) may make recommendations to the Government for prescribing standards for the—

(a) operation and maintenance of all irrigation works;

(b) maintenance of power houses and grids;

(iii) may make recommendations to the Government for promoting simplification of methods of charge for supplies of electricity and standardisation of the system of supply;

(2) Before the Authority exercises any control under clause (i) of sub-section (1), the area over which and the extent to which control is intended to be exercised shall be agreed to and notified by the Government in the official Gazette.

Water Apportionment Accord and IRSA

- Indus Apportionment Accord, 1991
- Indus River System Authority Act, 1992

6 Powers and duties of the Authority

- 1) The duties of the Authority shall be to:
 - a) lay down the basis for the regulation and distribution of surface waters amongst the Provinces according to the allocations and policies spelt out in the Water Accord;
 - b) review and specify river and reservoir operation patterns and periodically review the system of such operation;
 - c) coordinate and regulate the activities of the Water and Power Development Authority in exchange of data between the Provinces in connection with the gauging and recording of surface water-flows;
Explanation:- Actual observation and compilation of the data shall be the responsibility of the respective Provinces, Water and Power Development Authority and other allied organizations, while the process shall be monitored by the Authority;
 - d) determine priorities with reference to sub-clause (c) of clause 14 of the Water Accord for river and reservoir operations for Irrigation and hydro-power requirements;
 - e) compile and review canal withdrawal indents as received from the Provinces on 5-daily or, as the case may be, on 10-daily basis and issue consolidated operational directives to Water and Power Development Authority for making such releases from reservoirs as the Authority may consider appropriate or consistent with the Water Accord;
Explanation:- The directives issued under this clause shall be binding upon Water and Power Development Authority and the Provinces, and shall be followed in letter and spirit;
 - f) settle any question that may arise between two or more Provinces in respect of distribution of river and reservoir waters; and consider and make recommendations on the availability of water against the allocated shares of the Provinces within three months of receipt of fully substantiated water accounts for all new water projects for the assistance of the Executive Committee of the National Economic Council.

Easements Act, 1882

- An “easement” is a right over someone else’s land
- Section 7 Easements Act:
“Easements are restrictions of one or other of the following rights”, and including, inter alia, “The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel”
- Phillipe Cullet (SOAS):
The fact that existing rules directly derive from English case law is not surprising since the rules were developed in the nineteenth century. What is more surprising is that the rules were never adapted to the vastly different climactic conditions prevailing in India, whose climate includes arid and semi-arid tropical areas, tropical and subtropical rainy areas with only a small part of the country having climate conditions comparable to England. Further, these rules were never adapted to the completely different patterns of water use, for instance with regard to irrigation accounting for the overwhelming share of water use

Provincial Legislation

- Irrigation & Drainage Acts
 - Punjab, Balochistan and Sinds Canal & Drainage Acts
 - Punjab, Balochistan and Sindh Irrigation and Drainage Authority Acts
 - Sindh Irrigation Act, 1879

NOTE: No “right”; only “entitlements”

 - Balochistan Groundwater Rights Administration Ordinance, 1978
 - Punjab Soil Reclamation Act, 1952
- Provincial Environmental Protection legislation
 - Punjab Environmental Protection Act, 1997
 - Balochistan Environmental Protection Act, 2013
 - KPK Environmental Protection Act, 2013
 - Sindh Environmental Protection Act, 2014

➔ All prohibit the discharge or domestic or industrial effluent in excess of Provincial Environmental Quality Standards (PEQS)

Punjab Canal and Drainage Act, 1873

“Whereas throughout the territories to which this Act extends, the Provincial Government is entitled to use and control for public purpose ... sub-soil water.”

5. Notification to issue when water is required for public purposes. –

Whenever it is expedient to the Provincial Government that ... any sub-soil water be applied or used by the Provincial Government for any existing or projected canal or irrigation work the Provincial Government may ... declare that such water be so applied.

62-A. Management of Sub-Soil Water. (1) The Provincial Government shall take necessary steps for the proper management of the sub-soil water to protect the aquifer, the quality and availability of such water.

Punjab Soil Reclamation Act, 1952

Whereas it is expedient to make provision for the speedy reclamation and improvement of areas damaged by *thur* and *sem*, for preventing further damage and for maximizing agricultural production.

- Provides for a Punjab Land and Water Development Board
- The Board may prepare schemes for the reclamation of the local areas or for prevention of *thur* and *sem*
- Procedure for acquisition, compensation and development of land
- Once a scheme is sanctioned, “the use of underground waters in that area except water used for domestic purposes or for watering livestock shall come under the control of the Board” and the Board may frame rules to define such terms.

Thur means salt efflorescence at the surface of the land rendering the surface white, ash colored, black or brown or not discolored but presenting an oily appearance

Sem means the rise in sub-soil water-table so high that the water actually oozes out of the land or the land remains constantly damp

Balochistan Groundwater Rights Administration Act, 1978

- Provides for management of groundwater rights in Balochistan
- Statement of Reasons:

There is no law in Baluchistan regulating the use of water of tube wells/open surface wells within the vicinity of karezes. In some areas of Baluchistan there was a Riwaj that no well should be allowed to [sic] dug within the distance of 250 yards of the stony lands. There are certain areas in Baluchistan where most of the cultivators depend on the Karezes for their livelihood. Hydrological conditions in Baluchistan are not uniform through out the province like Indus Plain. The ground water reservoir also vary from place to place. It is, therefore, not advisable to provide a uniform policy for the entire Baluchistan for regulating the use of ground water. Areas having ground water resources are to be identified and declared as designated Ground Water Basins for which a law should be framed with a view of ensuring the maximum utilization of ground water resources. Hence this Ordinance.

Local Government Legislation

40A. Local Government. (1) Each Province shall, by law, establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments.

- Punjab Local Government Ordinance, 2001
 - District Council “to review the development of “integrated system of water reservoirs” (spring, well, tube well, pond, tank, water course, culvert and any channel for supplying water other than a canal, river, lake or stream).
 - Tehsil/Town Municipal Administration to provide, maintain and improve municipal infrastructure including water supply and control and development of water resources.
 - Union Councils to provide and maintain public sources of drinking water.
- Development Authorities
 - DAs have ‘exclusive right to use ground water resources of the areas under their control.
 - DAs may give permission to install tubewell for commercial purposes and may levy fees for use thereof

Thank You – Be Green