

## CONTOURS OF INDIA- NEPAL RELATIONSHIP AND TRANS- BOUNDARY RIVERS WATER DISPUTES

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### Abstract

*India and Nepal share about 1800 square kilometres of porous border; inhabit the majority of their members from the same religious group and have symbiotic interdependent on each other; yet they are engaged into disputes over many issues. It is always alleged by Nepal that India does not consider it as a sovereign country rather as one of its own administrative unit. The basis of this allegation is behaviour of Indian establishment and its epistemic community towards Nepal. The political tensions between the two countries have kept on surfacing at intermittent period and have influenced the water sharing arrangements between the two countries. Nepal alleges that as a powerful country, India exploits Nepal's natural resources for its own benefit. As a result many of the transboundary river water treaties have not been activated, some have been sternly opposed by the people from the catchment areas, and a few's future is hanging in the air. To overcome these problems and its dependency on India, many times Nepal has invited other countries to develop its hydropower sector. Amidst all existing differences the two countries share inextricable relationship because of geographical location and shared primordial identity.*

India and Nepal are linked by history, geography and economy. The two sovereign countries share a lot between them, still they have passed through various phases of tensed bilateral relationship. Even at the time of writing this paper the two countries are in quandary over the provisions related to Madheshis (an ethnic group) inserted in the constitution of Nepal promulgated in September 2015. Differences over the constitutional status of Madheshis have led to protests and blockade on India-Nepal border. Nepal feels that India has no right to interfere in its internal affairs, while India argues that it is pointing out constitutional injustice done to the Madhesis. A substantive number of Madhesis living in India<sup>1</sup> are critical about the constitutional provisions for their group and engaged in building

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1 As told by a few people from Nepal to whom the author met. Some of them were from Madhesh area but were very critical about the role of Indian government and fellow Madheshis. They used the words 'lobbyists' 'traitors' and phrases like 'on the pay roll of Indian intelligence agencies' for those who are supporting the causes of Madhesis from New Delhi and Kathmandu.

public opinion in India over what they feel constitutional injustice. In such sort of relationship, a question emerges: How bilateral relationship between India and Nepal influences their water sharing arrangements/agreements/ treaties? This paper is an attempt to study water sharing issue between India and Nepal by taking into account their bilateral relationship. Besides introduction and conclusion, this paper examines relationship between India and Nepal; discusses the various water sharing agreements the two countries has; and constitutional provisions inserted in the new constitution to safeguard Nepal's water resources. In this paper primary document compiled by A.S. Bhasin, draft constitution of Nepal, and documents of India-Nepal water sharing agreements have been widely used.

### **India-Nepal Relationship: Unique but not stable**

India and Nepal has open borders for each other's citizens, and people from one country is eligible for government's job in other country; yet the relationship between the two countries have witnessed many phases of bad weathers. Historically, the pre-2008, monarchy under the Shah Kings of Nepal (1768-2008) traces their roots in Sisodia rajputs of Rajasthan. In Nepal, they first established state in area marked as Gorkha under Driya Shah in 1559 (Muni 2015). As a part of their project to turn India into their colony, the British also attacked on Nepal. The Anglo-Nepalese war went on for two years and ended with the imposition of Sugauli Treaty on Nepal in 1816. Under this treaty British got rights to put up their resident in Nepal and use the Gorkhas as soldiers in their Army. The soldiers from Nepal were used by the British to put down the rebellion of 1857. Their role during that made them to categorise as a part of martial race, who were sought after to fight imperial wars for the British crown. The male from the region were on high demand during the both World Wars. The recruitment agents had recruited almost all male members to fight Second World War. In many villages there were not a single male left to look after the agricultural activities, which were then taken up by the women. The term *dukha* meaning sorrow is being used to describe the position of women and also address those who were recruited to fight the war (Khan 2015; Onta 2014). Still, folklore depicting that situation is popular in Nepal from where soldiers are recruited in the British, Indian and Nepal Army.

Later on as successor of British India, the Indian state used their service during the integration of Hyderabad in 1948, and when the situation precipitated

by Pakistan's tribal invasion in Kashmir (Muni 2015). To maintain this sort of relationship on 9 November 1947 Memorandum of Agreement was signed among the representatives from the Government of India, Nepal and the United Kingdom over the issue of recruitment of people from area called Gorkha/Nepal as soldiers in their respective Army. The agreement states that they will not be used against the Hindus (Bhasin 2005, 54-56). An issue regarding this was raised by the Nepalese legislators in 1987 when Nepali soldiers were sent to Sri Lanka as a part of Indian Peace Keeping Force (IPKF). The Government of India maintained that the soldiers were on Peace Keeping mission and to protect, not to kill the Hindu Tamils (Bhasin 2005 773).

India's security interests in Nepal were radically recast soon after independence when in 1949 China emerged as a communist nation and in 1951, militarily occupied Tibet. The geographical determinism of India's security interests in Nepal led the Indian Prime Minister Pandit Jawaharlal Nehru to build what came to be called as 'special relationship' with Nepal. This involved guarding Nepal's northern border, modernizing Nepal's defence capabilities and closely coordinating the foreign policy of Nepal (Bhasin 2005).

To secure their symbiotic interests India and Nepal signed friendship treaty in 1950. According to article VI of the treaty "Each government undertakes, in token of the neighbourly friendship between India and Nepal, to give to the nationals of the other, in its territory, national treatment with regard to participation in industrial and economic development of such territory and to the grant of concessions and contracts relating to such development" (Bhasin 2005, 94). And article says 'The Governments of India and Nepal agree to grant on a reciprocal basis to the nationals of one country in the territories of the other the same privileges in the matter of residence, ownership of property, participation in trade and commerce, movement and other privileges of a similar nature (Bhasin 2005, 94). Besides guiding security interests of India, the treaty was also a needed to protect age old prevailing *roti-beti*<sup>2</sup> relationship between people from *Terai* part of Nepal and north Bihar (Malhotra 2015).

Despite such arrangements, India-Nepal relationship was affected in 1950s due to Nepal's experiment with democracy and factionalism in the government

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2 A relationship based on marriage, family and food. As the people from terai and Indian state of Bihar shares common caste identity they enter into marital relationship. Even the erstwhile monarchs, prince and princess from India and Nepal had been related on the basis of marriage.

of the day over issues like occupation of the post of Prime Minister and President of the Party by B.P. Koirala and Bharat Shamsheer, leader of the Gorkha Parishad, volte-face over the issue of Nepal's relationship with India. Over both issues clashes in the street occurred, and gave 'legitimate' reasons to King Mahendra to intervene and re-capture the power (Whelpton, 2005: 98). During 1961-1979 King Mahendra took many decisions which created tensions between the two countries. He allowed China and Pakistan to build their presence in order to counteract India's pressure for the restoration of democratic order (Muni 2015). Not only the Chinese were allowed to build a road connection (Kathmandu-Kodari Road) but the Chinese traders and officials were also encouraged to make their presence in the *Terai*, a proximity to India's Indo-Gangetic heartland, through Nepal's newly established chain of State Trading Corporation outlets (Muni 2015). To India's dismay, in 1988-90 King Birendra purchased Chinese arms which was an effort to erode arrangements made in India-Nepal friendship treaty of 1950. In reaction India blocked the supply of goods to Nepal for thirteen months. This was also a period when *Janandolan I* (Movement for democracy) was going on against the monarchy in Nepal.

The relationship between India and Nepal was normalised in June 1990 after restoration of democracy in Nepal and visit of the then Prime Minister Krishna Prasad Bhattarai to New Delhi (Bhasin 2005, 797). From 1990 to 2005, in a span of fifteen years, Nepal has had many Prime Ministers because of intra party factionalism and rumblings. In 2005 the situation became volcanic for the second *janandolan* when King Gyanendra assumed direct executive power, arrested political leaders and declared emergency in the country. The movement was led by Seven Party Alliance (SPA)<sup>3</sup>, eventually succeeded in abolishing the monarchy and setting up of a democratic system and second Constituent Assembly (CA). During the transition of political system, India did play a significant role by not extending its support to King Gyanendra. After the new government was formed under the Maoist leader Prachanda, a fear was expressed about his behaviour towards India, but nothing that sort happened. He followed the traditional stand, may be due to institutional reluctance to adopt Maoist leaders stands on India.

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3 It included Nepali Congress, Nepal Congress (Democratic), Communist Party of Nepal (United Marxist-Leninist), Nepal Workers and Peasants Party, Nepal Goodwill Party (Anandi Party), United Left Front and People Front.

The CA set up in 2006 passed through various phases, and came up with a final Constitution in 2015. The provisions in this constitution, as the protestors and India, alleges is discriminatory towards many ethnic groups like Tharus, Madhes etc. The problem has been multiplied after the election of K.P.Sharma Oli, alleged to be anti-India, as the Prime Minister of Nepal in 2015. To check the situation, earlier India sent its Foreign Secretary S. Jaishankar on a last minute mission in calling off the inauguration of the Constitution and to make a concerted effort to keep Prime Minister K.P.Sharma Oli out of power. Both failed (Haider 2015). Nepal's new constitution has now made sweeping changes to the age old custom of roti-beti between two regions, insisting that Indian women marrying into the Madhes will be treated on par with other foreigners. Earlier Indian women marrying Madhesi men could relinquish Indian citizenship and take their husband's citizenship along with jobs in the country. Popular support to the political campaign is primarily based on destruction of this ancient tie. Nearly 75 percent of the Madhes has relatives in Bihar and Uttar Pradesh (Jyoti Malhotra 2015). On the issue of constitutional provisions for Madhesi, Kanak Mani Dixit writes, of the 116 (first-past-the-post) seats occupied by representatives from the Tarai-Madhes plains, 105 voted for the constitution while 11 boycotted. Only Madhesi people have been provided an identity-based province (province no. 2 of the east-Central plans) in the federal delineation (Dixit 2015). As for the set of seven demands that New Delhi is said to have placed before Kathmandu, including proportional representation in all arms of the state, adjustment of electoral constituencies according to population, as well as aspects of citizenship rights, these are the matters already been discussed between Madhes-based parties and the three main parties (Dixit 2015). Ostensibly, under the pressure from the movement for Madhes rights, on 22 December 2015, the government of Nepal agreed to make a few amendments in the constitution to address their grievances.

### **India-Nepal Water Issues: Disputes over Arrangements/Agreements**

The political relationship between India and Nepal was much needed to discuss to examine the water issues between the two countries. The state of bilateral relationship do influences their water sharing relationship or better says one reflects the other. Whenever the two countries had been in a good relationship they had signed agreements to exploit hydro power for mutual interests but when the relations deteriorate or opposition party comes into power in Nepal or

opposition groups become strong in the parliament, questions had been raised over such arrangements. This has caused delays in construction of projects or even re-visits of some agreed water arrangements.

Nepal is a small, but rich with water-resources, and upper riparian to all Indo-Nepalese transboundary rivers. It is estimated that the Nepalese rivers could generate up to 83,000 MW of hydroelectric power, which is more than the combined total hydroelectric power produced by USA, Canada and Mexico (Subedi 2005, 120). To harness the shared hydro power India and Nepal have signed various water-sharing treaties, but most of them have been either not operative or being criticised by the people from Nepal. Especially, public opinion in Nepal has always been very critical of Kosi (1954) and Gandak (1959) agreements. It is being maintained that as the barrages were constructed quite close to the Indian border, Nepal was unable to benefit from them. Had the projects been located further up in Nepal, it could have received a fair share of waters for irrigation from them (See Subedi 2005, Salman & Upreti 2002). Both of water agreements were revised in 1964 (Gandak) and 1966 (Kosi) respectively to accommodate the grievances of people from Nepal's catchment areas. However a deep distrust was created between the two countries in the area of water harnessing and no major project was undertaken until the signing of the Mahakali treaty in 1996.

In 1977 King of Nepal Briendra Bir Bikram Shah put forth the concept of regional cooperation in development of significant Nepali water resources (Dixit 1997). The regionalism over water issue is difficult to attain in south Asia because of following reasons (Iyer 2002, 365-395): *First*, in South Asia there is no agreement on what constitutes a basin? *Secondly*, the idea of planning for a basin or sub-basin as a whole has not made much headway even within India, so how come it participates in similar formulation with other country (ies). *Thirdly*, the commitment of Nepal and Bangladesh to the idea of basin-wide planning is imperfect. *Fourthly*, the language of 'integrated, basin wide planning' seems to carry implications of centralized technology driven planning, and 'regional co-operation' usually implies at the governmental or technocratic levels. Both these terms are needed to interpret in a wider sense so as to cover co-operation at the level of peoples, and for purpose beyond engineering and technological reasons. Besides these technical reasons the regional cooperation over water issue in south Asia is also difficult because of political animosities and trust-deficit among the water sharing members of the region.

***Kosi River Treaty***

The Kosi is the wildest river with the most devastating effects in the Indian State of Bihar, for which it is also referred to as the "sorrow of Bihar." Because of the seasonal damage it caused, a scheme to attenuate the effects of the Kosi was deemed necessary. The first Prime Minister of India Jawaharlal Nehru emphasized the importance of such a scheme. Referring to the strategy at the time of its initiation, Pandit Nehru stressed: "[I]t is my opinion that the Kosi Project is very necessary and should be somehow constructed. We must make a start even though it may take a few years to complete because, as you know, in some parts of Bihar every year a strange difficulty arises, bringing disaster and ruin (Salman & Upreti 2002 , 66).

Historically, the idea of tapping the waters of the Kosi had been discussed in India as early as 1896, but because of the absence of serious feasibility studies no immediate decision was made (Salman & Upreti 2002). This idea resurfaced in the 1930s, but again because of political uncertainties in both India and Nepal, no concrete decision was made. In 1951, after the overthrow of the Rana oligarchy, a new government was installed in Nepal and more focused attention was directed to the Kosi project. The Central Water and Power Commission of the Government of India prepared a scheme for harnessing the Kosi River that received the sanction of the Government of India in 1953. Thereafter, the scheme was endorsed by the Nepalese Government, following which the 1954 Kosi Agreement was negotiated and signed ( Salman & Upreti 2002, 69). But soon after its conclusion, the 1954 Agreement was sternly criticized by the opposition political parties in Nepal. Critics asserted that the Project did not benefit Nepal in any manner whatsoever, and that it granted extraterritorial rights to India for an indefinite period without providing Nepal with adequate compensation. Nepal would receive only a minute proportion of the total irrigated land and India would benefit more from the power resources developed by Nepal. Also alleged was that Nepal had to lose its fertile land without equivalent gains in exchange of it, and that the scheme was actually designed for the furtherance of India's own interests without paying proper attention to the well being of the Nepalese people (Salman & Upreti 2002).

The Kosi project as originally conceived was to be a 750 foot high dam at Barahakshetra in Nepal with a storage capacity of 11 million acre feet and 1200 MW power station. This was subsequently watered down to an 85-foot high earthen dam at Helka hills, nine miles downstream from the proposed high dam site (Bhasin 2005 xliiii). The smaller project was designed to generate only 68

MW of power and irrigate 1.52 million acre-feet. The scheme, which was finally implemented, consisted of only a barrage and embankments and a ring bund essentially as a flood protection measure. The location of the Kosi barrage was not the best from the Nepalese point of view. It provided flood relief to Bihar but it brought little benefit to Nepal ( Bhasin 2005 xlii).

As far as Kosi Project was concerned its revision in 1966 did not propitiate Nepal. In 1978 India agreed to finance yet another project to overcome Nepali resentment (Bhasin 2005 xlvi). A sum of 1805 lakh of Nepali Rupees was made available to Nepal for it to undertake the renovation and extension of the Chandra Canal, its distribution system and the related works to provide irrigation for net command area of 34,690 hectares in Nepal territory (Bhasin 2005, xlvi).

### ***Gandak Treaty***

Efforts toward harnessing the large irrigation potential of the river Gandaki had been made as early as 1871, although through informal channels. Formally, it was initiated in 1947 with the construction of a canal in Tribeni (Salman & Upreti 2002). In 1947 Dr. Rajendra Prasad, the then Food and Agriculture Minister of India, wrote to the Government of Bihar to explore the possibilities of constructing a canal system from the Gandak for irrigation. In 1951 a report was prepared in this connection and submitted to the Planning Commission of India, which accepted the proposal. This proposal was later forwarded to the Government of Nepal who also endorsed it, and in December 1959, an Agreement was concluded ( Salman & Upreti 2002, 83). The Gandak Project consists of construction of a barrage, canal head regulators and other appurtenant works about 1,000 feet below the existing Tribeni canal head regulator. The Project also involves taking out canal systems for purposes of irrigation and development of power for India and Nepal. While the Gandak Agreement mainly highlighted the common interests and benefits of both Nepal and India, it also specified that the Project was being built by and at the cost of Rs 50.5 crores to be borne by the Government of India. (Salman & Upreti 2002, 84)

Although not completely immune from shortcomings and criticisms, the provisions of the Gandak Agreement, from Nepal's perspective, certainly compare favourably with those of the Kosi Agreement (Salman & Upreti 2002). For instance, while Article 4 of the Kosi Agreement gave Nepal 50 percent share of the hydroelectric power that India generated as a result of the Project, it did not require India to produce any power ( Salman & Upreti 2002). In fact, India has not

generated any such power, thus depriving Nepal of the promised benefit. Again Article 10 of the Kosi Agreement stipulated that provision shall be made for free and unrestricted navigation at and around the barrage "if technically feasible," the qualifying conditional words providing a justification for India's doing nothing about navigation as required by the Article (Salman & Upreti 2002). As against 1.60 million hectares it was designed to irrigate in UP and Bihar states of India, it was only planned to provide irrigation for 15,800 hectares in Nawalparasi district of Nepal. The canals under the project were aligned in such a manner, that it led to water logging in large areas of Nepal( Bhasin 2005, xliv)

Both Kosi and Gandaki gave bad experiences to Nepal. In order to break the Indian stranglehold on its waters Nepal for some time toyed with the idea of regional cooperation for utilizing the waters of the Himalayan Rivers by bringing in Bangladesh and China (Bhasin 2005 xlvii). It had another compelling reason to suggest the regional approach. While India's interest in the waters was consumptive, besides generation of power and flood control, Nepal was more interested in the navigational aspect for easy and cheaper access to the sea through Bangladesh's territory (Bhasin 2005 xlvii).

The question of Nepal's participation in the India-Bangladesh talks on Ganga waters was discussed in November 1982 between Nepal and Bangladesh during the visit of President H.M. Ershad to Kathmandu. Ershad said he would devote his "best efforts" in talks with the Indian leaders on a proposal to link Bangladesh and Nepal through 29 kilometers strip of Indian territory (Bhasin 2005, xlvii). The water link was expected to give Nepal an outlet to the sea by linking Nepal's river-system with Attahrai river in Bangladesh. But he did not make any serious effort in this direction ( Bhasin 2005 , xlvii). In 1986 at Dhaka's insistence to involve Nepal to study the feasibility of storages on the Ganga for the augmentation of the Ganga flows, New Delhi agreed to discuss the issue in a tripartite meeting. The meeting of the experts of the three countries took place in October 1986. As expected it neither contributed to the solution of the augmentation problem nor did Nepal feel attracted to allow storages in its territory ( Bhasin 2005, xlvii).

### ***Mahakali Treaty***

The most controversial water treaty between India and Nepal is Mahakali river treaty, which was signed in February 1996( see appendix). This treaty is a classic case of "marry in haste and repent at leisure" as the impasse over its implementation demonstrates ( Gyawali and Dixit 2008, 280). The Mahakali River begins where

two rivers, the Kali originating in the Taklakot area in the east, and the Kuthi-Yanki originating in the Zanskar range of the Himalayas, meet at Kawa Malla in the Darchula District in Nepal (Salman & Upreti 2002). Both merges to form Mahakali river and flows southwest, where it makes numerous oxbow lakes and is joined by many tributaries, the largest of which are the Chamlia River and the Chavandigad River ((Salman & Upreti 2002). The efforts towards exploitation of the Mahakali River waters began before India's independence from Britain. The colonial government formalized with its Nepalese counterpart in 1920, the negotiations of the Sarda Treaty in the form of an Exchange of Letters. The treaty provided for the construction of a barrage on the Mahakali River (which is known as the Sarda River in India) at Banbassa bordering the present Mahendra Nagar in Nepal ((Salman & Upreti 2002). The main features of Sarda Agreement are (Qutub & Parajuli 2004, 162):

- (i) Nepal is to provide 4000 acres of land to India on the left bank (eastern side) of the Mahakali river for the construction of the barrage in exchange of 4000 acres of land located elsewhere and Rs 50,000 as compensation to Nepal.
- (ii) During the Kharif season (15 May to 15 October) India is to provide 13 cubic metres of water to Nepal from Sarda barrage which could be increased up to 28.34 cubic metres if there is surplus water available in the river. During Rabi season (16 October to 14 May) Nepal is to receive 4.25 cubic metres of continuous supply or being alternately closed and opened for ten days at 8.5 cubic metres whenever canal is opened.

After this agreement both the left and the right banks of the Mahakali in the vicinity of Sarda barrage belonged to India. Conflicts between India and Nepal over sharing the benefits of the Mahakali River started shortly after India's unilateral decision to construct Tanakpur barrage in 1983( Qutub & Parajuli 2004, 163). The later was 18 km upstream to Sarda barrage. Nepal had objections with Sarda treaty and it constantly tried to renew this treaty but it could not and the treaty continued for 76 years, from 1920 to 1996, when it was replaced by the Integrated Development of Mahakali River Treaty (Salman & Upreti 2002).

It included development of Sarda barrage, Pancheshwar project and Tanakpur barrage.

Tanakpur Agreement was signed on December 6, 1991. The Agreement provided for the construction of the left afflux bund (the retaining wall) on Nepalese territory for which the Nepalese provided 2.9 hectares of land. (MoU on Tanakpur Barrage Project, 1991). This MoU is being considered as a hasty decision and lopsided one in favour of India, so it is being highly criticized. It is being considered that then Nepalese Government, led by Girija Prasad Koirala, did not appreciate the legal, socio-economic and political ramifications involved in the issue, or decided to overlook them to appease India. The deal, which relinquished 2.9 hectares of land to India to build a dam and a 120 megawatt power station in return for a share of the water and power, was criticized by the most of political parties of Nepal (Iyer 2002, 365-395). Besides Tanakpur, stationing of the Indian troops at Kalapani presents the Mahakali treaty in bad light for the people of Nepal. Both are inextricably linked with each other (Gywali and Dixit 2008, 282)

The issue raised in the objections dealt primarily with a concern for Nepalese territorial sovereignty and a belief that Nepal had not benefited from the Project as much as India had. Those opposing the agreement argued that because the agreement dealt with natural resources it fell under the articles of the constitution and required ratification by a two-thirds majority of Parliament. A writ petition was filed in the Supreme Court, with the Prime Minister as one of the respondents, challenging the validity of the Tanakpur Agreement. The Supreme Court issued its verdict in December 1992, and concluded that the Tanakpur Agreement was indeed, a Treaty that required ratification by the Parliament, and was not a mere Memorandum of Understanding (Iyer 2002, 365-395). Under the treaty, Nepal's rights over Mahakali have been limited to as low as four percent, it is quite clear that much has been lost in this agreement. To hide their failure the political parties passed a stricture on the treaty through *sankalpa prastav* in parliament (Gwyali 2007, 54). The constitutional committee then in session ended up incorporating a provision in the constitution that any agreement covering utilization and distribution of Nepal's natural resources would need to be approved by a two-thirds majority of the members of both the houses present and voting in a joint session of Parliament- a Kosi- Gandak syndrome (Bhasin 2005, xlviii).

Post-Mahakali treaty, Nepal has raised various objections over it, due to which the project is yet to start. The Maoists even demand for re-visiting of this treaty. After this Nepal always shy away from entering any new arrangements over transboundary rivers water , though it has not raised serious qualms over continuation of old agreements and projects. In February 2012 in the first meeting of Joint Ministerial Commission on Water Resources in New Delhi, the move was made to set up Pancheshwar Development Authority to break the deadlock over construction of the multipurpose 6000 –MW Pancheshwar dam. The two sides agreed to fast track completion of the Detailed Project Report of Sapta Kosi High dam and the Sun Kosi Storage-cum-Diversion scheme by February 2013. India will also “study” the demand for compensation sought of crops and damage to land for water resources projects. India also responded positively to Nepal’s request for power from India. It was agreed to expedite the process for implementation of medium-term strengthening works for additional power supply to Nepal (The Hindu 17 February 2012).

As a sovereign country Nepal has maintained relationship with both countries, and never hesitates to welcome any proposal from China which is beneficial to it. This is not a new development rather is in practice since late 1960s. Over water issue as early as in 1978 Nepalese Prime Minister Kirtmidhi Bista in New Delhi in a Joint Communiqué on April 17, 1978 said that Nepal would be happy if China could participate in the regional development of water resources and could spare some finances for such development (Bhasin 2005, 696).

In 2014 during the Indian Prime Minister Narendra Modi’s visit to Nepal, the two countries signed hydropower treaties. On Arun-III the two countries signed Project Development Agreement. Pancheshwar and Upper Karnali projects too were pushed up (Times of India ,2014, 9 February) . There were minor dissensions against the deal from Communist Party of Nepal-Maoist and Communist Party of Nepal-United Marxist Leninist. Not only they but many political groups and people too, after 1996 have expressed reservations against the signing of any water treaty with India (Jaiswal 2014).

### **Constitutional Provisions To Secure Nepal’s Water Interests**

In its new constitution promulgated in September 2015 various provisions have been inserted to protect many of its water interests. Under article 55 (g), “the

state has adopted a policy to manage water resources. Both federal and provincial governments have regulatory rights over the rivers water". In article 55 m (2) a provision has been made which calls for the state to enter into treaties and agreements on the basis of equality and mutual interest, by reviewing past treaties. As mentioned above, Nepalese political parties have never been in consensus over many treaties and agreements signed with India. This particular provision inserted in the constitution may become an excuse to revisit a treaty or agreement one government entered into. As the constitution is in the infant stage it has to be empirically observe that how the government under different political groups or combinations are going to use this particular provision. Obviously, they cannot revisit and review all agreements and treaties, the previous government had entered into.

To protect the interests of the local community article 63 (4) have an arrangement according to which "the federation, province and the local level entity shall have to make arrangements for equitable distribution of the benefits from the development of natural resources. A certain portion of such benefit, royalty, services or objects, shall have to be distributed in areas affected by projects and to the local communities as provided for by law". Likewise, article 63 (5) says "when the federal, provincial and local level entity utilize natural resources, they shall have to give priority to local communities to make certain percentage of investment if they wish to do that in view of the nature and percentage in the investment". To manage its natural resources Part 25 has a provision to constitute National Natural Resources and Fiscal Commission.

### **Conclusions**

This paper discussed the India-Nepal transboundary water sharing issues, in light of political relationship between the two countries. It has maintained that both water sharing arrangements with India and political relationship has influenced each other. Nepal always alleges India for exploiting its water resources for the benefit of later. This is a reason why most of their bilateral water sharing treaties have been either re-negotiated or not been activated or taken a lot of time to come into effect.

This paper has also highlighted the meddling of India in internal affairs of Nepal and its assertion. Both have caused rise of anti-India sentiments in

Nepal. The common people from Nepal are against any form of interference by India. They maintain that India always considered them as an extension of its administrative units and not a sovereign country.<sup>4</sup>

This paper has also discussed about on-going blockade on India-Nepal border. The situation was made only more ridiculous by the decision of the Ministry of External Affairs to fly two batches of Indian journalists into Kathmandu to explain what the government calls the “Indian perspective”. To counter it the Nepal government planned its own propaganda offensive by taking Indian journalists to Madhes to see the effects of what Nepal calls a “blockade by India”(Haider 2015). Anyways, as the government of Nepal has agreed in principle to make amendments in the constitution, it seems that the stand-off between the two countries would come to an end soon.

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<sup>4</sup> This was expressed by the few Nepali to whom the author met. They were from diverse field like Member of a Parliament, University Teacher, Media Personal and Writer. They were unanimous on the issue that India is losing its ground in Nepal and they were all for inviting more and more engagement of China in Nepal. No one in the group was from Madhes ethnic group.

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