

**Tribhuvan University**

**NEPAL'S WATER RESOURCES SHARING: LOWER RIPARIAN RIGHTS WITH  
REFERENCE TO MAHAKALI TREATY**

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**By**

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**LETTER OF RECOMMENDATION**

I certify that this dissertation entitled "**NEPAL'S WATER RESOURCES SHARING: LOWER RIPARIAN RIGHTS WITH REFERENCE TO MAHAKALI TREATY**" was prepared by **Shyam Bahadur Regmi**, student of MIRD second year, Tribhuvan University, under my supervision. The research has fulfilled all the requirements as prescribed by the Central Department of MIRD, Faculty of Humanities and Social Science, Tribhuvan University.

The research work accomplished by the researcher is a novel one. I therefore, hereby recommend this dissertation for final examination by the Research Committee Master's in International Relation and Diplomacy, Tribhuvan University, in fulfillment of the requirements for the degree of **MASTER'S IN INTERNATIONAL RELATION AND DIPLOMACY**.

I wish him grand success in his future endeavor.

Thank you

Date: -April29, 2021

.....

Tejman Shrestha,

Faculty, MIRD

Supervisor

## **DECLARATION**

I hereby declare that this dissertation is my own work and that it contains no materials previously published. I have not used its materials for the award of any kind and any other degree. Where other authors' sources of information have been used, they have been acknowledged.

Signature:

Name: Shyam Bahadur Regmi

Date: April 29 2021

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## **ABSTRACT**

The demand of fresh water is increasing day by day due to the increasing number of population to fulfilling the requirements for urbanization and industrialization. The major challenging tasks in today's context is to lay out the suitable procedure specially for those countries which are the basin states of water resources or the countries which shares common international rivers.

Reasonable and equitable utilization of water of International River is today's major demand. In international arena common water resources can be taken for both aspects such as it has shown to be a good catalyst for cooperation between nations but on the other hand sometime it creates some disputes and misunderstanding between basin states.

South Asia is one of the regions that has had to deal with some of the most difficult disputes over international water rivers, while for some cases it has been successful to implement proper treaties and agreements in between the basin states.

The purpose of this study is to portray the nature of water relationship between India and Nepal based upon Mahakali Treaty. Additionally, the geographical condition, water sharing pattern, brief study of treaties and agreements associated with Mahakali Treaty also will be the central idea of this study. Highlighting the lower riparian rights according to the customary and international laws is another agenda of this study.

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## **LIST OF ABBREVIATIONS/ACRONYMS**

DPR- Detailed Project Report

FP- Foreign Policy

GCM- general Circulation Model

GLOFs- Glacial Lake Outburst Floods

GWP- Global Water Partnership

HOG- Head of Government

HOS- Head of State

HMG- His Majesty's Government

ICIMOD- International Centre for Integrated Mountain Development

ICJ- International Court of Justice

ICWC- Interstate Commission for Water Coordination

IIC- Imperial Irrigation Commission

IWRA- International Water Resources Association

JPO- Joint Project Office

KW- Kilo Watt

KWhr- Kilo Watt hour

MIP- Mahakali Irrigation Project

DIRD- Department of International Relation & Diplomacy

MoU- Memorandum of Understanding

MW- Mega Watt

MWhr- Mega Watt hour

PDA- Pancheshwar Development Authority

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# CHAPTER-I

## INTRODUCTION

### 1.1 Background of the Study

The future of world politics will be determined by some factors, among which natural resources are the crucial one. Among such natural resources, water resources are one of the significant factors for a country's intrastate relation. Water has become a significant instrument of power in interstate relation in Asia, stoking underlying tensions, festering competition, and exacerbating impact on ecosystems and impeding broader regional collaboration (Chellaney, July/August 2014, p.2, 3). Being a significant factor with multipurpose implication the value of water is increasing day by day. Sometimes better and understandable uses of water resources can promote regional cooperation.

According to the definition proposed by the United Nations water security as a global water agenda,

“The capacity of a population to safeguard sustainable access to adequate quantities of acceptable quality water for sustaining livelihoods, human well-being, and socio-economic development, for ensuring protection against water-borne pollution and water-related disasters, and for preserving ecosystems in a climate of peace and political stability.”

(<http://www.unwater.org/publications/water-security-global-water-agenda>).

In the present world, the preservation and protection of water resources is the main objective of a country to fulfill the demand and need of people and the sustainable development of a nation.

The economic, political, socio-cultural development of any nation more or less depends upon the foreign policy and the relation with neighboring countries. For Nepal commonly known as sandwich surviving between two biggest rivalry countries, the geographically attached countries are more strategic to continue their sustainable relationship with this country having a lot of potentiality of water resources. For India being a neighbor, it is not a surprising thing to pursue interest about water resources. As we can observe, during the period of the past decade Chinese investment in Nepal is increasing in the name of hydroelectricity, power project etc. On the other hand, Indian interest is extravagant in terms of water resources in Nepal. Despite the upper neighbor, here the researcher only will discuss the interest of lower riparian and water tensions.

Nepal-India relations have been growing ever since the existence of the two countries. Increased interaction at official and private levels, as reflected in the exchanges of visits, cooperation in economic, political, cultural, technical and other areas based on friendship, goodwill and understanding, are the hallmarks of bilateral relations. Having been the neighboring countries with many similarities, the two countries have huge potentialities of expanding their relations in a number of areas of mutual interest. Two countries have a friendly relationship from existence. There are so many aspects of friendship such as economic, sociocultural, political, trade and so on. The focal aspect of this study is about bilateral relationships based upon water.

The countries occupying an international river basin usually vary in their levels of economic development and technological capacities. Usually in each basin, at least one country is already a dominant regional power. These states place great strategic and economic value on the international water resources shared by both of the nations. The regional powers have the capacities

to take proactive steps in developing and implementing the projects which can alter allocation options of water or energy in such projects. If the downstream countries are relatively less powerful than upstream regarding water controlling aspects, conflict may be less likely, but social and economic insecurity can lead to greater political instability(Tiwari,2006, p.1684-1692). In our context as well, as observed by Tiwari, political instability has been experienced and can be expected because of such practice. In terms of our context, India seems as a powerful nation than Nepal. Having large territory, the major interest and need of India is to secure the water resources in contemporary period.

As an international river flows through or across the territories of two or more than two states, such states have the rights to benefit from such rivers. Such states are categorized as riparian entities; and "each state exercises sovereignty over the part of the river flowing through its territory"(Green, 1987 p.226). Rivers like Koshi, Gandaki, and Mahakali continuously flow to the Indian territory via Nepalese land. The importance of proper rules, regulations, and justices are highly significant between two countries in order to use the watercourses of common rivers

The sharing of water between Nepal and India is one of the major challenging issues for both of the nations. Geographically, many rivers are flowing continuously from Nepal to India, both countries are facilitated with the rivers passing through the territory of both nations. In such cases both parties should involve in proper provisions and procedures for being facilitated from this kind of river. Water treaties and agreements are important because of equal and rational utilization of common water resources. Historically, Nepal-India water relation was beginning in 1920 with Sarada Barrage agreement with the then British government of India and the ruler

Chandra Shamsheer from the Nepalese side. Due to having a minimum population and the situation at that time the water issues were negligible.

India and Nepal are sharing so many common rivers. Being an upper riparian, Nepal enjoys certain water rights for the river flowing toward Indian Territory. These two countries were able to reach an agreement since the beginning of the 20<sup>th</sup> century on the sharing of river waters but feelings of mistrust remain in the minds of many Nepalese. There are some treaties and agreements on water or river that were signed between the two countries, some of them create some sort of mistrust between each other.

The management of water resources plays a vital role in the economic development of any nation but in global context where the water projects, treaties driven by more than one nation create a particular political tension (Colombi and Bradnock, Mar-2003, p.43-64). Georgia's law of riparian rights is a natural flow theory modified by a reasonable use provision. In other words, every riparian owner is entitled to a reasonable use of the water in the stream, as it flows naturally across his property, subject to the disturbances caused by other owners' reasonable use of the water before it gets to him. Riparian proprietors have a common right in the waters of the stream. The natural flow cannot be diverted to, for example, create a new watercourse, but irrigation is a reasonable use. The question of water rights, that is, the right to use the water, is distinct from the right to go on the water and boat, fish or swim. Owners with property bordering on a watercourse generally have a right to reasonable use of the water itself, but not necessarily a right to go on the water. Non-riparian owners (i.e., owners owning land not adjacent to the water) can acquire the rights to water from riparian land, and water from riparian land can be used on non-riparian land. (<http://www.ga-lawyers.pro>) Specially, in context of

Mahakali River, it is the boundary (border) river which is passing through the territory of both of the nations. The sub-rivers of Mahakali are arising from both countries (Gyawali & Dixit, 1999, pp.553). Though the treaty under Mahakali River is bit complex in comparison to other water treaties. Though, both countries should pass through the legal provision in order to utilize the water of Mahakali River.

### **1.2.Lower Riparian Rights**

The convention on the Law of the Non-Navigational Uses of International Watercourses, 1997 provides that watercourse states shall in their respective territories utilize an international watercourse in an 'equitable and reasonable amanner' (Malcom N. Shaw, 2003, p.793). The International Law Association, a private organization of international lawyers, proposed the Helsinki Rules on the Uses of the Waters of International Rivers in 1966, in which it was noted that each basin state was entitled to a reasonable and equitable share in the beneficial use of the waters (Reports of the fifty-second conference, 1966, p.484). The dynamism in the international water courses dispute can well be illustrated in the origin, growth, continuation and efforts to resolve the water dispute in the south Asian region.



### **1.3.Statement of the problem**

So many fluctuations might have emerged in Nepal's domestic politics after some water treaties and agreements between Nepal and India. Some kind of mistrust is building among the civilians of both nations after promulgation of water treaties and agreements such as Mahakali, Gandak and so on.

Most of the people from Nepal observe water treaties and agreements irrational and biased, because India is much more facilitated with the maximum utilization of water. In the context of Nepal's case, a tiny amount of water is utilized in comparison with India. Treaties are significant for India to secure water for irrigation and power projects. On the other hand, proper management of water is a crucial task for long term perspective. We should think precisely, deeply in order to use tomorrow's water to fulfill today's demand.

Scholars, academicians, political intelligent bureaucrats have explained and shared their views, ideas, knowledge about Nepal's water potentiality and its acquaintance in international boundaries through the medium of many articles, journals, and communications. However, some gaps and puzzles which were not fulfilled by previous scholars, academicians like how Nepal copes up with the situations of contemporary circumstances regarding water resources with neighboring nations. The main purpose of this research is to find the water issues related to Mahakali Treaty and address the appropriate solutions. The following mentioned statement of problems have been formulated for this study:

- a. What kind of challenges and obstacles Nepal has been suffering in terms of water treaty and agreement with India in Mahakali river water consumption related treaty?

- b. What kind of procedure Nepal should follow in order to maintain lower riparian right in water sharing?

It is highly essential to know about the water sharing provisions between India and Nepal because; none of the treaties are equally entitled for Nepal. So, the objective of this study is also to lay out the proper causes, provisions and solutions in this regard. This academic research is done in context of determining the present challenges and problems faced by Nepal presenting the geopolitical country's interest and finding the relevant solutions.

#### **1.4. Research Questions**

This study will answer the following questions in order to fulfill the given objectives of the research;

1. What is the plight of the water resource sharing of Nepal with India under Mahakali Treaty?
2. How could we justify the riparian rights in water resources sharing in terms of Mahakali Treaty?

#### **1.5. Objectives**

In order to meet the goals of the dissertation title, followings will be the specific objectives;

1. To discuss the plight of water resources sharing among Nepal and India.
2. To explore the lower riparian rights under Mahakali Treaty.

### **1.6.Limitation**

This dissertation is constructed for the purpose of partial fulfillment of Master's Degree in International Relation and Diplomacy, there are lots of problems in context of bilateral relationship however the study is going to be done under the boundary of two nations Nepal and India. The researcher has not evaluated it from all angles, anyway this study only focuses on the concern of water resources sharing and lower riparian rights based upon Mahakali treaty. The researcher might explore more evidences from Nepal's side as a pro-Nepalese citizen. Non availability of sufficient previous academic research on this area is the biggest limitation for this study. Time and resource constraint appears to be a very prominent part of the subject understudy. Despite the limitation of study, best effort will be tried to find out the truth precisely as far as possible.

## CHAPTER-II

### LITERATURE REVIEW

#### 2.1 Introduction

This chapter will attempt to review the available literatures which are related to this dissertation topic. Mainly this study will be concentrated in 'Nepal's water resources sharing and the lower riparian right reference to Mahakali River', where it mainly focuses on the Nepal-India water issues, tensions and agreements regarding water resources under Mahakali Treaty.

Due to the increasing number of population, The International water discourse is becoming significant day by day.

More than 40 percent of the world's population is living in the trans-boundary river basins area or their better survival (UN, 2008). Sometimes conflict among the national and international interests used to rise in the context of water resource management but on the other hand trans-boundary rivers have also provided the significant opportunity for regional cooperation and establishment of regional peace and security.

Despite the use of physical properties of water there are other significant features as well. Water relations between two nation alters the entire aspects. Water is "not merely a physical phenomenon, but also a set of ideas, material practices and power relations" (Garrick 2016, p.154), the relation between the two countries depends upon their geographical location, historical background, natural resources and the foreign policy they have formulated. Water we can perceive as an ultimate requirement for human beings. In international context the border or the boundary river determines the relationship between the countries. It is essential to minimize

the confrontation by cooperation in order to strengthen the relationship among the states.

Though, the international water resources can be taken as a complete set of ideas and the factor which affects political, social, cultural and economic relation between two states. Though, hydro politics determine the relationship between society, rivers and state.

As a small developing country between two emerging power the ultimate interest of Nepal is to have a speedy development and moving forward to maintain the better relationship with growing superpowers (Subedi, p.1). A country having no access to the sea is another challenge for the rapid development in this case priority should be given to maintain the balance relationship between both neighboring countries. Talking about India seems like playing a double standard policy whereas the relationship with Nepal as a lower riparian and a relationship with Bangladesh as an upper riparian (Subedi, p.1). The policy of India with Nepal vis-à-vis Bangladesh can be different to achieve the national interest.

International water conflict is still a new field of enquiry where theoretical ingredients are still growing. An international river basin links all the riparian states in a complex network of environmental, economic, political and security interdependencies. Riparian structure refers to how the political units are arranged in a geographical space, or what the comparative locations of political units in the given river basin are (Tiwari, 2006, p.1684). Water scarcity is increasing day by day due to the increasing number of populations. Water issues are growing day by day, in this situation each and every nation is trying to increase their access to water resources in the name of treaties and agreements with neighboring nations. The riparian structure highly matters to the contemporary political and inter-state relationship.

According to recent analysis of satellite data measuring fluctuations in gravitational force on the earth's surface, the South Asian subcontinent and the Tibetan Plateau, which the Himalayan, Hindu Kush, and Karakoram Mountain ranges, are losing groundwater. While climate change might affect the replenishment of some stocks of groundwater, or lead to their contamination due to salt intrusion from rising sea levels, groundwater loss is due mainly to overuse for irrigation. This is a classic "tragedy of the commons" scenario, in which the small-scale unsustainable actions of individuals aggregate into enormous collective losses. Pakistan, for example, which is a very arid country, depends on groundwater for more than 50% of its irrigation and is especially sensitive to this trend. The United States can support the buildup of scientific cooperation, share its experiences with regional cooperation, and use its great technical and diplomatic resources to encourage more productive political relationships. The recent National Research Council report *Himalayan Glaciers: Climate Change, Water Resources and Water Security (2012)* is a good example of how the U.S. scientific community can collaborate with local scientists and hence assist in understanding the region's water stress (Matthew, 2013, p.42). Future is going to be more complicated in terms of bilateral and multilateral waters resources sharing mechanism. A collective action should be initiated from policy level to protect and preserve the water resources. Before Mahakali Treaty there were several treaties and agreements signed between Nepal and India. Koshi Agreement which was signed in 1954 one of the biggest rivers in Nepal. It is said that it was primarily initiated by India to meet its requirements or solve the problems which include some benefits to Nepal as well. A dam was constructed where 95% of water went to India and only 5% to Nepal. However, the dam was constructed in Nepal's territory giving limited facilities to Nepal. The scenario has been changes before and after the construction of Dam. Previously the Bihar part of India have been affected massively by flood but after the

construction of this project the problem has been resolved which we can consider as a great achievement for India. Whereas, some parts of Koshi in Nepal started to face the flood issue, in this point of view, The Treaty become unjustified for Nepal (Tabassum and Idriks, 2004, p.53). Even now, the project is suffering from poor design, lack of proper engineering and maintenance. The Koshi agreement somehow created a bitterness in India-Nepal relations. After the bitter experience of Koshi agreement, Nepalese leaders became careful in terms of concluding any treaties and agreements with India. As a result, no progress could be made in context of Karnali, Pancheshwar and Saptakosi. Mahakali is a boarder river following the Nepalese territory of Darchula, baitadi and Dadeldhura districts. In 1920, when the British Indian government decided to build Sarada barrage to irrigate the United Provinces, it concluded with the Nepalese government of that time, a treaty under which it was agreed that Nepal would transfer 4,000 acres of the eastern banks of the Mahakali to India to build Sarada barrage. After a major flood in 1953 in the Mahakali area, India extended the left afflux bund of the Sarada barrage about 100 meters into Nepalese territory. In 1971, Nepal, with World Bank assistance, began its Mahakali Irrigation Project to utilize its share of the waters of the river, which it was allowed under the 1920 Sarada agreement (Tabassum and Idriks, 2004, p.54). During the Nepalese Premier's visit, India and Nepal concluded an agreement on Tanakpur project, which was not called a treaty, rather an understanding by the then Nepalese government. Under this understanding, the Government of Nepal allowed the construction of 577 meters left afflux bund on its territory, to prevent a recurrence and to ensure greater poundage of water at the dam site (Tabassum and Idriks, 2004, p.54). The debate was that the so-called understanding should be considered as a treaty and, therefore, must be ratified by the Nepalese parliament.

The cooperative relationship between India and Nepal has further exacerbated by the construction of a large number of dams by India in unilateral ways along the Nepal-India border. Construction of such unilateral dams is against the international water laws. According to the Helsinki Rules, construction of dam within 8km of border unilaterally is prohibited. Large parts of areas in Nepal faced problems of inundation due to the unilateral dams constructed by India. 17 places were acknowledged which created inundation problem in Nepal due to the construction of the dams by India. Several water resource projects which were initiated by International funding agencies in Nepal were undermined due to the direct or indirect pressure by India. The light at the end of the tunnel in relation to the water resource cooperation between India and Nepal can only be seen if officials in India realize the genuine grievances from the Nepalese side. Several intellectuals have realized the damaging effects of the past water treaties with India, though only in a piecemeal manner. The implementation of most of the treaties between India and Nepal suggests that India is more interested in water than power from Nepal. However, a poor and developing country like Nepal has no other choice than to export the power generated from the fast-flowing rivers of Nepal (Subedee, p. 5-6). However, later realization has gained grounds especially through the initiative of people`s based groups that the future of Nepal-India water issues would hinge on mutual cooperation and not power politics.

Political relations between India and Nepal which had become very bad indeed during the Rajiv Gandhi period had begun to improve significantly with the advent of parliamentary democracy in Nepal and changes of governments in India. Despite the Tanakpur contretemps, this trend continued. A new chapter in Indo-Nepal relations was opened with the Mahakali Treaty of February 1996. The signing of the treaty was preceded not merely by negotiations between the two governments but also by extensive informal consultations covering all parties in Nepal so as



to facilitate the process of parliamentary ratification. After much difficulty and suspense parliamentary ratification by a two-thirds majority also came through. Now the treaty is in force and in the process of implementation, but that process has been stalled by some differences. However, before going into those problems, it is necessary to take a quick look at the contents of the treaty (Iyer

The treaty is 'concerning the integrated development of the Mahakali river'. The preamble describes the river as "a boundary river on major stretches between the two countries", and the Treaty itself as a "treaty on the basis of equal partnership". The treaty covers the Sarada Barrage,<sup>3</sup> the Tanakpur Barrage and the proposed Pancheswar project, and replaces earlier understandings on these matters. From the Sarada barrage, the treaty gives Nepal 1,000 cusecs of water in the wet season and 150 cusecs in the dry season, and provides for this water to be supplied from Tanakpur in the event of the Sarada barrage becoming non-functional; it also includes the interesting provision that not less than 350 cusecs shall flow downstream of the barrage to maintain and preserve the ecosystem of the river. On Tanakpur, the treaty re-affirms Nepalese sovereignty over the land (2.9 ha) needed for building the eastern afflux bund, as well as the 9 ha of pondage area. "In lieu of the eastern afflux bund" (presumably this means "in consideration of..."), the treaty gives Nepal the right to 1,000 cusecs of water in the wet season and 300 cusecs in the dry season; and 70 million kwhrs of electricity (as against the earlier agreed figure of 20 million kwhrs). As and when the Pancheswar project comes into being and augments the availability of water at Tanakpur, Nepal will be provided with additional water and additional energy, with Nepal bearing a part of the cost of generation of incremental energy. There is a provision for the supply of 350 cusecs for the irrigation of Nepalese part that is Dodhara-Chadani area.

Regarding to the treaty itself, there is a difference between the Indian and Nepalese views on what the 'equal sharing' principle implies. From the fact that the Mahakali is a boundary river (let us ignore for the moment the qualification "on major stretches"), the Nepalese draw the inference that it belongs equally to the two countries, and therefore that half of the waters of the river belong to Nepal. The Indian view is that there is no warrant for drawing this kind of inference: that the river can be used by the two countries but does not 'belong' to either; that in particular, any doctrine of ownership of flowing water and the implied right of the upper riparian to 'sell' the water so owned to the lower riparian (who would in any case receive that water naturally by gravity flow) seems non-maintainable; that 'equal sharing' really applies to the incremental benefits (including the storage of waters in the reservoir) to be created by the Pancheswar project; and that the relative benefits gained by the two countries would determine their respective shares of the capital costs of the project (Iyer, 2018, p. 1511) This is a matter for discussion. However, the Nepalese government, while explaining the merits of the treaty to parliament and the public, seems to have made the (questionable) claim that the Indians had been persuaded to deviate from the Helsinki principle of 'equitable apportionment for beneficial use' and accept that of 'equal sharing'. If so, it would appear that the Nepalese have made their own task somewhat more difficult.

Pancheshwar was a dam that India had wanted all along for over two decades but for which Nepalis had not shown much interest because of their smaller requirements for water and power. There was also a lack of clarity from the Indian side regarding power purchase price as well as valuation of irrigation benefits and India's security concerns over control of the dam that would have compromised Nepal's sovereignty. Former prime minister Kirti Nidhi Bista had warned the powerful general secretary of the UML and deputy prime minister Madhav Kumar Nepal before

the latter left for talks with New Delhi that he did not agree to the Indian demand on Mahakali. He said that he had turned down Indira Gandhi's request for a pact on the Mahakali in 1972. The minority UML government, however, was not able to push it ahead because of differences within its ranks about the implications of the 'package deal'. Also, it soon got embroiled over the controversial Arun3 hydroelectric project from which the World Bank withdrew support in August 1995 during its tenure, allowing the Nepali Congress to blame it for 'setback to development (Gyawali and Dixit, 1999, p.557). Political inconsistency is another practice for Nepal to formulate the strong and long-term interests in terms of treaties and agreements. It is highly important to raise a collective voice when it comes as a national goal.

The United Nations General Assembly (UNGA) adopted on December 20, 2010 and it has been addressed accordingly that all member states of the United Nations system and all the other actors to take advantage of the Year to promote actions at all levels. Such actions include encouraging international cooperation, aimed at the achievement of the internationally agreed water-related goals (Salman, 2013, p.1). It is important to initiate a policy level of actions and implementations to get the collective goals.

Article 7 of the convention on the Law of Non-Navigational Uses of International Watercourses provides that watercourse states concerned, the conservation, protection, development and economy of use of the water resources of the watercourse states. Any harmful causes created must be solved by the stakeholders in an appropriate procedure (Shaw 2003, p.794). At the same time, it is equally important to preserve the ecosystems of international watercourses and shall act to prevent, reduce and control pollution of an international watercourse that may cause significant impact to other watercourse states or to their surroundings.

## **2.2 Historical Context**

The Nepal-India water relation was beginning in the form of treaty in 1920, an agreement on the Sarada Irrigation Barrage between British Government in the United Province in India and the Rana regime in Nepal. The main purpose of East India Company was to irrigate the western plains through the barrage. The East India Company started to build the Sarada barrage just after the completion of the Upper Ganga Canal (UGC) in 1854. However Indian government did not get the proper support from local side, which led the idea to build the Sarada Barrage. The government of United Province identified the suitable site for the eastern flank of Mahakali River within Nepalese territory. Negotiation had begun in 1910 between the United Province government and the Rana government of Nepal. Both of the government have become with the conclusion that the sharing of 4000 acres of Nepalese land in order to share the Mahakali River. Rs.50000 was provided from British government and Nepal got to receive 230 cusecs of water from the Sarada Barrage. In 1920, the land at Brahmadevmani has been provided for the construction of Sarada Barrage, in 1983, the National Hydro Power Corporation (NHPC) promulgated the proposal to construct the Tanakpur Hydropower Plant within Indian Territory just upstream the Sarada Barrage. The purpose of Tanakpur Barrage is to Generate 120 MW of Hydro-energy. After the response from Nepalese side the entire project has been changed and the water was discharged into the Mahakali above the Sarada Barrage (Shresta & Adhikari, 2009, p.72-75). An Indian idea of constructing a project in Nepal and getting maximum benefit through the project is not justifiable.

At the time of Multiparty Democracy in Nepal in 1990, the Tanakpur issue led to the dispute between two nations, but later the dispute was over where Nepal had permitted the construction of an afflux bond in order to complete the barrage in a boundary river. The first Memorandum of Understanding (MOU) was signed by Nepalese Prime Minister Girija Prasad Koirala during his visit to India in 1991. Again the MOU was revised in 1992 during the visit of Indian Prime Minister Narasimha Rao to Nepal, concluded by the Integrated Treaty on the Mahakali River signed in 1996.(Shresta & Adhikari, 2009, p.72-77). After the construction of Tanakpur barrage, the Union Government of India (UGOI) maintained it as an Indian project where Nepal does not have the right to interfere. From Nepal's side, demand was raised that not to harm the Nepalese territory through which UGOI permitted to build the left afflux bond 577 meters in Nepali territory to minimize the risks of erosion and flood. The Tanakpur Barrage was concerned as a project to generate electricity and Sarada for irrigation. The dispute regarding Tanakpur was over in 1996 when the Mahakali Treaty was signed on deriving both power and irrigation benefits with constructing the Pancheshwar High Dam Project.

According to the article on Hydro diplomacy in South Asia by Prof. Subedi, Numerous rivers originate in the Nepalese Himalayas and flow through the valleys and plains of Nepal to India, and ultimately to the Bay of Bengal. These rivers can provide great potentiality of hydroelectric power and irrigation capability. Nepalese rivers have capacity to produce more than eighty thousand MW of electricity simultaneously with the benefit in favor of irrigation the low-lying parts of Nepal as well as the fertile Indo-Gangetic plains of India. That is one reason why India became interested as early as the 1950s in utilizing the Nepalese rivers in the interest of both India and Nepal (Subedi,1999, p.954). Many Nepalese however, took the view that India was keen to exploit Nepal's hydropower potential to its advantage, they argued based upon the

experience from the Koshi and Gandak agreements of the 1950s. The major agenda of this treaty is to concern about the integrated development of the Sharda Barrage, Tanakpur Barrage and Pancheshwor Multipurpose Project within Mahakali River.

Kosi Agreement (1954) created some breach in Indo-Nepal relation. Was essentially conceived by India 'to meets its requirements or to solve its problems' (Tabassum & Idrits,2004, p.51,52). This project was built in Nepalese territory which gave minimal benefits to Nepal. After the construction of the barrage Nepal has to bear some flood problems in some areas. On the other hand the barrage has issues of poor maintenance, poor design and lack of proper management which could be crucial factor for possible disasters. However, in present context, somehow the flood affected arena of Nepalese territory has been managed. This kind of experience makes Nepalese politicians careful about concluding any new agreement with India. This might be the crucial factors for the progressive movements in regard, Karnali, Pancheshwar, And Saptakosi. Though, the water relation in between India and Nepal is passing through complex situation.

The Nepal-India relation was also deteriorating after the Indian unilateral decision in order to build the Tanakpur project without consulting with Nepal in 1983. The Indian scholar says, 'it was a very minor matter of a small piece of land nearly 2.9 hector being used by India in terms of building the eastern afflux for the protection of Nepalese territory from possible backwater affects from the Tanakpur Barrage (Tabassum & Idrits, 2004, p.53). The major challenging things for Nepal are how to come up with the better resolution for the issues created by the unequal distribution of water. Due to the increasing demand of water and energy it is essential for Nepal to make the water resources more secure through the strong strategies and managerial tasks.

Mahakali Treaty was signed by a more than two-thirds majority of Nepali parliament through constitutional requirement of article 126. The parliament passed a stricture (*sankalpas*) before the ratification of the treaty. The four elements of the stricture are, 'avoided cost' principle for Nepal's electricity by India, Mahakali commission constitution with the agreement of the opposition party in the parliament, equal right or entitlement in the utilization of water of Mahakali, major stretches between two countries are same for Mahakali as a boundary river. (Gyawali & Dixit,1999, p.558).

Different political parties have issued statements to put forward their perspectives on the Tanakpur Treaty initialed between Nepal and India alleging that despite the claims to have achieved 'notable gains' from the treaty and attempt to snatch credit for it, Nepal failed to obtain what it actually had to do. At the time of signing the treaty between Nepal and India, Prime Minister Sher Bahadur Deuba has said it is the symbol of success in bilateral ties. But it was not able to functioned which it should. Foreign Minister Dr. Prakash Chandra Lohani has said that the integrated Mahakali River Basin Development signed with India has established Nepal's right on the basis of equality (Gyawali & Dixit,1999, p.558). He noted that though the study on the Mahakali river was initiated on 1997, the treaty has been signed only after India accepted significant proposals on rrigation, electricity, flood control, construction of power houses jointly, price fixation and construction of a joint- Mahakali River Commision. Though, in every agreement and treaties India always tried to play a role of 'big brother.' This is not a good task as a neighbor.

## CHAPTER- III

### CONCEPTUAL FRAMEWORK/ RESEARCH METHODOLOGY

#### **3.1. Conceptual Model:**

A conceptual model offers an organized way for research design and methodology. It also helps develop and test hypothesis and interventions based on the principle of a certain theory (Radwin and Fawcett, 2002). Conceptual models are global in scope & are not as well developed as theories. They can also serve as a basis for a research study. Unlike theories, conceptual models do not follow the deductive process that it applies to its propositions. it is important to note that not all theories begin as conceptual models, and not every conceptual framework can progress into theories.



Comparing old treaty with new treaty procedure:

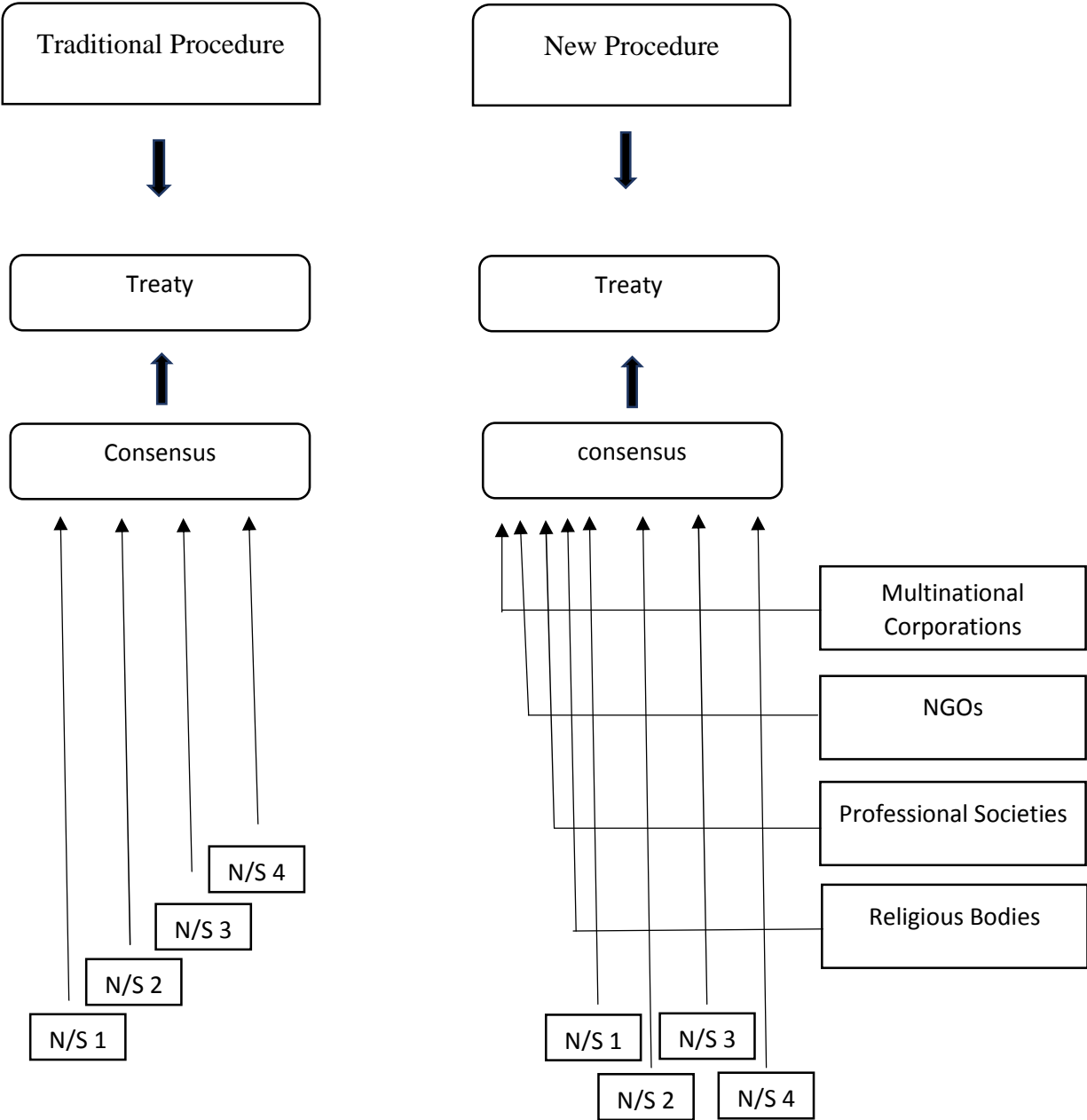


Fig:1 Flow chart showing the traditional and Modern treaty procedure

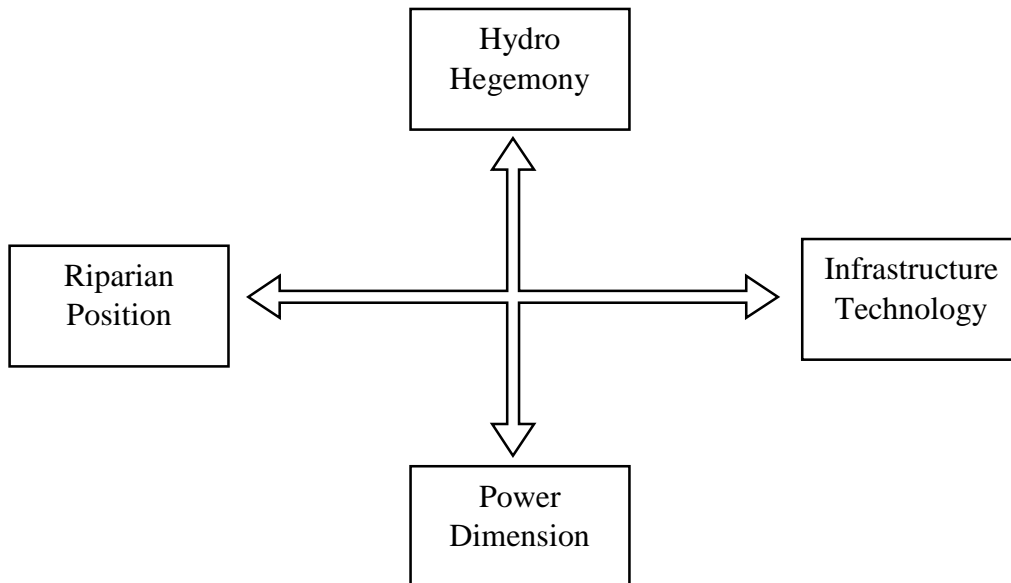


Fig 2: Flow-chart showing the leading factors of Hydro hegemony in international dimension

This is an orientation of the including factors on treaty procedure. This section advances the conceptual analysis and the theoretical framework upon which the thesis is structured and constructed. Conceptualizing the essence of the literature review in the second chapter with the theoretical linkage is the major aspect of this chapter.

### 3.1.1 Hydro Hegemony

Hydro hegemony can be understood as a phenomenon of countries at the river basin level. Strategies among the countries can be executed through the tactics in the form of treaties, knowledge construction, coercion pressure, bilateral, trilateral or multilateral agreements. Mostly in context of international scenario Hydro hegemonic phenomenon can be considered in favor of politically dominative actors.

The framework of Hydro hegemony is applied in Nile, Jordan and Tigris and Euphrates river basins, where it is found that the existing hydro hegemonic configuration tends towards the dominative forms. Due to the increasing numbers of population and the constant resources, Interstate water relations are also increasing. There might various possible ways in order to utilize the international water resources, such as coercive ways and mutually win-win ways. It will be argued that control over international waters cannot be achieved through water wars but through a suite of power related tactics and strategies.

### **3.1.2 Infrastructure Technology**

Infrastructure technology of a country can be considered as one of the driving factors for international water course utilization. The capacity to shape the international water course related treaties and agreements are significant in order to get the short term and long term benefits.

### **3.1.3 Power Dimension**

Comparatively India is more powerful nation than Nepal with the great advantages of territory, population, and Infrastructure technology are could be the major factors for the decision making phenomenon of a country. India seems very keen to protect her natural resources with the means of treaties and agreements with neighboring countries.

### **3.1.4 Riparian Position**

According to the Article IV of Helsinki Rules, “Each basin state is entitled within its territory, to a reasonable and equitable share in the beneficial uses of the waters of an international drainage

basin.” This sentence reflects that every basin state in an international drainage has the right to have an equal and reasonable use of waters. The main idea of equal sharing is to facilitate a maximum benefit to each basin states from the resource.

Geographically India is located in the lower part of Nepal. Right to use the common natural resources must be justified from the perspective of both of the Nations.

### **3.2 Research Methodology:**

The methodological approach adopted in this study refers to the disciplinary research, since it aims at combining theories, tools and ideas which used by different and separate research traditions. The research vision is informed by a wide comparative international insight that aims at overcoming the gaps identified in the literature review.

Content analysis, secondary database documents are the major methodological guidelines of this library-based research.

#### **3.2.1 Research Design**

A research design is the specification and methods and procedures for acquiring the information needed. It is the overall operational pattern of framework of the project that stimulates what information is to be collected from which source by what procedure. (Paul, Tull, 1975). This is

an explanatory research design. This will be limited under the area of Nepal's water resources sharing and lower riparian rights under Mahakali Treaty.

### **3.2.2 Methods of Data Collection**

This is an academic writing mainly based upon the library based research. Journals and articles written by academicians, relevant, books, articles are the major resources for this study.

#### **3.2.2.1 Nature of Data**

Secondary sources of data collection form the published articles, journals, books, authorized news, interview with the relevant person are the methods of data collection of this academic study.

#### **3.2.2.2 Sources of Data Collection**

Various sources have been used in order to fulfill the given objectives in this thesis. Secondary sources of data collection are Published articles, journal, books, reports from Nepal water Conservation Foundation (NWFC), videos, governmental reports, authorized news, newspaper articles, magazines.

### **3.2.3 Tools and Techniques of Data Collection**

Document, content analysis are the major tools and techniques has been used in this academic study. The study is purely qualitative and descriptive in nature.

### **3.2.3.1 Documents**

Specially the secondary resources of data collection where, the genuine information are to be collected from various medium. The documents were partially collected through online academic mediums, such as news archives, reports from research institutions etc.

### **3.2.3.2 Content Analysis**

Data from various sectors including primary and secondary resources are analyzed to quantify the content in order to accomplish this thesis. As well as the raw phenomenon has been converted into data which can be treated in a scientific manner so that the body of knowledge may be, build up.

## CHAPTER- IV

### THEORIES OF INTERNATIONAL RELATION AND WATER DISCOURSE

International relation can be defined as the study of relationships and interactions between countries, including the activities and policies of national governments, international organizations, nongovernmental organizations and multinational corporations (Jackson & Sorensen, 2013, p.4). Today the world has become more complex and interconnected in between the states. Every citizen of a particular state required some sorts of values from the state, which can be categorized as five basic social values of society. Security, freedom welfare, order and justice are the major values carried by a particular state.

If we observe the patterns of Indo-Nepal relation from the realistic view, India is looking for the maximization of sovereignty toward the international water resources. Constructing the Tanakpur Barrage without consultation to Nepal is one of the examples of realistic nature of Indian politics. Even the water of Mahakali River (Boundary River) is one and only the source for Tanakpur Barrage, thus the realistic thought provokes the international relations are understood by realists as primarily a struggle between the states for domination and security. On the other side, Nepal should counter the actions from lower riparian through realistic view as well. Where the major responsibility of state is also to protect and preserve the natural resources for the welfare of its citizens, which is also considered as the national interest of the state as well. India seems as a dominating big shark in South Asian atmosphere. Neighboring states are always in alert while signing any kinds of treaties and agreements with India because of past experiences. In realistic world every state will pursue her best effort to preserve self-interests.

India-Pakistan, India-Bangladesh, India-Bhutan, and India-Nepal relation regarding water resources more or less has some sorts of mistrusts and disagreements.

The term 'Liberalism' is the aim of politics to preserve individual rights and freedom maximization (Jackson and Sorensen, 2013, p.306). It emphasized on the equal rights and fundamental form of equality. According to this thought India and Nepal must go through the mutually acceptable agreements with the principle of non-interference. However, in some sorts India and Nepal has been passed through mutually acceptable agreements in context of water resources sharing.

Positive views of human nature, cooperation rather than conflict, belief in progress are the basic assumptions of liberal thought ((Jackson and Sorensen, 2013, p.100). the core concern of liberalism is the happiness of human beings. Peaceful resolution of dispute is the major task to be emphasized by liberal view. The liberal thought is crucial to critically analyze the pessimistic view of realism versus optimistic view of liberalism.

Liberalism has championed limited government and scientific rationality believing individuals should be free from arbitrary state power, persecution and superstition. It has advocated political freedom, democracy and constitutionally guaranteed rights and privileges the liberty of the individual and equality before the law (Bruchill, Linklater, Devtak, Donnelly, Paterson, Smit and True, 2005, p.54). Liberalism also explains about the individual competition in civil society and market capitalism. The proper management and utilization of scarce resources within the society is also the crucial point for liberal view. In today's context in world politics, liberal school of thought remains a powerful and influential discourse.



Liberal thinking is closely connected with the emergence of the modern constitutional state (Jackson and Sorensen, 2013, p.101). Modernization is the process to involve all huge arena of the world under the umbrella of cooperation and interaction. Thus, the modernization process focuses the scope of cooperation across the international boundaries. The end of affairs, mistrust conflict is possible through the greater cooperation by liberal school of thought. The proper cooperation between India and Nepal could lead the better understanding between them with remarkable benefits. According to sociological liberalism, the scopes of international relation are the relations among governments, peoples, groups and societies. Relations between peoples could be more cooperative rather than government. Thus the government should initiate the policy with the proper understanding of citizens' demands and necessities. Interdependence liberalism emphasize on complex interdependence which explore the more cooperative international relations. Mutual cooperation, trust and proper equality between states are justified through institutional liberalism, where the international institutions could be more helpful to resolve the circumstances of trust between states.

## **CHAPTER- V**

### **RESULTS AND FINDINGS**

After studying, analyzing the various factors it seems like that Nepal is not equally treated by the water treaties and agreements with India.

#### **5.1 Unequal distribution of water**

The unequal distribution of water exists in Mahakali river, where the ratio of water is in 3:97 in Nepal and India respectively. India is getting 14 thousand cusecs whereas Nepal is only getting four hundred sixty cusecs (Shrestha, 2073, p 9). As a border river, both of the countries have equal right to utilize the flowing liquid.

#### **5.2 Contemporary challenges in Nepal**

According to the report of ICIMOD 2001, Water is the greatest natural resource of Nepal. There are more than six thousands of rivers in Nepal. it assumed that every year, four thousands and nine hundred thirty cubic litre per second of water flows continuously from Himalayas even in the dry season. nepal is not utilizing water resources properly even being the richest country in water resources. Every year the citizens from Kathmandu valley suffered from drinking water issues. More than 19 crore litre per day of water is demanded by Kathmandu valley whereas only 8 crore litre of water is supplied in dry season. People from Kathmandu valley are still waiting for Melamchi water project which was supposed to function long before. Likewise, 40% of people from remote area are not getting proper drinking water facilities. (Nepal Samacharpatra Dainik, Jestha 26, 2060)

### **5.3 'Water resources management in International discourse:**

Due to the increasing number of population and other developmental activities, water resources are getting more vulnerable. In this situation countries are looking for water control mechanisms and water diplomacy. Countries like Nepal, Bangladesh & India are suffering from water resources problems in dry seasons. According to the perspective of water resources, Nepal, India, China, Bangladesh and Bhutan are the riparian nations. The water resources conflict started when the lower and upper riparian states got stuck due to the lack of proper provisions, rules and regulations in this field. Rivers like Mechi, Mahakali, Ganga are the transnational rivers which pass from one nation to another nation.

### **5.4 International Law and water resources management:**

For the application of Mahakali Treaty it was essential to be ratified under the constitution of Nepal. But the treaty compromises the sovereignty of the nation. Being a boarder river, Nepal has 50% right to be benefited from. Any sorts of energy generated from the projects under Mahakali treaty should be shared equally between the two nation. According to the Helsinki Rules of International Law Association, it was the duty of India to consult Nepal before starting any project in the part of the river and inter into negotiation for its equitable utilization.

(Wouters, 1997, P. 143-175). The Tanakpur dispute was started due to the legitimate concerns from Nepal where the Indian government started to construct the barrage without consulting the Nepal. Nepal had also made a claim that the territory that was swapped between the two nations for a specific purpose of the construction of Sarada barrage could not be utilized for other purposes without consulting Nepal.

No State has right to use or permit the use of its territory in such a manner as to cause injury by fumes in or the territory of another country (American Journal of International Law, 1941, 684, 716) The construction of a project in a country without the consent of other country from the common property and the possible damage may be taken as the encroachment of the territorial integrity of that country and may involve in state responsibility.

Accordingly, the International Court of Justice (ICJ) in the case of Legality of the Threat or use of Nuclear weapons stated. “the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other states or of other areas beyond national control is a part of the corpus of international law relating to the environment” (ICJ, 1996, p.241). Despite the International laws, rules and regulations, India has been using the water of Mahakali in her own way, Tanakpur project was leaded by India in a monopolizing way. Nothing could be done from Nepal’s side.

After signing various treaties and agreements, Nepal does not need to start a diplomatic capacity building approach from scratch. A set of frameworks has already been formulated where Nepal only needs to revisit it. Nepal geographically located on the upper part of UP and Bihar of Indian territory. India will need storage dams in Nepal for water alone, even if there were no electricity involved, and Nepali hydroelectricity can only be a very valuable by-product. How valuable is it, is what the vigorous debate currently happens to be concentrated on between state agencies and the socio-environmental activists. Nepal have got enormous Rivers continuing their flows in all twelve months. Having a capacity to produce large amount of Hydroelectricity can direct Nepal in to the progressive path. Power is needed for the long term benefits for all the nations, two countries India and Nepal can collaborate with each other to

gain the maximum benefits with the reasonable and equitable manners. Successful water diplomacy is required to justify the equal utilization of water resources.

The Tanakpur/Mahakali issues were merged for political expediency without considering the larger political aspects in terms of water resources development. Cooperative rather than coercive approach can be implemented while it comes to the agreement between two or more than two stakeholders. The negotiation between the consumers must be done in a joint venture when it is about the resources sharing of common properties. From the prominent experience of past agreements and treaties a future agreement should be done in a transparent manner and not behind the closed walls. Though, the Nepal's long-term interests cannot be sacrificed for the short-term benefits. So, Nepal needs to rethink about the proper cost and benefits while initiating any agreements. It is important to calculate the risk and have proper projection of future outcome while having a cooperation.

### **5.5 A View from International Water Law Discourse: (Legal perspectives and Debates)**

The scarcity of proper international water law still existed. Despite the work of a least number of academicians, scholars, the institutions and the United Nations, still there is no universal treaty which regulates the non-navigational uses and protection of international water courses.

Customary law has developed rules with regard to equal riparian rights to international rivers but these were not extensive.

According to the Helsinki Rules on the Uses of International Rivers in 1996, "Every basin state are entitled for the reasonable and equitable share of international water or beneficial purpose, but they are strictly prohibited to cause the new form of water pollution which may distract the

territory of other basin states." According to this principle, every nation belonging to the basin states has equal right to use the water from international water discourse (Shaw, 2003, p.792)

Talking about the India's actions and activities toward Nepal regarding the water relations (treaties and agreements) the situation is bit different, India always trying to play the role of big brother by initiating the laws, principles which mostly beneficial toward own nation by facilitating a certain portion of opportunities to another sharing state.

During the 52<sup>nd</sup> conference at Helsinki in 1966, some broad principles were formulated regarding the rules, governing rights and duties of riparian states;

- ) Where the river system drains the territorial area of more than one state, each state has the right to consider that river system as a whole and take into account its own interest along with the interest of other states.
- ) In principle, each state has an equal right of taking maximum use of the waters within its territory but in exercising of rights, must also respect corresponding rights of other states.
- ) In circumstances when exercise of one state's rights conflicts with the water of another state, the principle to be applied is that each state is entitled to an equitable apportionment of the benefits of the river system in proportion to its needs and in the light of the conditions of the particular river system.

(Shaw, 1997, p.616)

A state can pursue its rights over the utilization of international water discourse passing through its territory but at the same time the rights of other nation must be respected. In context of water relation between India and Nepal, both nations are equally entitled to take maximum benefit through the water energy of Mahakali River.

Geneva Convention 1923 dealt with the right of any riparian state to carry out on its territory any operations for the development of hydraulic power that it may consider desirable subjects to the limits of international law (Salman & Upreti, 2002, p.10). During earlier 20<sup>th</sup> century, this convention allows riparian state to build any developmental project related to the energy generation by neglecting the riparian rights of other states. India and Nepal were able to promulgate the first international negotiation regarding Sarada Barrage at 1920 however it was mostly benefited to Indian Territory rather Nepal.

## **5.6 Evolution of Non-navigational uses of water.**

To a large extent, through state practice and the exercise of scholars and the experts in the field, mainly our principles were existed in the beginning of 20<sup>th</sup> century in terms of non-navigational uses of water discourse.

1<sup>st</sup> principle- "Absolute Territorial Sovereignty" has been one of the most controversial principles. It is also known as Herman Doctrine (Salman & Upreti, 2002, p.11). According to this principle, state doesn't have any right to demand the flow of water from other nations or other riparian. Nepal has complete sovereignty to the rivers which are located within the territory of it through this principle; hence any state as an upper riparian state can't claim over the water but this principle is no more existed.

2<sup>nd</sup> principle- "Absolute Territorial Integrity" (Salman & Upreti, 2002, p.12). It states that the right of state for the natural flow of international rivers towards their territory from riparian states. It also provokes the protection of lower riparian rights from upper riparian. It is just opposite from the first principle that is absolute territorial sovereignty where upper riparian are

also free to dispose of the water of the international river thus or this reason, the principle of territorial sovereignty was rejected which was also failure to respect to the rights and interests of other riparian states (Salman & Upreti, 2002,p.14). Through the concept of this principle India also has right to be benefited through the water facilities.

3<sup>rd</sup> principle- it combines the principle of limited territorial sovereignty and limited territorial integrity. It restricts both of the principles, where it states that every riparian states are equally entitled to use the water of international river without distraction or harm toward the other riparian state's rights and interests. (Salman & Upreti, 2002, p.14). In international context no states are allowed to divert the flow of Natural River neither for navigational purpose nor for irrigation or power generation. Presently the principle of equitable and reasonable utilization of water is the major guiding principle in contemporary era.

4<sup>th</sup> principle- The community of co-riparian states in the water of an international river, (Salman & Upreti, 2002, p.14). The entire river basin is an economic unit and the right to use the water of the entire river is guided by the collective body, principles, laws and treaties. Sometimes, states can pass through the different rules from the international law according to their mutual understanding and dignity.

The convention on the law of the Non-Navigational Uses of International Watercourses, 1997, States shall in their respective territories utilize an international watercourse in an 'equitable and reasonable manner'(Shaw, 2003, p.792). The conservation, protection, development and the economy of water resources utilization are the major effective discourse of watercourse.

The Herman Doctrine was dismissed after United Nation Conventions on Non-Navigational Uses of International Water but it was alive for China, where China's relation with other riparian



states clearly stated the 'principle of absolute territorial sovereignty'. Some international rules, regulations and principles were laid out by this convention but these were not applicable for China (Chellaney, 2014, p.624), In this sense China became critical in order to shape peace for water resources in South Asia.

According to the provisions of the Mahakali treaty, Nepal is entitled to facilitate 1000 cusecs of water in the wet season and 150 cusecs of water in the dry season from the Sarada Barrage. In case of Sarada Barrage become non-functional the proposed amount of water will be supplied from Tanakpur Barrage. At the same time the provision does not allow to minimize the flow of water not less than 350 cusecs in order to maintain and preserve the water ecosystem. Talking about the Pancheshwar Multipurpose Project which is to be located on the border area of two nations, which is joint project aimed at the equal partnership and equal entitlement in the utilization of the water of Mahakali River with mutual respect and no interference with either state (Iyer, 1999. p.1511). Through this point of view from Nepalese side India is trying to build water hegemonic power with the maximization of more facilities in comparison to other states.

### **5.7 Tanakpur Dispute:**

In 29, Jan 1996, Nepal and India promulgated a new treaty in Tanakpur by Foreign Minister Prakash Chandra Lohani and his Indian counterpart Pranam Mukherjee in the Presence of Nepalese Prime Minister Sher Bahadur Deuba. This treaty was supposed to give more benefits to Nepal than earlier time. This treaty was considered as one of the most important part of the Integrated Development of Mahakali Treaty on the western border line of Nepal. The major proposals of this treaty was to receive 70 million units of power, 1000 cusecs of water at

monsoon and 300 cusecs at dry season, additionally Nepal was supposed to receive 350 cusecs of water for irrigation purpose at Dodhara Chandni area of Nepal. Nepal was also entitled to have equal benefits and the utilization of water from the Mahakali River through all the future projects (including Pancheshwar Mutipurpose Project) on the river (Kathmandu Post, Jan 30, 1996).

"Nepal's long-term interests should not be sacrificed for short-term political support from the successor state to the colonial British Raj" (Shrestha & Adhikari, 2009, p.6). During the period of Tanakpur dispute in Nepal, some significant questions were raised through parliament, press and streets regarding the required substance and the proper procedure for any kinds of hydro-treaties and agreements with India. One of the pertinent aspects was to negotiate the treaties and agreements between two nations in a transparent manner rather in closed room. Significantly the voice was raised to refine the democratic provision of Article 126 of the constitution to purify what kinds of agreements could be done through simple majority and or what sorts of provisions the 2/3<sup>rd</sup> majority could be needed were the major matters of concern.

### **5.8 The letter of exchange on Mahakali Treaty:**

The application was promulgated from the then Foreign Minister Prakash Chandra Lohani from Nepal on Integrated Development of Mahakali River including Sarada Barrage, Tanapur Barrage and Pancheshwar Project. Following were the major agreements between two governments regarding the treaty provisions;

1. India will construct the road to connect Tanakpur Barrage to the east west Highway within one year.

2. Nepal was entitled to receive 20 Millions of units according to the joint committee, but Nepal will continue to get 70 million units of energy after the implementation of Tanakpur barrage in July, 1992 (Sandhi, p. 239)
3. To finalize the DPR about Pancheshwar Mutipropose Project following principles and conditions will be implemented;
  - i. Sharing and Utilizing of natural resources: government of India and Nepal has come up with the agreement to get benefits from the flowing water based upon mutual trust and respect.
  - ii. Uniformity and harmony with the constitution: both of the governments are required with the acceptable agendas which could be fitted with the constitution of both of the nations.
  - iii. Responsibility to evaluate the effects of treaty or agreement on the nation: government and the representatives are required to evaluate the effectiveness including the legal, constitutional, economic, technical and diplomatic considerations (Shrestha & Adhikari, 2009, p.6).
4. The complete framework preparation and activities related to the field study will be started right after the DPR ratification. The report on mutual agreement will be forwarded simultaneously. Various budgets shall be separated according to their mutual agreements for project implication. (Sandhi, p.240)
5. After the observation of DPR, the project will be aimed to complete within 8 years from the date of agreement. (Sandhi, p.240)

These were the points forwarded by the Foreign Minister Prakash Chandra Lohani for His Majesty's Mr. Pranab Mukharjee from Minister of Foreign Affair India. (Sandhi, p.240)

After passing through the above paragraph, the treaty was claiming that the complete DPR will be prepared within the six months of treaty ratification, even after lapse more than two decades

the DPR has not been completed. Due to this situation, further conversation and utilization of Mahakali River provisions was not initiated which was supposed to do soon.



Fig:3 (Source: Engr. D.B. Singh, Presentation on Mahakali Treaty at a talk program organized by Independent Power Producers Association, Kathmandu, October 2009)

It is clearly observable that Indian intention behind the building of Tanakpur Barrage without consultation with His Majesty's Government of Nepal. The issue was raised even in the

Panchayet Era from Nepal's side. In 1992, Nepal's Communist Party CPN UML linked the Tankapur Treaty with the national sovereignty. Even CPN UML demanded the resignation of PM Grija Prasad Koirala due to the agreement of Mahakali Treaty with India. When the CPN UML came to power, it demanded the open talk from India on the issues of Tanakpur including other water resources development. *The Rising Nepal* quoted the "equal right over the water of river". And implementing projects on the rivers with the prior approval of both countries, the formation of Mahakali River Commission is comprised with the equal number of partnerships from both of the nations (The Kathmandu Post, Jan 13, 1996). Both of the nations have equal right over the utilization of water from Boundary River simultaneously both of the nations are equally responsible to borne the cost of maintenance and management of common properties. Regarding the utilization of the water of International River there should not be the discrimination based upon the number of populations, territory and the economic status. India has been benefiting from the potentiality of Mahakali River more than Nepal which is not justice from straight analysis but at the same time we should look it toward different angle as well, If we are talking about the supportive/side river of Mahakali, the number of those kinds of river are bigger in number in Indian territory rather than Nepal. On the other hand, the biggest covered area by Mahakali River in India is far bigger than Nepal in this sense, having maximum interest over the possible facilities from the river is not straightly bad aspect of India.

"The signing of the treaty does not mean a shift or the better regarding India's outlook towards Nepal" (The Kathmandu Post, Feb 18, 1996). The treaty was said to be a diplomatic move by India. The implementation aspect of the treaty (signed by Sher Bahadur Deuba and PV Narsimha Rao) is the major guiding principle of Indian View toward Nepal. According to the view of Nepalese residents, India was promised to build the Kohalpur-Banbasa Bridge at that time but

failed to implement which left the sour test of the mouths of many civilians in Nepalese territory. It was becoming one example that India always acted only when it suited with its purposes. India was trying to take much more by Tanakpur by giving little to Nepal. Past Indian policies were the crucial tasks to make this area of western Nepal underdeveloped. So many peoples also feel that the boarder complication is also a result of building all the Infrastructure of Tanakpur and Sarada Barrages inside the Indian Territory. The Mahakali Treaty has been considered by both of the nations for "significant Benefits" to each other. The treaty was not the great achievement for Nepal including it the policies regarding the equal partnership for the utilization of Mahakali River, equal rights on hydropower potentiality, future power projects are the major matter of concern for the betterment of both of the nations.

## **2.6 Pancheshwar Dispute:**

Pancheshwar Multipurpose Project was said to be delayed due to technical considerations. The Nepalese side has measured the capacity of project was 6480MW whereas Indian expertise claimed the project's capacity is 4000MW. At the same time both of the side were unable to decide that where to use the power generated from the project. From Nepalese side the power was demanded to utilize during peak load hours but India have argued to utilize as a normal load barrier. The main debate later was whether to operate the power plant for five hours (demanded By Nepal) and take advantage of the peak hour demands or run it for twelve hours as normal power supplier. India's strategy was to expand the power and to serve Utter Pradesh through irrigation facility through Pancheshwar Project. However, Nepal and India were agreed to prepare a complete DPR (Detailed Project Report) on Pancheshwar within six months during the

visit of Indian Prime Minister Pranab Mukherjee's to Kathmandu in Feb, 1996. India needs to overcome the traditional mentality regarding projects whereas Nepal had a world standard proposal with positive concern toward India on regulating the water of Mahakali River. In case of implementation the dam of Pancheshwar will be located at the height of 695 meter with the capacity to resist floods flowing 23,500 cubic meters per second. The project will irrigate 93,000 hectares of Nepal and 1.6 million hectares of Indian land (The Kathmandu Post, Feb 8, 1996). Former Water Resources Minister Pashupati SJB Rana said the cost of the project would also be shared equally but "If one party takes more benefit, then the cost of that benefit must be borne in proportion by that party in the overall cost of that project." According to his argument the benefit utilization and the cost should be in proportion. According to the previous treaties and agreement between two states, India is taking more benefits than Nepal.

Initiation of bi-National Mahakali River commission is significant where the demand was to be guided by the principle of equality, mutual benefit and no harm to either party (Iyer, 1999, p. 1511). Both of the parties came up with the significant point that is to establish the specific joint entity to develop, function and manage the Pancheshwar Project. The complete DPR was said to be prepared within six months but it has got delayed due to some technical problems and political nature. Some strictures *sankalpa* were made in order to justify the utilization of the project. In context of Pancheshwar construction, according to the principle of 'avoided cost', the price from India should be based on the cost of power generation through alternative procedure.

Nepalis feel betrayed by this treaty. It also raised political concerns in Nepal. India's construction of a dam on the Kosi River has strained relations between the two countries. The location, design and construction of the dam benefits India more than Nepal, and Nepal's territory is also exploited. The treaty directs Kathmandu to respect the rights of its low-lying neighbor India.

Something that India itself will never practice. The only facet for Nepal was that the Mahakali Agreement contained a clause for referral to a pending arbitration tribunal, even though India insisted on a bilateral agreement.

The Thanakpur/Mahakari episode captivated the Supreme Court, media and parliament. The early 1990s consumed much of my academic work in the 1990s. It has a complicated history that began in British India in the early 20th century. An attempt to develop irrigation in the West Ganga Plain with Salad Dam to the west. The Nepalese tip of the Mahakali River that forms the border between Nepal and India. India in the 1980s. The government decided to build a power plant upstream of the salad dam on most of the land. Exchanged with the Rana rulers of Nepal in the 1920s.

## **2.7 Fix Boundary and Mahakali**

On 12<sup>th</sup> Feb. 1996, Nepal and India concluded a treaty concerning the Integrated Development of Mahakali River including Sarada Barrage, Tanakpur Barrage and pancheshwor Project. The treaty has 12 articles and a letter was exchanged between the two governments, the letters so exchanged refers to the treaty, the decision taken in the joint communiqué issued during the visit of the then Indian Prime minister dated 21<sup>st</sup> oct, 1992 (International Legal Material, 1997, P.533)

During the period of post 1990 in Nepal, Mahakali Treaty has been the most debated issue in the civil society which divided the political parties' academicians, professionals of repute with their various opinions. Some see it as *Rastraghat*. (Quisling). (Amatya,1996, P. 23). Still others claim that serious home work was done before its conclusion and that the treaty is a collective vision of



all the Nepali and is poised to take the nation on the path of development. (Lohani, 1996, P.21-25).

## **2.8 Stricture/Sankalpas and Indian view:**

The Government of Nepal was more sensitive in case of utilizing the hydro-facilities through Mahakali River. It is because of bitter experience with India in terms of earlier treaties and agreements, which is the significant aspect behind making strictures or *sankalpas*.

- i. India must follow the principle of avoided cost to pay Nepal's electricity,
- ii. Mahakali Commission should be constituted with the proper agreements of opposition parties as well.
- iii. Equal rights and entitlement in the use of Mahakali River.
- iv. Mahakali River always must be accepted as a boundary river between two countries. (Shrestha & Adhikari, 2009, p.31)

While initiating such strictures or *sankalpas*, one of the Indian Scholar Ramaswami R Iyer pointed that these strictures can be applied to the Government of Nepal but not for India. At the beginning phase of Integrated Development of Mahakali River, the Indian Military Personnel were actively strolled around Nepalese territory but they were pushed away due to the suggestion by the government of Nepal.

According to the stricture number 1, the portion of Nepal's shared energy shall be sold to India but the price should be amended by both of the parties. During the preparation of DPR, 'inter alia' principle should be applied in order to assess the benefits from projects. In case of producing large amount of energy, India would be the ultimate Buyer of power. The price of export electricity will be determined based upon the benefits.

The Mahakali Treaty calls for cooperation on a single river rather than focusing on the entire basin waters. In the context of the Indus Basin, water experts call this a 'second-best solution', second only to full integration, sharing water 'on each of the six rivers that make up the system'. It is still technically feasible and the Mahakali Treaty was developed with the specific needs and uses of both countries in mind. It can be applied to specific projects (Salad Barrage, Tanakpur Barrage, Pancheswar Dam Project), hydropower, monsoon runoff water storage for irrigation, synergies and the relative strengths and needs of each country. It envisions the specific use of water to provide a buffer against flooding. The Mahakali Treaty therefore assigns responsibilities and benefits based on each country's capabilities. For example, Article 1 of the Convention requires India to maintain a minimum flow of 350 cusec downstream of the Salada Dam to "protect and sustain the ecosystem of Mahakali". A relevant feature of the treaty is the cost of cooperation imposed on India, and under the terms of the agreement Nepal is obliged to make unilateral commitments solely for the benefit of the other country. This not only creates an intrinsic confidence-building measure in the treaty, but also ensures that each country has leverage over the other and, in theory, an incentive to comply in good faith with the terms of the treaty. The performance of the other side is contingent. For example, Article 2 requires Nepal to cede almost 3 hectares of land to India to allow construction of the Tanakpur Bridge while retaining final sovereignty.

## CHAPTER- VI

### DISCUSSION AND CONCLUSION

The Integrated approach to the Mahakali Treaty and its purpose was to solve the Tanakpur controversy and take the cooperation of two nations in a new height. When the treaty was supposed to ratify with the parliamentary ratification, some major issues have been raised like the Mahakali as a boarder river where both of the countries have equal rights. Though, half of the water of Mahakali river belongs to Nepal and; fixation and export of energy belonging to Nepal should be done on the basis of avoided cost; solve the boarder issues with India in the upper area of Mahakali etc. On the other hand, it is to be borne in mind that Mahakali Treaty is not a boundary treaty, which defines the boundary between both countries. The agreement reached in this treaty with respect to the fact that water does not have any implication on the boundaries of the two countries. So far as the rights of the countries on the international watercourse are concerned, there is no separate law for contiguous rivers and successive rivers regarding their utilization. Whether the river is a boarder or adjacent, it has no significance in international law for defining the rights and obligations of the states sharing the water.

According to the international law, the states' rights on the uses of watercourses are defined by the principle of equitable and reasonable use. The action of any watercourse is to be evaluate in the light of its equitability and reasonability. The states in their respective territories have right to utilize equitably and rationally that portion of the international watercourse which belongs within their territories but at the same time they must follow the rules and regulations on international watercourses.

## **6.1 Mahakali as a Framework Treaty**

Mahakali Treaty can be considered as a framework treaty because it allows the further collaborations in the Mahakali river, like Pancheshwor and other projects on the basis of certain guidelines and principles. In case of Sarada barrage becomes non-functional, India pressurized to continue the existing supply from Tanakpur barrage under the treaty. In case of Tanakpur barrage, the treaty included the provisions to reconstruct the barrage. In fact, the treaty subsumes the Memorandum of Understanding (MoU) reached between the two countries on Tanakpur project with certain amendments and makes Nepal more beneficial. According to the Article 6 of the Mahakali Treaty the framework of Mahakali Treaty prescribes some principles for the development of Pancheshwor, it is short of taking a boarder view and limits the applicability of those principles to only those projects, which are included in the treaty and those which are to be developed at the place where the river forms boundary between two countries.

The Mahakali Treaty has been a landmark in context of building cooperation between Nepal and India regarding the development of water resources, which they share. There are so many rooms for improvement in Mahakali Treaty. There would always be a room for interpretation specially if one party does not want to understand the intention of other party. However, the goals was not acquired from the Mahakali agreement as per the Treaty provisions, norm and criteria. However, Mahakali can be considered as an example of negotiation with a boarder vision and for a better result in future. The proper execution of Pancheshwor Project would create a new hope of healthy collaboration and cooperation but that has been lacking between both of the countries. However, this treaty is an example in the history of cooperation on water resources which can guide the further hydro agreement and collaboration in a better height. In this scenario, the standard principles of international law on common water resources are the major guidelines to

drive the equitable solution of treaties and agreements. Both of the parties should be honest regarding the negotiation and the finalization of the DPR of water resources agreements.

If the river is passing through a territory of two or more countries, a collective action should be taken in terms of equal justification. It seems like India have always been presenting as a 'Big Brother' with neighboring countries. Two neighboring countries can be friends not a brother. India played a same nature of activities with Nepal whereas it plays a role of monopoly while initiating a treaties or agreements. As we can observe that the water of Mahakali is a common resource. Where it is important to share a water commonly with mutual benefit with a proper address of international laws, norms, rules and regulations. Common sets of understanding must be addressed regarding common activities such as irrigation benefits, power generation, fisheries and so on. At the same time the consumers also need to maintain the water ecosystem without destroying the equality of water. Cost and benefits in terms of utilizing the common resources must be borne equally by the stakeholders. It is important for both of the nations to play a significant role to insure the equal and justifiable utilization of common resources.

Social acceptance of development project, such as Pancheshwar on the river Mahakali will need the public to debate on the project, rather than confine the project details to within the four walls of the project authorities. This will enable understanding the dynamics and functioning of the resources, its likely impact, evolve coping mechanism and also give forum for the stakeholders, namely the affected people in the decision-making and in the management process.

In terms of creating a win win situation and avoid the conflict between Nepal and India regarding resources utilization of Mahakali River, following ideas can be implemented.

- i. Balance distribution of benefits: Most importantly a political sector, civil society can work out on this to ensure the equal distribution of benefits.
- ii. Common projects and cost sharing: If the projects is being constructing for the mutual benefits, cost should be borne by the stakeholders equally.
- iii. Proper project DPR and study: It is important to pass through a proper Engineering procedure before initiating a project and infrastructure in a shared property.

Water-sharing disputes are increasing day by day in this world due to the increasing demand for various purposes such as irrigation, transportation, tourism, power generation, drinking purpose etc. At the same time, it is highly important formulate ideas and take actions to safe the water resources as well. Governmental or commercial decisions on where to set up new manufacturing or energy plants are increasingly being influenced by the local availability of adequate water resources.

The dark side of bilateral or multilateral treaties and agreement of common water resources is more about politics than about international law. It is highly important to improve the political nature to have a healthy negotiation and cooperation regarding water resources sharing.

Manipulation by a powerful country is a common trend when it comes to the negotiation and cooperation. Nepal needs to learn so many things from pasts while implementing any treaties and agreements.

## **6.2 Suggestions**

The emerging water issue between India and Nepal should be resolved through mutual cooperation. Policy of equal rights for the shared property should be adopted by both of the

nations. The successful negotiation can protect the national interest which is beneficial for both of the nations. Nepal have gifted enormous water resources and mountains by nature. Nepal has to explore various opportunities in terms of water resources and Mountains. Proper utilization and preservation of natural water resources is today's requirement to fulfill tomorrow's demand. Nepal needs to do a proper study and research before implementing any treaties and agreements in terms of sharing of common water resources. The potentialities of power generation and proper implementation of unbiased policies are crucial for Nepal to protect her national sovereignty.

## **ANNEX:**

### **Provisions of Mahakali Treaty:**

The treaty between His Majesty's Government of Nepal and the Government of India concerning the Integrated Development of the Mahakali River including Sarada Barrage, Tanakpur Barrage and the Pancheshwar Multipurpose Project, February 12, 1996. In order to strengthening the friendly relationship between two nation, amending Mahakali river as a boundary river, realizing the equal partnership, elucidating that the both parties were agreed to construct the Sarada Barrage through the exchange of letters 1920 where Nepal is to receive some waters from that Barrage, Remembering that the one afflux bond is located on the Nepalese territory assimilating through the Joint Commission 1991 during the visit of Indian Prime Minister of India to Nepal in 1992, and noting that both parties are jointly preparing the DPR for Pancheshwar Multipurpose Project on Mahakali river, Following are the agreements of both of the parties.

### **Article- 1**

1. Nepal shall have right to supply of  $28.35\text{m}^3/\text{s}$  (1000 cusecs) water from the Sarada Barrage in the wet season (i.e. from 15 May to 15 Oct) and  $4.25\text{m}^3/\text{s}$  (150 cusecs) in the dry season (i.e. from 16 Oct. to 14 May).



2. India shall maintain the flow of not less than 10m<sup>3</sup>s (350 cusecs) downstream of the Sarada Barrage in the Mahakali River to maintain and preserve the ecosystem.
3. In case the Sarada Barrage becomes non-functional due to any cause:
  1. Nepal shall have the right to supply of water as mentioned in paragraph 1 of this article, by using the head regulator mentioned in paragraph 2 of article 2 herein. Such a supply of water shall be in addition to the water to be supplied to Nepal pursuant to paragraph 2 of article 2.
  2. India shall maintain the river flow pursuant to paragraph 2 of this article from the tailrace of the Tanakpur Power Station downstream of the Sarada Barrage.

## **Article- 2**

In continuation of the decisions taken in the Joint Commission dated 4-5 December 1991 and the Joint Communiqué issued during the visit of Prime Minister of India to Nepal on 21<sup>st</sup> Oct. 1992, both the parties agrees as follows:

1. For the construction of eastern afflux bund of the Tanakpur Barrage in Jimuwa and tying it up to the high ground in the Nepalese territory, Nepal gives its consent to use a piece of land of about 577 meters in length (an area of 4.6 hectares) of the Nepalese territory at Jimuwa village in Mahendranagar Municipal area and a certain portion of the No-Man's Land on the either side of the border. The Nepalese land consented to be so used and the land lying on the west of the said land (about 9 hectors) upto the Nepal-India border which forms a part of the poundage area, including the natural resources endowment lying within that area, remains under the continued sovereignty and the control of Nepal and Nepal is free to exercise all attendant rights thereto.

2. In lieu of the eastern afflux bund of the Tanakpur Barrage, at Jimuwa thus constructed, Nepal shall have the right to:

1. A supply of 28.35m<sup>3</sup>/s (1000 cusecs) of water in the wet season (i.e. from 15 May to 15 Dec.) and 8.50m<sup>3</sup>/s (300 cusecs) in the dry season (i.e. from 16 Oct. to 14 May) from the date of the entry into force of this treaty. For this purpose and for the purpose of article 1 herein India shall construct the head regulators near the left under sluice of the Tanakpur Barrage and also the waterways of the capacity up to the India-Nepal border. Such head regulators and waterways shall be operated jointly.
2. A supply of 70 million kilowatt-hour (unit) of energy on a continuous basis annually, free of cost from the date of the entry into force of this treaty. For this purpose, India shall construct a 132kv transmission line upto the India-Nepal border from the Tanakpur power station (which has at present, an installed capacity of 120,000 kilowatt generating 448.4 million kilowatt-hour of energy annually on 90 percent dependable year flow).
3. Following arrangements shall be made at the Tanakour Barrage at time o development of any storage projects including Pancheshwar Multipurpose Project upstream the Tanakpur

Barraage:

1. Additional head regulator and the necessary waterways, as required, up to the Nepal-India border shall be constructed to supply additional water to Nepal. Such head regulator and waterways shall be operated jointly.
2. Nepal shall have additional energy equal to half of the incremental energy generated from the Tanakpur Power Station, On a continuous basis from the date of augmentation of the flow of the Mahakali river and shall bear half of the

additional operation cost and, If required, half of the additional capital cost at the Tanakpur Power Station for the generation of such incremental energy.

### **Article- 3**

Pancheshwar Multipurpose Project (hereinafter referred to as the "project") is to be constructed on a stretch of the Mahakali River where it Forms the boundary between the two countries and hence both the parties agree that they have equal entitlement in the utilization of the Mahakali River without prejudice to their respective existing consumptive uses of the water of Mahakali River. Therefore, both the parties agree to implement the project in the Mahakali River accordance with the Detailed Project Report (DPR) being jointly prepared by them. The project shall be designed and implemented on the basis of following principles;

1. The project shall, as would be agreed between the parties, be designed to produce the maximum total net benefits. All benefits accruing to both the parties with the development of te projects in the forms of power, irrigation, flood control etc., shall be assessed.
2. The project shall be implemented or caused to be implemented as an integrated project including power stations o equal capacity on each side of the Mahakali River. The two power stations shall be operated in an integrated manner and the total energy generated shall be shared equally between the parties.
3. The cost o the project shall be borne by the parties in proportion to the benefits accruing to them. Both parties shall jointly endeavor to mobilize the finance required or the implementation o the project.
4. A portion of Nepal's share of energy shall be sold to India. The quantum of such energy and its price shall be mutually agreed upon between the parties.

#### **Article- 4**

India shall supply 10m<sup>3</sup>s (350 cusecs) of water for the irrigation of Dodhara Chandani area o Nepalese territory. The technical and other details will be mutually worked out.

#### **Article -5**

1. Water requirements of Nepal shall be given prime consideration in the utilization of the waters of the Mahakali River.
2. Both the parties shall be entitled to draw their share of waters of the Mahakali River from the Tanakpur Barrage and/or other mutually agreed points as provided for in this treaty and any subsequent agreement between the parties.

#### **Article- 6**

Any project, other than those mentioned herein, to be developed in the Mahakali River, where it is a boundary river, shall be designed and implemented by an agreement between the parties on the principles established by this treaty.

#### **Article-7**

In order to maintain the low and level of the water of Mahakali River, each party undertakes not to use or obstruct or divert the water adversely aecting its natural flow and level expect by an agreement between the party provided, however, this shall not preclude the use of the Mahakali River by the local communities living along both sides of Mahakali River, not exceeding 5 percent of the average annual flow at Pancheshwar.

## **Article-8**

this treaty shall not preclude planning, survey, development, operation o any work on the tributaries of the Mahakali River, to be carried out independently by each party in its own territory without adversely affecting the provision of article 7 of this treaty.

## **Article-9**

1. There shall be a Mahakali River commission. The commission shall be guided by the principle of equality, mutual benefit and no harm to either party.
2. The commission shall be composed of equal number of representatives from both of the parties.
3. The function of the commission shall, Inter alia, include the following:
  1. To seek information on and I necessary, inspect all structures included in the Treaty and make recommendations to both the parties to take steps which shall be necessary to implement the provisions of this treaty.
  2. To make recommendations to both the parties for the conservation and utilization of the Mahakali River as envisaged and provided for in this treaty.
  3. To provide expert evaluation of projects and recommendations thereto.
  4. To co-ordinate and monitor plans of actions arising out o the implementation of this treaty
  5. To examine any differences arising between the parties concerning the interpretation and application of this treaty.
4. The expenses of the commission shall be borne equally by both of the parties.

5. As soon as the commission has been constituted pursuant to paragraph 1 and 2 of this article, it shall draft its rules of procedure which shall be submitted to both of the parties or their concurrence.

6. Both the parties shall reserve their rights to deal directly with each other on matters which may be in the competence of commission.

#### **Article- 10**

Both the parties may form project specific joint entity/ies for the development, execution and operation of new projects including Pancheshwar Multipurpose Project In the Mahakali River or their mutual benefit.

#### **Article- 11**

1. If the commission fails under Article 9 of this treaty to recommend its opinion after examining the differences of the parties within three months of such reference to the commission or either party disagrees with the recommendation of the commission, then a dispute shall be deemed to have been arisen which shall then be submitted to arbitration for decision is no doing either party shall give three months prior notice to the other party.
2. Arbitration shall be conducted by a tribunal composed of three arbitrators. One arbitrator shall be nominated by Nepal, one by India, with neither country to nominate its own national and the third arbitrator shall be appointed jointly, who, as a member of the tribunal, shall preside over such tribunal. In the event that the parties are unable to agree upon the third arbitrator within 90 days after receipt of a proposal, either party may request the Secretary-General of the Permanent Court of Arbitration at The Hague to appoint such arbitrator who shall not be a national of either country

3. The procedures of the arbitration shall be determined by the arbitration tribunal and the decision of the majority of the arbitrators shall be the decision of the tribunal. The proceeding of the tribunal shall be conducted in English and the decision of such a tribunal shall be in writing both the parties shall accept the decision as final, definitive and binding.
4. Provision for the venue of arbitration, the administrative support of the arbitration tribunal and the remuneration of expenses of its arbitrators shall be as agreed in an exchange of notes between the parties. Both the party may also agree by such exchange of notes on alternative procedures for settling differences arising under this treaty.

## **Article-12**

1. Following the conclusion of this treaty, the earlier understandings reached between the parties concerning the utilization of the waters of the Mahakali River from the Sarada Barrage and the Tanakpur Barrage, which has been incorporated herein, shall be deemed to have been replaced by this treaty.
2. This treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification. It shall remain valid for a period of 75 years from the date of ratification.
3. This treaty shall be reviewed by both the parties at ten years interval or earlier as required by either party and make amendments thereto, if necessary.
4. Agreements, as required, shall be entered into by the parties to give effect to the provisions of this Treaty.

The provisions of this treaty hereby has been signed by both of the parties in the two original o each Hindi, Nepali and English languages. (Karki, KC, Shrestha, Siwakoti, Subedi, Sitaula, p.232-238)

The treaty is about the Integrated Development of Mahakali River has three major aspects;

- i. A boundary river between two nations
- ii. Treaty on the basis of equal partnership
- iii. The treaty covers Sarada Barrage, Pancheshwar Multipurpose Project



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