

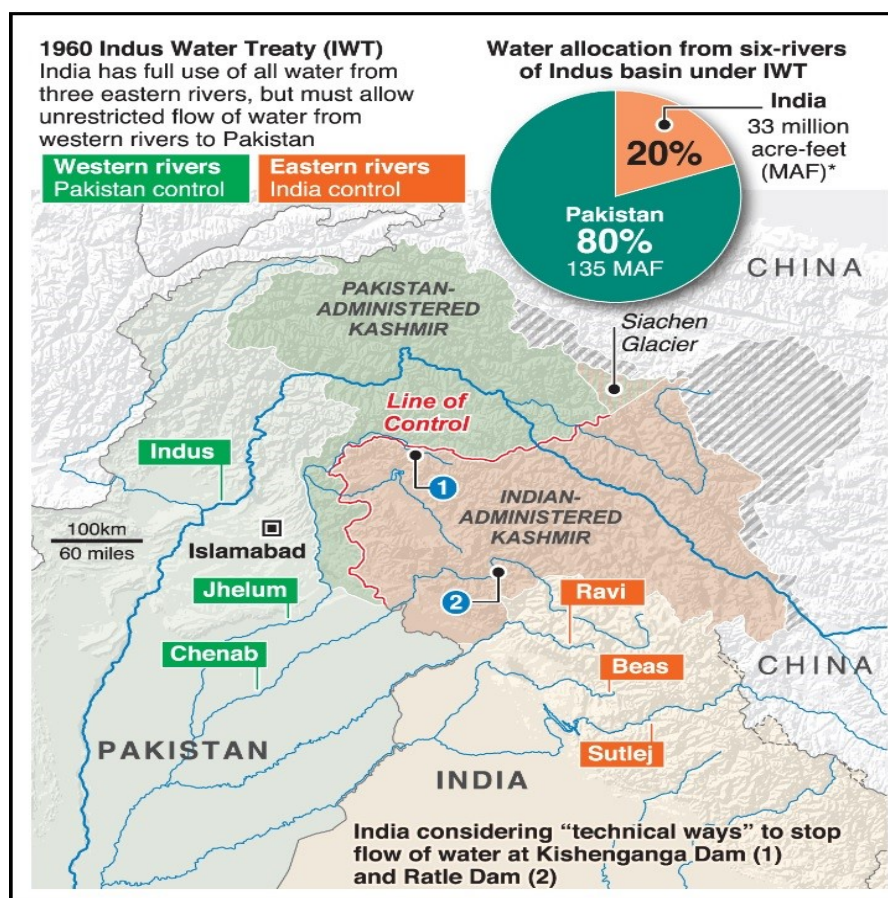
Revisit Indus Water Treaty

Why in news?

There is a need to revisit the Indus Water Treaty (IWT) rather than action of court of arbitration.

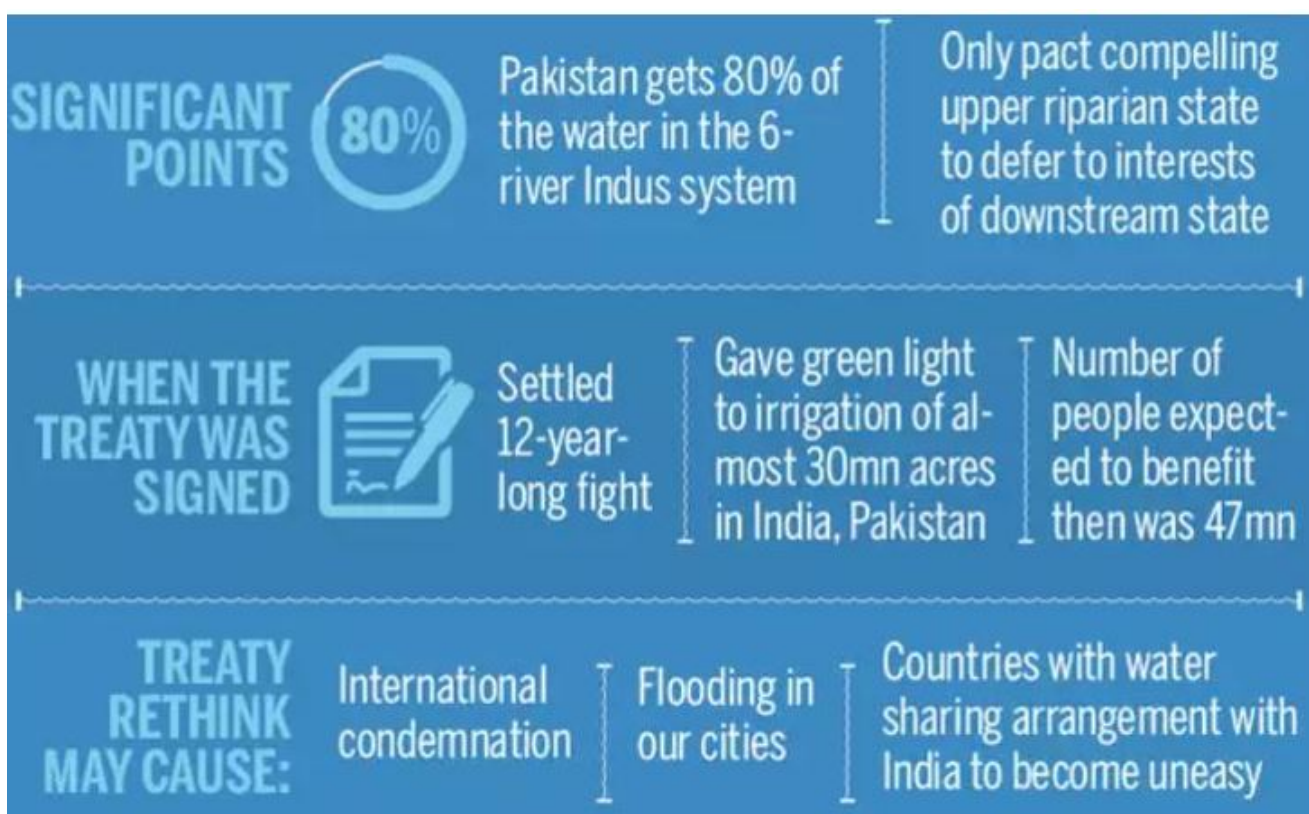
What is Indus-Water Treaty?

- **Indus Waters Treaty** - The Indus Waters Treaty was signed in **1960** between India and Pakistan.
- It was brokered by the **World Bank**.
- The treaty administers how river Indus and its tributaries that flow in both the countries will be utilised.
- **Rights of water usage** - The treaty divides the Indus system into two segments:
 - **Eastern Rivers** - Sutlej, Beas and Ravi
 - **Western rivers** - Indus, Chenab and Jhelum



- India gets right of unrestricted use over the Eastern Rivers while Pakistan is entitled to unrestricted use of the Western rivers.
- India is under obligation to let flow the western rivers unrestricted.

- However, since Indus flows from India, the country is allowed to use 20% of its water for
 1. Irrigation
 2. Power generation
 3. Transport purposes
- Both India and Pakistan have the right to non-consumptive use and rights of drainage issues and river conservation aspects.
- **Dispute resolution** - A Permanent Indus Commission was set up as a bilateral commission to
 1. Implement and manage the Treaty
 2. Solve disputes arising over water sharing
- **Article 8 of the treaty** - Both sides are expected to meet at least once a year to discuss bilateral problems.
- After the Uri terror attack in 2016, India had suspended routine bi-annual talks between the Indus Commissioners of the two countries stating that **blood and water could not flow together.**
- **Withdrawal from the treaty** - Experts suggest that India can exercise the sovereign right of a state under Article 64 of the Vienna Convention to withdraw from any international treaty.



What is the dispute redressal mechanism laid down under the Treaty?

- The dispute redressal mechanism provided under Article 9 of the IWT is a graded, three level mechanism under Commissioner, Neutral Expert and the Court of Arbitration.
- **Commissioner** - Whenever India plans to start a project, under the Indus Water Treaty, it has to inform Pakistan that it is planning to build a project.

- If Pakistan oppose it and ask for more details, it has to be clarified between the two sides at the level of the Indus Commissioners.
- **Neutral Expert** - If it is not resolved, then the question becomes a difference, which has to be resolved by the Neutral Expert.
- It is at this stage that the World Bank comes into picture.
- **Court of Arbitration** - If it is not resolved by the Neutral Expert or that the issue needs an interpretation of the Treaty, then that difference becomes a dispute.
- It then goes to the Court of Arbitration.

What is the issue over the hydro-electric project?

- **Construction of hydel projects** - New Delhi accuses Pakistan's refusal in implementing the treaty as it repeatedly raises objections to the construction of hydel projects on the Indian side.
 - **Kishanganga** (Neelum in Pakistan) hydroelectric project in river **Jhelum, Jammu & Kashmir**.
 - **Ratle** hydroelectric project in river **Chenab, Jammu & Kashmir**
- **Authority to solve**- India wants to solve the contention with the help of neutral expert but Pakistan approached the Permanent Court of Arbitration.
- India views that the PCA it is not competent to consider the views of Pakistan.
- However, the court determined that it is competent to consider and determine the disputes set forth in Pakistan's request for arbitration.
- In July 2023, the court unanimously passed a decision which is binding on both parties without appeal rejecting each of India's objections.

Why there is a need to revisit IWT?

- **Future water availability**- World Water Council highlights the need to incorporate mechanisms that allow flexibility to changes in the quantity of water available for allocation among the parties.
- **Adopting the principles of water course**-
 1. Equitable and Reasonable Utilisation (ERU)
 2. No Harm Rule (NHR)
 - **ERU** - It represents a compromise between two extreme and uncompromising positions regarding the right conferred upon States, by virtue of their territorial sovereignty, to use shared transboundary water resources found within or passing through their territory.
 - **NO Harm Rule**- It is a due diligence obligation which requires a riparian state undertaking a project on a shared watercourse having potential transboundary effect to take all appropriate measures.
 - ERU and NHR are binding on both countries as they are customary international law rule generating the binding obligation to both parties.

Quick facts

Permanent Court Arbitration

- It is an intergovernmental organization established to facilitate arbitration and other forms of *dispute resolution between member states, international organizations, or private parties* arising out of international agreements.
- The cases span a range of legal issues involving territorial and maritime boundaries, sovereignty, human rights, international investment, and international and regional trade.
- PCA has ***no sitting judges***; instead, parties themselves select the arbitrators.
- PCA has 122 Contracting Parties including India, Pakistan, China, Russia, and the US.
- The organization is ***not a United Nations agency*** but has observer status in the UN General Assembly.
- The rulings of PCA are ***binding*** but the tribunal has ***no powers for enforcement***.

| PCA | |
|--------------------|------------------------|
| Founded in | 1899 |
| Headquarters | The Hague, Netherlands |
| India's membership | India is a party |

References

1. [The Hindu| Revisit IWT](#)
2. [The Hindu| Court of arbitration ruling](#)