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India Rejects IWT Court of Arbitration "Maximum Pondage" Award as Null and Void

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India Rejects IWT Court of Arbitration "Maximum Pondage" Award as Null and Void

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WHY IN NEWS:

India categorically rejected the **Court of Arbitration's award on "maximum pondage"** issued on **May 15, 2026** under the **Indus Waters Treaty (IWT), 1960**, calling the court "illegally constituted" and its decisions "null and void." MEA Spokesperson **Randhir Jaiswal** reiterated on May 17 that India's decision to hold the IWT **in abeyance** — imposed following the **Pahalgam terror attack** of April 22, 2025 — remains fully operative. This is the latest front in the legal-diplomatic conflict over the Indus waters framework.

BACKGROUND: INDIA'S IWT ABEYANCE DECISION

| EVENT | DATE | DETAIL |
|------------------------------|----------------|------------------------------------------------------------------------------------------------------|
| Pahalgam terror attack | April 22, 2025 | 26 civilians killed in Baisaran Valley, J&K; Resistance Front (TRF/LeT proxy) claimed responsibility |
| India places IWT in abeyance | April 23, 2025 | MEA announces the treaty will be held in abeyance until Pakistan ends cross-border terrorism |
| Operation Sindoor | May 7–10, 2025 | India strikes 9 terror infrastructure targets in Pakistan/PoK; ceasefire via DGMO talks May 10 |
| Court of Arbitration award | May 15, 2026 | Arbitration panel issues award on "maximum pondage" provisions; India rejects it |
| India's rejection | May 17, 2026 | MEA formally rejects award as "null and void" from an "illegally constituted" tribunal |

THE INDUS WATERS TREATY, 1960 — FRAMEWORK

The **Indus Waters Treaty (IWT)** was signed on **September 19, 1960** between India and Pakistan, mediated and funded by the **World Bank**.

Water Allocation

| RIVER | ALLOCATION |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Eastern Rivers: Ravi, Beas, Sutlej | Exclusive use by India |
| Western Rivers: Indus, Jhelum, Chenab | Exclusive use by Pakistan (with India's restricted rights for run-of-river hydro, irrigation, and non-consumptive uses) |

India can build **run-of-river hydropower** projects on the Western Rivers — but with strict design constraints on pondage (storage), drawdown, and gated spillways.

Dispute Resolution Mechanism

| MECHANISM | WHEN USED | FORUM |
|-----------------------------------------|-------------------------------------------------|----------------------------------------------------------------------|
| Permanent Indus Commission (PIC) | Routine issues; meetings at least once per year | Bilateral (India + Pakistan commissioners) |
| Neutral Expert (NE) | Technical questions about treaty interpretation | Appointed by World Bank; binding on technical matters |
| Court of Arbitration | Legal/political disputes beyond Neutral Expert | 7-member panel: 2 nominated by each side + 3 by neutral institutions |

WHAT IS "MAXIMUM PONDAGE"?

Pondage in the IWT context refers to the **volume of water that can be temporarily stored** in a reservoir of a run-of-river hydropower project on the Western Rivers.

- India's hydropower projects on the **Chenab and Jhelum** (e.g., Ratle, Kishanganga) are run-of-river — no large dams, but small forebays/ponds
- The IWT prescribes **maximum pondage limits** — how much water India can hold in these forebays at any given time
- Pakistan argues that India's projects exceed allowable pondage — giving India an ability to temporarily withhold water downstream, affecting Pakistan's agricultural calendar
- The May 15, 2026 award ruled on the technical specifications of "maximum pondage" — specifically in the context of **Ratle Hydroelectric Project** (Chenab, J&K; 850 MW)

WHY INDIA REJECTS THE COURT OF ARBITRATION

India's consistent position (since 2016) is that the **Court of Arbitration is illegally constituted**:

| INDIA'S OBJECTION | BASIS |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Parallel proceedings | Pakistan simultaneously initiated both a Neutral Expert (NE) process and a Court of Arbitration (CA) for the same disputes — India argues this is impermissible; the treaty envisages sequential, not parallel, processes |
| World Bank's role | World Bank facilitated both proceedings; India protested this as incompatible with the treaty's dispute resolution sequence |
| Unilateral composition | India refused to nominate its arbitrators; the 3 neutral arbitrators were appointed unilaterally — making the court's composition illegitimate from India's perspective |
| Jurisdiction | India argues the disputed matters are "technical" and properly belong before the Neutral Expert — not the Court of Arbitration |

India has boycotted all Court of Arbitration proceedings since 2016 and considers its awards "non-binding and null and void."

THE RATLE HYDROELECTRIC PROJECT

| PARAMETER | DETAIL |
|----------------------|-------------------------------------------------------------------------------------------------|
| Location | Chenab River, Kishtwar district, J&K |
| Installed capacity | 850 MW |
| Type | Run-of-river hydropower project |
| Status | Under construction; NHPC (National Hydroelectric Power Corporation) executing |
| Pakistan's objection | Argues design parameters (pondage, drawdown) exceed IWT limits; has contested at both NE and CA |
| India's position | Design is fully compliant with IWT; Pakistan's parallel legal challenges are impermissible |

KISHANGANGA HYDROELECTRIC PROJECT

| PARAMETER | DETAIL |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Location | Kishanganga River (tributary of Jhelum), J&K |
| Installed capacity | 330 MW |
| Status | Commissioned 2018 |
| Pakistan's objection | Argued India was diverting water from Neelum River (Kishanganga's name in Pakistan) — affecting Neelum-Jhelum project downstream |
| Court outcome | Permanent Court of Arbitration (2013) upheld India's right to build but imposed flow restrictions — India has complied with minimum flow requirements |

NEUTRAL EXPERT PROCESS (ONGOING)

Separately from the Court of Arbitration, a **Neutral Expert** process is ongoing:

- The World Bank appointed **Michel Lino** as Neutral Expert in 2022 to adjudicate the same Rattle/Kishanganga technical disputes
- India is participating in the NE process (unlike the CA)
- Final NE award expected by end of 2026
- India's position: NE has exclusive jurisdiction over these "technical" matters; CA has no competence

IWT'S BROADER CONTEXT: AFTER PAHALGAM

India's April 2025 decision to hold IWT in abeyance — unprecedented in the treaty's 65-year history — changes the legal-diplomatic landscape:

- 1 **Abeyance ≠ termination:** India has not formally terminated or withdrawn from IWT; "abeyance" is a diplomatic signalling tool
- 2 **Practical effect:** India has suspended meetings of the Permanent Indus Commission (PIC) and refused to engage bilaterally on water issues until Pakistan ends cross-border terrorism
- 3 **Legal risk:** No provision in IWT allows for "abeyance" — international law experts argue India may be violating the treaty; India counters that Pakistan's terrorism constitutes a "material breach" triggering suspension under Vienna Convention on the Law of Treaties

- ④ **Vienna Convention Article 60:** Allows suspension of a treaty in case of material breach by one party — India’s implicit legal basis

UPSC RELEVANCE

GS Paper 2 — International Relations

- **Indus Waters Treaty (1960):** water allocation, dispute resolution mechanism (PIC → NE → CA sequence), World Bank’s role
- **India-Pakistan water diplomacy:** Rattle, Kishanganga projects; Pakistan’s legal strategies; India’s counter-strategy
- **India’s “abeyance” decision:** legal basis under Vienna Convention; diplomatic signalling
- **International arbitration:** difference between Neutral Expert (technical) and Court of Arbitration (legal/political); why India rejects CA

GS Paper 3 — Environment/Water Security

- **Indus basin:** geography, water sharing, climate-vulnerability; glacial melt implications
- **Hydropower on treaty rivers:** run-of-river design constraints under IWT

Mains Question (GS2): “India’s decision to hold the Indus Waters Treaty in abeyance following the Pahalgam terror attack represents a fundamental shift in how India uses treaty commitments as instruments of foreign policy. Critically examine its legal basis and strategic implications.” (250 words)

Keywords: Indus Waters Treaty 1960, maximum pondage, Rattle hydroelectric project, Court of Arbitration, Neutral Expert, Permanent Indus Commission, World Bank, abeyance, Vienna Convention Article 60, Pahalgam, Operation Sindoor, Kishanganga.

Sources: ANI, The Wire, MEA

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INDUS WATERS TREATY (IWT), 1960:

Signed: September 19, 1960; between India and Pakistan; mediated by World Bank

Eastern Rivers (Ravi, Beas, Sutlej) → India exclusively

Western Rivers (Indus, Jhelum, Chenab) → Pakistan exclusively (India has limited run-of-river hydro rights)

Dispute resolution sequence: PIC → Neutral Expert → Court of Arbitration

INDIA'S ABEYANCE DECISION:

Date: April 23, 2025 (day after Pahalgam attack)

Reason: Pakistan's continued support for cross-border terrorism

Effect: Suspended PIC meetings; no bilateral engagement on water

Legal basis: Vienna Convention on the Law of Treaties, Article 60 (material breach)

COURT OF ARBITRATION — INDIA'S REJECTION:

India considers it "illegally constituted" since 2016

Reason: Pakistan initiated parallel proceedings (both NE and CA simultaneously) — violating treaty sequence

India boycotted all CA proceedings; considers all CA awards "null and void"

"MAXIMUM PONDAGE" AWARD (MAY 15, 2026):

Relates to temporary water storage permitted in forebay/pond of run-of-river hydro projects on Western Rivers

Specifically concerns Ratle Hydroelectric Project (850 MW, Chenab, Kishtwar, J&K)

India rejected the award on May 17, 2026

NEUTRAL EXPERT (NE) PROCESS:

India participates in NE (unlike CA)

NE: Michel Lino (appointed 2022 by World Bank)

Final NE award expected end of 2026

RATLE HYDROELECTRIC PROJECT:

Location: Chenab River, Kishtwar, J&K

Capacity: 850 MW; run-of-river; under construction by NHPC

KISHANGANGA HYDROELECTRIC PROJECT:

Location: Kishanganga River (Jhelum tributary), J&K

Capacity: 330 MW; commissioned 2018

2013 PCA award: India can build but must maintain minimum downstream flow

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