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**Kathmandu School of Law (KSL)**

Dadhikot-9, Bhaktapur, Nepal, Ph: 6634455, 6634663,

Email: [info@ksL.edu.np](mailto:info@ksL.edu.np), [www.ksL.edu.np](http://www.ksL.edu.np)

# **Title of the Book: International Watercourses Law and A Perspective on Nepal-India Cooperation**

**Writer:** Surya Nath Upadhyay  
**Publisher:** Ekta Books, Kathmandu  
**ISBN** 9789937102285  
**Publication year:** 2012  
**Total Pages:** 650  
**Reviewed by** Dr. Yubaraj Sangroula

Water is unequivocally essential for life; simply not possible without it. The Greeks were astute enough to acknowledge it as the primal substance of universe, some 2500 years ago. Water is a resource for dignified life, as much as it is a bare necessity. Explaining the ‘development’ and ‘survival’ aspect of water requires a deeper thinking, analysis and projection of ideas thereof. The book authored by Suryanath Upadhyay is an apt example in which the author has rightly projected that Nepal boasts abundance of water resource in its territory but sadly, the ordinary citizens have not been able to reap much from the abundance.

Writing a book against the backdrop of a severely constrained, if not absolutely disturbed, intellectual ambience in Nepal is quite a challenge, which the author has overcome by putting together a work the reviewer considers the finest book in international law regarding watercourses. A note of gratitude goes to the author for this immensely valuable contribution.

Upon a thorough study of the content with personal perspective, it seemed very relevant tool from the dimensions of jurisprudence and philosophy of law. The author inspires to view the rivers of Nepal from the prisms of nationalism, human development and international water politics. He puts into plain sight the significance of water systems in Nepal’s national development and Nepal’s policy failures with respect to Nepal-India bilateral relationship that supposedly envisions prudently harnessing the river systems. The book clearly shows how miserably Nepal has been failing to utilize its rivers productively in

order to transform the lives of millions of poor people. It implicitly conveys that the largely untapped and naturally chilled water running down rivers and tributaries' could provide warm clothes, nutritious food and a pleasant life to such people had the political segments of the country been able to firmly stand as nationalist and pragmatist while utilizing the water resources.

The book is divided into two parts- the first part (chapter 2 and 3) deals with international watercourses law and the second part (chapter 4, 5, 6,7, 8 and 9) deals with 'Nepal-India cooperation with regards to water system that Nepal shares with India'. The first part contains description, critical analysis and the author's perceptual ideas on 'the international law on watercourses' which come into play when watercourses are not limited to the sovereign jurisdiction of a particular country. The core idea he projects in the first part is that 'river or river system as an important form of water resource among many, when flows beyond a particular country acquires international character and consequently attracts international law. The idea is contextual to Nepal since many rivers flowing across it assume international character. Unfortunately, Nepalese nationals have been less emphatic about the sentiments and value attached with me and indolent to develop expertise to invoke rules of international law in favour of smaller nations like Nepal where rivers originate to flow down to powerful bigger nations. In the lieu of the sense of urgency it delivers, the book shows an avenue for paving the way for emergence of a regime of international law applicable to Nepal where tiny rivulets take the shape of colossal rivers and end down into sea. It instills the realisation that the field demands many professions to be involved in it.

The first part also extensively delivers information and makes a critical discourse on international system of law on watercourse. The arguments, rationales and principles developed in this arena provide a rich insight concerning failures of Nepal in this regard. The author has explored on 'international law based on Helsinki Rules 1966 of International Law Association, UN Convention on Non-Navigational Uses of International Water Courses, the resolution on the Use of International Non-Maritime Waters (known as Salzburg Resolution), International Law Association's Statement of Principles which sets guidelines for 'Rules of Law concerning the Use of International Rivers (commonly known as Dubronvik Resolution) among others. The book, in this sense, is resourceful for government policy makers, planners, politicians, professors and law practitioners. The leaders of the political parties are urged to invite the author and have interact on how Nepal can use international law on water courses to its advantage. It would be a wise decision that could help the national flourish.

Additionally, the first part of the book has judiciously explored on the case law of international jurisdiction as well as the diversity of rules established by bilateral treaties concerning river system. The insightful summary of the principles established in cases such as the *Kansas v. Colorado*, which held that each state has full jurisdiction over the lands within its borders, including the beds of the streams and other waters, *New Jersey v. New York*, *Wruttemberg & Prussia v. Baden*, *Helmand River Delta Case*, *San Juan River Case*, *Trail Smelter Case* among others supply a rich jurisprudence to matters of use of rivers. Indian arbitral awards are another category of jurisprudence the author has delved into. He has discussed on the principle of equitable apportionment of water between states as a guiding principle adopted by the *Krishna Water Dispute Tribunal* 1973 among others, which is a gripping idea in itself.

The intriguing and engaging aspect of the book is that the author has been so deeply inspired by the ideas of richness of the (international) water system and its economic significance and viability, provided its prudent usage. The author makes a compelling point that observance of the international law is the best route to resolve number of issues concerning the shared rivers which Nepal and India are grappling with. Nepal, in particular, can enhance its benefits if it develops capacity to utilize the international law developed in this field.

Moving to the second part, it starts with an examination of the ‘physiographic situation of Nepal’ with multidimensional observation on climate, river system, potentiality of water resource and its current use among others. A striking feature of this particular part is its unravelling of minute details of Nepal-India agreements on various rivers. Two inferences collected from the agreements are: a) none of the projects have strictly complied with the terms and references agreed upon, primarily due to deficiency in monitoring capacity in Nepal; b) an atmosphere of secrecy surrounds the agreements, and the general people are kept deprived of information of their interest. As a matter of fact, most of the agreements have subsequently come into controversy inducing the people to associate the issues therein with their national sovereignty. India on the other hand, has taken it a siren of emerging ‘anti-India euphoria’ in Nepal. The potentiality of integrated efforts mutually beneficial by sharing water resource has thus been clouded. The policy makers of Nepal and India are certainly guilty of failing to properly address the sentiments of people of the both countries.

The book is resourceful in the sense that it could be able to extract the truth behind quite a many controversies in and between India and Nepal about sharing of rivers and other water resources. The frankness and exploration of

the truth has been a remarkable boldness of the author. For instance, in one case study he has enlivened a fact as ‘In essence, the basic strategy of the project has been to serve the interests of India and whatever has been set for Nepal’s benefit are simply the appendage. There was no participation of the Nepalese experts in designing and construction of the project. The project was totally managed and administered by India.’ (p.169)

To expound on the author’s views, political parties endorsing all sorts of ideologies and political structure have used water diplomacy as party slogans frequently in the past. Projects like *Koshi* and *Gandaki* have been used as tools of election manoeuvres and pseudo-nationalism. The slogan chanters and election candidates have however hardly read the documents of agreement. In this grim perspective of intellectuality, the author has made benign efforts to find out the problematic aspects of the projects. Political parties will find this book particularly resourceful to frame informed and rational argument to prudently negotiate with India and establish a meaningful relation with it.

The book has elaborately and minutely covered the agreement on *Koshi*, *Gandaki* and *Makhali*. Chapter 8 delves into how should India’s approach to the development of water resources in the region be understood. The reviewer is tempted to say that without understanding the Indian approach of water resource development in the region, Nepal, or an of India’s neighbours for that matter, cannot have a robust diplomacy with India. What is needed in this instant time is development of number of experts who are able to understand such matters. The reviewer thanks the author for having produced an intellectual work that shall serve the nation in a critical juncture.

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