

Chapter Four

Background and Evolution of the Understanding of Right to Water in India

Introduction

This chapter seeks to investigate the emergence and evolution of the understandings of the idea of Right to Water, the meaning of which is explained in Chapter Three of the present study. The aim here is to explore the status of Right to Water in India. To attain this objective, the chapter focuses on some fundamental questions as how the emergence of the idea is intricately linked with the national and state documents, how it has evolved with judicial interpretations and how the initiatives taken by civil society have contributed to its development. Since this chapter focuses on the emergence and evolution of notion of Right to Water, it is in a way an expansion of Chapter Three that explores the notion in the Indian context. The purpose of such contextualization is to understand the Indian perspective on Right to Water that will be further used as a background for analysis of water policy of the union government of India.

It is important to note that while seeking relevant answers for the questions, this chapter argues that in India, the idea of Right to Water has not evolved in a chronological order^{ccxxi}. The idea has been introduced with different interpretations and has evolved with numerous arguments, presented and advanced by different stakeholders^{ccxxii}. The chapter further argues that government's official documents in India do not provide a holistic and conceptual understanding on Right to Water and the gap is partially filled by other stakeholders, including the judiciary and civil society. The chapter emphasises that the national and state governments hold a narrow understanding about the idea of Right to Water. Whereas, the interpretations

made by the Indian judiciary, along with the initiatives of Indian civil society, present an explicit and deeper comprehension of the idea^{ccxxiii}.

Keeping these arguments in view, the present chapter is divided into various sections and subsections. The first section is subdivided into two sections, which respectively provide a note on the water regime in British Colonial India and in Independent India. The subsection which elaborates on Independent India is exceptionally large and is further divided into various subsections, each of which elaborates on the institutions concerning with the evolution of the idea of Right to Water. Section two discusses the process of progression of the idea of Right to Water in India and section Three and Four, respectively, point to the need of national water policy and draw on the evolution of National Water Policies in India, which is followed by the summary.

Such a scheme of discussion has multiple reasons. A discussion on these lines will provide an important entry to understand the background, which will provide if and how the idea of Right to Water has evolved in the Indian context. A discussion revolving around the constitutional, legal, planning, judicial frameworks is appropriate because the frameworks together provide strategies and measures of water management. An analysis of the role of civil society is even important because globally civil society is considered as a major stakeholder in water management and is made responsible to ensure right to water to all. Such a discussion is even otherwise essential because India has hardly documented historical developments on the idea of Right to Water, as Chapter Two of this study provides. This indeed has created a gap in water studies, which requires to be filled. In the view of this, the present chapter essentially provides a backdrop for a critical analysis of Right to Water in the context of water policies of the Union Government, which is the theme of the subsequent chapter.

4.1. Status of Right to Water in India

The nature and scope of right to water in India is still at the initial stages of evolving. As an idea, it has not evolved conceptually but only reflects some

key values in the national and state government documents and initiatives of the Indian judiciary and civil society. In view of this argument, the following paragraphs discuss the undertakings made by the Union and State Governments along with the rubric and verdicts of the Indian judiciary and the initiatives taken by the Indian civil society.

4.1.1. British Colonial India

Inquiring about the status of the idea of Right to Water in British colonial India is challenging. In continuation to Chapter Three, this section raises a fundamental question: whether a discussion on Right to Water in the context of British colonial India is relevant. The question is logical as British rule in India did not entitle any rights to Indians. In the given situation, exploring the status of Right to Water in British colonial India may appear to be irrational; however, this is not the case. It is essential to note that the purpose of investigation here is not to argue for the idea of Right to Water, meaning of which is described in Chapter Three of the present study, but it is to attain an understanding on water management developed during the British rule in India. The discussion is important here because sovereign India has adopted British administrative frameworks including frameworks of water management (Vani, 2012). Basically, this discussion seeks to find how rights over water were defined and enjoyed during the British rule in India.

A study of historical documents shows that during British colonial rule water was a subject of management and control by the central government. Historians, in this view, present that the purpose of colonial administration in India was to uphold a system of water management that could create and ensure strategies to maximise profit from water bodies^{ccxxiv}. Since the focus of water management was on maximum profit/gains, the laws introduced by the colonial administration were concerned with use of water for productive activities as irrigation, navigation and embankments.

Notably, in the Company and British administration, to strategize water management, Acts and regulations were introduced in accordance with regional requirements; Acts such as Bengal Regulation VI of 1819;

Embankment Regulation, 1829, the Act of 1866; Northern India Canal and Drainage Act, 1873 and Bombay Irrigation Act, 1879 are major landmarks in this regard^{ccxxv}. The Acts, enacted during the Company administration, initiated and endorsed the control of the state on water bodies and water resources that was first noted in 1819 when the Bengal Regulation Act of 1819 was introduced. The Act empowered the government to invade "private rights" of ferry by establishment of "public ferry". The Act aimed to break down the system of Kudimaramath (self-repair) and to replace it with a system of state owned water management that was managed through public funds^{ccxxvi}. Similarly, to manage and repair embankments, the Company enacted the Embankments Resolution Act, 1829 that endorsed the power of the British government to control water resources and water bodies.

With the shift of power to the British crown, the interest of the colonial government on water resource management increased and in order to gain maximum profit from water bodies, government's control on canal water supply was justified and special attention was given to irrigation. The Act of 1866, Northern India Canal and Drainage Act, 1873 and Bombay Irrigation Act, 1879, are examples of such initiatives. These Acts, while deciding on the purpose of water use, argued differently from the Company administration and stated that water resources are the subject of public use and so it is justifiable to put them under government control. The Preamble of Act 1873, states that the Provincial Government is entitled to use and control for public purposes, the water of all rivers and streams flowing in natural channels and of all lakes and other natural collections of still water^{ccxxvii}.

Notably, the British colonial government, while emphasizing the use of water for irrigation purposes, had on record admitted that the government has the duty to fulfill the requirement of drinking water supply. However, the control over water resources, in all the situations, remained in the hands of the British government. The Bengal Irrigation Act 1876 and the Bombay Irrigation Act 1879 have special significance in this regard. The Bengal irrigation Act recognized that wherever irrigation works led to a substantial deterioration of drinking water supply, the government had a duty to provide alternative

supply of drinking water within convenient distance. Similarly, the Bombay Irrigation Act 1879 stated that whenever it appears expedient to the State Government, the water of any river or stream flowing in natural channel, or any lake or other natural collection of still water, should be applied or used by the State Government. The State Government may, by notification, declare that the said water will be so applied (Section 5)^{ccxxviii}.

This study noted that the Acts that were passed in subsequent years have considered the Bengal Irrigation Act of 1876 and the Bombay Irrigation Act 1879 as milestones. In the light of these two Acts, the new Acts have redefined the meaning of control of the British government over water bodies and have paid attention on the requirement of drinking water, albeit in the limited sense. The Acts, as Punjab Minor Canals Act of 1905, Jharia Water Supply Act 1914, the Kumaon Water Rules of 1917 and the Utter Pradesh Minor Canals Act 1920 are important in this regard^{ccxxix}.

A major shift in water management was noted when the Royal Commission on Agriculture recommended participatory management in irrigation^{ccxxx}. The suggestions were placed in the Madhya Pradesh Irrigation Act, 1931, that added participatory irrigation along with the responsibility of drinking water supply. During the colonial administration, the idea of participation in water management is further argued as a key aspect of administrative decentralisation. The Government of India Act, 1935, is a major change in this regard as it has devolved irrigation matters to states. With the Act in effect, the provinces were entitled to make resolutions, laws and policies on matters concerning water supply, irrigation, canals, drainage, embankments, water shortage and hydropower.

It appears that the Acts introduced during British rule in India were concerned with making water available as it created a public system of water management that recognised the obligation of government to ensure supply of drinking water. However, it is important to clear here that the Acts were not intended to entitle people to lay claim on water as their right. The use of water was permissible on the ground of ownership of land that was in the hands of

the State governments, as all the Acts made during the colonial administration enact^{ccxxxi}. The provisions of the Acts enacted by the British clarify that in British colonial India, the use of water was not understood in the context of rights but endorsed as a subject of management, which allowed the governments to control water against the rights of commons over water resources.

4.1.2. Independent India

From the above discussion it is easy to understand that in British colonial India even the limited aspects of right to water were not being satisfied. This further means that sovereign India had to make a fresh start. Importantly, in comparison to other rights, identifying and exploring the precise point where Right to Water was introduced in India, is difficult. It is a fact that India in its constitutional settings had implicitly protected water as a right. However, whether this protection comes under the category of Right to Water is yet to be investigated. To investigate this view, this section elaborates on governmental and non-governmental initiatives that have shaped Indian understanding on the idea of Right to Water. Here, the study of governmental initiatives includes the study of the Indian Constitution and the legal and planning documents of the Union and State governments. Simultaneously, the study of non-governmental initiatives includes studies of judicial references and endeavours by Indian civil society. It is important to note that since India has limited documentation regarding the political discussion on the idea of Right to Water, the factual details mentioned in the following paragraphs do not present a chronological development of the idea, but only highlights and elaborates the process of the evolution of the understandings of the idea which has globally been termed and classified as the concept of Right to Water.

4.1.2.1. Emergence of the Concept in National Documents

It is a fact that in India, the national documents introduce and offer the core principles of water management, directives of which are applicable to Indian states. This implies that to explore on the concept and status of Right to Water in India, it is essential to study national documents, in the view of the same.

This study noted that in India, the idea of Right to Water is implicitly mentioned in the Constitution and water laws. Further, principles of the ideas are reflected in the planning framework as well. This section, in this stance, elaborates on the major provisions of the Indian Constitution and national laws which point to the idea that water is a right and highlights the major plans and programs, objectives of which attempts to manage water in the line of the idea of Right to Water.

4.1.2.1.1. Foundation of the Idea: The Key Constitutional Provisions

In water discourses, it is often argued that the Constitution of India has not defined and ensured water as a right^{ccxxxii}. However, the researcher, while investigating the status of the idea of Right to Water in the Indian Constitution holds a view, offered by Shiva (2002), Iyer (2010), and Baxi (2010). The researcher like these scholars insists that the Constitutional endorsement on right to water in India though not explicit, does have an implicit presence and cannot be ignored. In the researcher's opinion, the indirect reference of the Indian Constitution to right to water provides a ground to promote the entitlement of Right to Water. Further, even the Indian judiciary, in its verdicts on water related issues has referred to Constitutional provisions. It is find that the judicial discussions have explained the idea of Right to Water with reference to the fundamental rights and duties, directive principles of state policy and division of powers between the union and the states. The references used by the Indian judiciary raises a question that if the idea of Right to Water is not mentioned at all in the Indian Constitution, how the judiciary as the supreme preserver of right can refer to the Constitution for its judgements. Clearly, since Indian courts have provided excellent interpretations on issues concerning water, even a brief mention of any aspect related to Right to Water in the Constitution, cannot be ignored. Indeed, the Indian Constitution does not restrict itself strictly to the meaning and scope of Right to Water, but certain of its provisions have circuitously considered right to water as one of the rights. The researcher has identified seven such provisions. These are as follows.

4.1.2.1.1.1. Right to Equality (Article 15 (2))

The Indian Constitution is the first national document in which sovereign India has placed right to water as an equal right to access. Article 15(2) of the Constitution explicitly states that no citizen shall ‘on grounds only of religion, race, caste, sex, place of birth or any of them’ be subject to any disability, liability, restriction or condition with regard to ‘the use of wells, tanks and bathing ghats’.

4.1.2.1.1.2. Right to Freedom (Article 19 (1)(e))

The second implicit but significant mention of right to water is noted in Article 19(1)(e) that gives right to freedom and guarantees right to reside and settle in any part of the country. The researcher thinks that the article offers an implicit guarantee to right to water. Since the purpose of this provision is to ensure all facilities, essential for dignified settlements, it is clear that under this provision, one can claim right to water as a part of right to freedom to settle in any part of India.

4.1.2.1.1.3. Right to Life (Article 21)

Another important right with reference to right to water is Right to Life declared in Article 21 of the Indian Constitution. The Article states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. In comparison to all other rights, entitlement of Right to Life comprises multiple entitlements. As per judicial interpretations it includes right to food, the right to clean environment and the right to health. Since enjoyment of all these rights are directly linked with the availability, accessibility and affordability of water, it is clear that the Constitution of India implicitly intends to ensure water as a fundamental right. In the legal discourse it has been argued that the idea is protected under the broad rubric of the Right to Life guaranteed under Article 21 of the Constitution^{ccxxxiii}.

4.1.2.1.1.4. Right to Education Act 2009 (Article 21 (A))

The most recent development, in respect to right to water, which again is implicit by nature, is noted in 2009, when the union government of India added a new right in the list of Fundamental Rights. Importantly, here right to water is indirectly assured in the context of Right to Education that is guaranteed under the Right of Children to Free and Compulsory Education Act, 2009 (Right to Education Act). Notably, while obligating States to provide free and compulsory education to all children of the age of six to fourteen, the Act determines that it is mandatory for all schools to provide safe and adequate drinking water facility to their students. This can be considered as an explicit recognition of the right to water to staff as well as students. Providing water in this manner to children ascertains them as one of the major beneficiaries of the right.

4.1.2.1.1.5. Fundamental Duties (Article 51 (A)(g))

This study found that the Indian Constitution has notified the individual's rights on water, with reference to duties. It can be argued that the Indian Constitution attempts to maintain balance between rights and duties and for this to be successful it urges citizens to protect water resources as their duty. Like Article 51-A (g), in this view, places a fundamental duty on every citizen of India 'to protect and improve' the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures.

4.1.2.1.1.6. Directive Principles of State Policy (Article 48A)

The aspect of duty is further carried forward with reference to Indian states. For instance, the provisions that are elaborated as directive principles to states, state that 'the State shall direct its policy towards securing that the ownership and control of the natural resources of the community are so distributed as best to subserve the 'common good'. Article 48A in this requirement provides that 'The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country^{ccxxxiv}. Visibly, the purpose of article 48A of the Directive Principles of State Policy is to obligate states to

protect, distribute and maintain natural resources for common good, which indirectly instructs the state to ensure equal availability and accessibility to water resources.

4.1.2.1.1.7. Division of Powers between Union, State and Local governments (Entry 56 (List I), Entry 17 (List II) & 73rd and 74th Constitutional Amendment Act 1992)

This study noted that the Indian Constitution has ascertained right to water not as an explicit right but as an explicit obligation of the Union and State Governments^{ccxxxv}. In the division of obligation, Entry 17 of the State List provides details on water management. It states that “Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power is the subject of state.” Another entry in this regard is conditional and is mentioned as Union Entry 56 (list-I) of the Seventh Schedule (Article 246) i.e. evolved as parliamentary law^{ccxxxvi}. This particular entry states that the Regulation and Development of interstate rivers and river valleys are under the control of the Union. Matters other than these subjects are given to the local governments. In 1992, the Indian Parliament while using its power of legislation made a constitutional amendment, known as the 73rd and 74th Constitutional Amendment Act 1992, added to the Eleventh Schedule. The Schedule enshrines the distribution of powers between the State legislature and the Panchayat which empowers Panchayats to take necessary measures for water planning including minor irrigation, water management and watershed development (Entry 3), fisheries (Entry 5) drinking water (Entry 11), waterways (Entry 13), health and sanitation (Entry 23), public distribution system (Entry 28) and maintenance of community assets (Entry 2)^{ccxxxvii}. Regarding the empowerment of Municipalities, details are mentioned in Article 243W, which obligates Municipalities to ensure water supply for domestic, industrial and commercial purposes that, is an important element of Right to Water.

With reference to the above discussions, it should be noted that even in the absence of a clear mention about the idea of Right to Water, the Indian

Constitution has prepared a background that values water as a right. It is quite evident that the duty of providing Right to Water in India is an obligation of the state as mentioned in the constitutional framework and has ensured in the form of rights, duties and directives principles of state policies. The provisions mentioned above assures individuals rights on water and guarantees them with reference to right against discrimination, right to freedom and more importantly, in favour of right to have life itself. The provisions enshrined in the part III and IV of Indian Constitution is indeed indicative of a paradigm shift that has suspended the colonial trend to use water for economic growth and shifted it to the objective of social justice (Baxi, 2010). In fact, it is the spirit of the Constitutional provisions which allows the Indian judiciary to address water related issues to ensure right to water and to make it obligatory for the administration to ensure it to all.

4.1.2.1.2. Reflection of the Idea in Indian Laws: Major Landmarks

This study noted that in the Indian legal frameworks, requirement of water uses is realized and fulfilled on a sectoral basis. The laws related to water use do not offer an exact legal framework within any single paradigm (Iyer, 2010; Sangameswaran, 2007; Cullet, 2010 & 2013). As a result, India has as many laws as there are water uses^{ccxxviii}. Several studies on water laws underline that in the Indian legal framework, use of water for drinking, irrigation and industrial purposes are defined separately (Cullet, 2013). Water related laws have addressed the issues concerning irrigation, energy, hydropower, drinking water, industry and environment and while doing so they have implicitly presented water as a right but not in a codified way. The researcher argues that while addressing the problems related to these subjects, Indian Laws on water management have reflected on the idea of Right to Water, howsoever in a narrow sense^{ccxxix}.

Constitutional adaptation of federal government has entitled the Union and State Governments to enact laws on water related issues. The exercise of the power of the enactment of laws has created a situation of legal pluralism. The legal structure of the Union Government, in this regard, is based on three

Articles, namely Article 246^{ccxi}, Article 262 (1)^{ccxli} and Article 262 (2)^{ccxlii}. These articles have collectively entitled Union Governments to legislate on water issues. To exercise legislative powers for water resource management, the union government has used an inclusive approach. Accordingly, while using the authority of enactment, the government has made laws which encompass all subjects that are directly or indirectly related to water uses, such as laws and acts on interstate and trans-boundary water disputes and conflicts, pollution and environment. Since sovereign union government of independent India has to maintain natural resources with federal setups, the early initiatives made by the union government aimed to address the problem of interstate water disputes. And hence, the Acts like River Boards Act 1956^{ccxliii} and the Inter-State River Water Dispute Act 1956^{ccxliv} do not emphasise the individual's rights over water use. In fact, the provisions of these Acts clarify the riparian rights of the states. Authorities of union government are further redefined in the Limitation Act 1963. Part IV section 25 of this Act states that the rights of the state, including right to such access and use of airway, watercourse, use of water, or other easement, shall be absolute and indefeasible. Since the provisions have majorly followed the principles of riparian rights, it is evident that the Acts have endorsed the rights of riparian owners and not the rights of individuals over water use (Cullet, 2009: 46).

A mention of right of individuals over water resources is implicitly noted in Factories Act 1948. The Act has obligated factory owners to ensure safe and cool water to their employees. Section 18 (1) of the Act states that “in every factory effective arrangements shall be made to provide and maintain at suitable points conveniently situated for all workers employed therein a sufficient supply of wholesome drinking water”. Since the claim on drinking water in this Act is limited to employees, the Act cannot be deemed to be an actual entitlement of right to water. A narrow expression of the idea of Right to Water is further noted in the Acts titled Water (Prevention and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986. The Water Act 1974 is important for the present research on two counts. First, it was the first time when a separate legislation was enacted on water itself and secondly,

it aims to provide fresh and drinkable water to all the citizens^{ccxlvii}. To ensure drinkability of water, the Act emphasises the control on water pollution and to attain this goal, it has offered comprehensive administrative details across 8 chapters and 64 sections. In the reference of the present study, Sub section 2(3) read along with sections 17 and 18 have vital significance as these emphasise the need to provide clean water to citizens. To establish obligatory mechanisms for the same, Sections 3 to 14 contain provisions to establish Central and State Boards that are obligated to undertake necessary measures to control water pollution^{ccxlviii}. The objective to have pollution-free and drinkable water is redefined in the Environment Protection Act 1986, whose provisions specifically concentrate on the quality and accessibility of water. To measure quality and accessibility of water, the Act provides notifications on permissible quality standards, environmental impact assessments and public hearings.

Most of the laws made by the union government share the idea of prevention of environmental pollution with regard to water bodies. However, they do not establish rights for the individual and hence the required suitable legal source for the derivation of such a right is not found in their offerings (Thielbo`rger, 2014: 51). The researcher noted considerable shifts with respect to the idea of Right to Water recently in 2016 when rights on water are entitled to individuals as well. The Rights of Persons with Disability Act, 2016 has established special provisions for the disabled/differently-abled that entitle them to claim water as a right. Chapter V of the Act i.e. ‘Social Security, Health, Rehabilitation and Recreation’, states that persons with disabilities have special right to water. Section 25 (e) of this Act states that access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas, is mandatory. Another significant change is expected from a national Bill titled ‘Water for All’ which is presently placed in the public domain for discussion, comment and suggestions^{ccxlviii}. The provisions in the Bill are important for the endorsement of right to water; however, since the Bill is yet to be passed by the Parliament; it is not found necessary to discuss it under this heading.

It is clear from the above discussions that legal frameworks introduced by the union government have so far not offered anything that can be termed as concrete with reference to the idea of Right to Water, as conceptually understood in Chapter Three. The researcher therefore argues that in the absence of codified laws in favor of the idea of Right to Water, the significance of planning and programming frameworks has increased. There are some schemes and programs of the union government that directly or indirectly adopt the major aspects of Right to Water. According to the researcher, the idea of Right to Water in planning and programming frameworks has emerged in two contexts. These are discussed in the next sections as part of the objectives of the Five Year Plans and also guidelines of government schemes and programmes.

4.1.2.1.3. Planning and Programming Frameworks: Major Assertions

This study has noted that in India, Five Year Plans have focused on water management with reference to the problem of water scarcity. Hence their objectives emphasise the optimum use of water resources. In the planning process, focus is commonly given to various issues as agriculture and industrial development, health, employment, transport, water technology and environment protection^{ccxlix}. Since the framework of water planning is based on socialist thought, priority of water distribution was given to the welfare of Backward Classes and programs/schemes were made to ensure that they be the first beneficiary of water resources. Importantly, the objectives of the Five Year Plans are realised through schemes and programs.

The First Five Year Plan (1951-56) endeavoured to provide drinking water to all^{cccl}. To make drinking water available was its first priority and in this direction, the Plan introduced the National Water Supply and Sanitation program in 1954. The program emphasized to make available safe water supply and adequate drainage facilities for the entire urban and rural populations of India. The next major development on this front is noted in the Fourth Five Year Plan (1969-74) that was made in the context of international development. As per the guidelines of International Organisations, the plan

introduced a program titled the 'Accelerated Rural Water Supply Programme' (hereafter ARWSP) made in 1972-73. Importantly, major ideas of it are reformed first in 1990' and then again in 2009.

Notably, the program has specific importance for the present research as it was the first instance when a national document offered guidelines to ensure drinking water to all habitations in rural areas. The guidelines significantly match the concept of Right to Water as they suggest a minimum level of water supply, deemed to be essential for human life. According to the guidelines, the basic minimum requirement is 40 litres per capita per day^{ccli}. To make water accessible as per the mentioned requirements, the program instructed that the distance of the source of water must be within 1.6 km or 100 meters and one hand pump should not serve more than 250 people. Thus, as a program it inculcated three major elements of the idea of Right to Water which included the minimum water requirement, easy accessibility of safe drinking water and sustainability of water resources to ensure water to all. The program had initiated a participatory approach and while offering implementation measures, ARWSP exceptionally emphasised the involvement of women in water planning.

The next plan i.e. the Fifth Five Year Plan (1974-79) added onto the schemes and while doing so it considered water as a part of environment and to preserve environment, it emphasized on preventing water pollution.

The Sixth Five Year plan (1980-85) focused on sanitation facilities in urban areas and emphasized women's participation in water planning. To attain the focused targets, the Sixth Five Year Plan introduced three programs titled the Low Cost Sanitation Scheme in 1980-81, the International Drinking Water Supply and Sanitation Program in 1983 and Promotion for the Role of Women in Water and Environmental Sanitation Services (PROWESS) in 1983. The researcher argues that the program, called Promotion for the Role of Women in Water and Environmental Sanitation Services had distinctly projected the idea of Right to Water as objectives of them intended to promote ways to include women in water supply planning and sanitation projects and had thus

initiated community participation in decision making. This should be considered as a move towards right to water because the Plan emphasises gender analysis, community involvement, participatory techniques and capacity building through field projects.

For the present study, references offered by the Seventh Five Year Plan (1985-90) are extremely important because it gave India its first national water policy in 1986 and in the water projects, gave exceptional priority to supply of drinking water and assurance of good quality water. For the latter, it offered measures for estimating the quality of water which is known as the Bureau of Indian Standard (BIS) IS: 10500 (the guidelines offered herein were modified in 2004 and titled as 'Guidelines for Drinking Water Quality and Guidelines for Safe Use of Wastewater and Grey Water', 2006). The Plan further launched a project called the 'Technology Mission' in 1986-87, which was renamed in 1991-92 as the Rajiv Gandhi National Drinking Water Mission. The purpose of both the programs was to ensure people's drinking water security in rural India, which indeed is an important aspect of Right to Water.

It should be noted that the Eighth Five Year Plan (1992-97) and Ninth Five Year Plans (1997-2002) together, while extending safe drinking water facilities to the urban population, has expanded people's participation in water planning that has been constantly maintained until the Twelfth Five Year Plan (2012-17). The researcher argues that the nature of people's participation as mentioned in this Plan was different than the prior involvement of the people. In these two plans participation was established as an obligation that was given to private sectors, including civil society and private enterprises. To ensure safe drinking water to urban and rural areas, the Plans emphasised on creation of appropriate infrastructure. Accordingly, reforms in the Rural Drinking Water Sector were adopted in 1999. The Plans launched projects called 'Swajaldhara' with two Dhara (streams). The first Dhara (Swajaldhara I) was established for a Gram Panchayat (GP) or a group of GPs or an intermediate Panchayat (at the Block / Tehsil level) and the second Dhara (Swajaldhara II) was introduced for Districts. In 2003, some reformative principles were added into Swajaldhara which were required to be adhered by

the State Governments and the Implementing Agencies. The principles mentioned in these two Plans insisted upon the adoption of a demand-responsive, participatory approach. The purpose of the Plan was to empower villagers by seeking their participation in the project functions and decision making processes^{cclii}. Importantly, it shifted the role of the government from direct service delivery to that of a planner, policy maker, monitor and evaluator, and a partial financial supporter.

The Tenth Five Year Plan (2002-2007) maintained balance between urban and rural water planning, importantly, initiatives in this respect were multiple. For instance, to ensure water at the rural level, a program named 'Haryali' was launched in 2003, to ensure water availability and accessibility at the urban level, the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was inaugurated in 2005 and to institutionalize community participation in water management and monitor and maintain water quality in rural areas, the 'National Rural Drinking Water Quality Monitoring & Surveillance Programme' was launched in February 2006. The Eleventh Five Year Plan (2007-2012) focused on the environmental aspect of water and with reference to it the National Urban Sanitation Policy 2008 was introduced that specifically focused on recycling of water. The Twelfth Five Year Plan (2012-2017) i.e., the current Plan has a combined focus on rural and urban water management. The official guidelines in this regard were released in 2013 in which rural water requirements are set at a minimum of 55 litres per capita per day^{ccliii}. The researcher finds that the orientation and scope of planning and programming frameworks in India are quite vast. The planning frameworks have adopted an integrated approach that covers almost all the sectors of water users^{ccliv}. With the focus on demand management, the Plans emphasize on community participation, equitable distribution and water recycling. To attain the decided objectives they have focused on strengthening the institutional capacity and creating conducive environment^{cclv} which indeed is a pre-requisite for both entitlement and assurance of right to water.

4.1.2.2. Regional Undertakings and Understandings on the Idea of Right to Water: The Contexts and Key Contents

In India, the system of governance is based on the principle of federalism. Accordingly, powers to legislate on regional matters are also enjoyed by the state governments (Articles 153 to 213). Entry 17 of List-II, i.e. the State List of the Indian Constitution entitles states to make laws, acts and policies on water related issues. While exercising the entitlements, states have made laws, acts and policies, as per the regional and local requirements. It is found that from state to state, legislations, policies and programmes on water related issues have been introduced and evolved in different contexts. Importantly, the expression of the idea of Right to Water is reflected in these differences. For instance, the Maharashtra State Policy 2003, while recognising the need of legislation for regulation and control of water resources, creates entitlements of water rights in favour of water users. To fulfil the objective, the Maharashtra State Water Policy 2003 (1)(3), emphasises ensuring, efficiency and productivity in water management. As per the policy, regulation and control on water resources is allowed to entitle people to use water as their right. The researcher believes that like the Maharashtra State Water Policy, other policies, laws and acts made by other state governments offer a limited meaning of right to water. These more or less entail certain major aspects of Right to Water.

The researcher noted that the undertakings made by state governments have a clear focus on water supply, to ensure drinkable water to all its inhabitants, the States incorporate measures for water availability and accessibility as well. For instance, Section 62 of the Maharashtra Municipalities Act 1965, while focusing on ground water management, points to the minimum availability and provides that the Municipal Councils are expected to provide at least 70 litres of drinking water per head per day^{cclvi}. Similarly, the Tamil Nadu Water Supply Act 1970, the Karnataka Urban Water Supply and Drainage Board Act of 1973, the Uttar Pradesh Water Supply and Sewerage act 1975 and Punjab Water Supply Sewerage Act 1976 have made special provisions to ensure regularity of water supply and obligated state governments to ensure drinkable

water to all. The obligations are further extended to local self government 73rd and 74th amendments which obligate Panchayats and Municipalities to ensure water supply to the inhabitants of their region. Importantly, the obligation of Panchayats to ensure water supply is argued in different references including public health requirements. In this regard, the Gujarat Panchayat Act 1993, in part III, 145 (iv), establishes a Public Health Committee for performing functions pertaining to public health, hospitals, health centres, sanitation, water supply, vaccination and family planning. It should be noted that in comparison to panchayats, obligation on municipalities are more complex and wider in scope with regard to ensuring water supply to larger parts of the area. The Bihar Municipalities Act 2007, in this regard, suggests specific duty of the municipalities to supply water and insist to provide or arrange to provide a supply of wholesome water in pipes to every part of the municipal area in which there are houses. The obligations of municipalities are extended even at the grievances level. For instance, the Mumbai Municipal Corporation Act 1888, in its modified form, on January 2016, insists that the primary objective of functions of the Wards Committee shall, subject to the general supervision and control of the Corporation, is to address the common grievances of citizens, connected with local and essential municipal services as water supply, drainage, sanitation and storm water disposal.

The top priority for drinking water in the State water policies and legislations are further mentioned through ground water management legislations made by States as Karnataka, called Karnataka Ground Water, (Regulation for Protection of Sources of Drinking Water) Act 1999^{cclvii}, Andhra Pradesh as Andhra Pradesh Water (Regulation for Drinking Water Purposes) Act 1996^{cclviii} and Maharashtra, as the Maharashtra Ground Water (Regulation for Drinking Water Purposes) Act 1993^{cclix} and Himachal Pradesh as Himachal Pradesh Ground Water (Regulation and Control of Development and Management) Act 2005. All these Acts, since they are aiming to protect and preserve groundwater resources for drinking purposes, are embracing the core aspects of Right to Water; however, a comparative analysis of the state legislations reveals that the Himachal Pradesh Act 2005 has offered a

relatively wider perspective of the same^{cclx}. This is because the Act while granting permission for water extraction, insists that the authority shall focus on a) the purpose or purposes for which water is to be used; (b) the existence of other competitive users; (c) the availability of water ; (d) quality of ground water to be drawn with reference to proposed usage (e) spacing of ground water structures keeping in view the purpose for which water is to be used; (f) minimum distance of two hundred meters in case of shallow wells and three hundred meters in case of tube wells from the existing source of water supply scheme to further strengthen the irrigation scheme, as the case may be; (g) long term ground water level behaviour and (h) any other factor relevant thereto (subsection 3).

This study has noted that at the State level, the obligation to supply water to all is not limited to the governmental bodies, but in some cases the obligation is extended even to the private sector. For instance, in Rajasthan the duty to supply water in urban water areas is singled out for private sector participation (Rajasthan State Water Policy 1999: 90). Since water supply has questioned the affordability of water for commons, to ensure drinking water as a right of commons, the Government of Rajasthan under the Sector Policy for Rural Drinking Water and Sanitation (Draft 2005 s3 (14)), has decided to subsidize water to a specific class of consumers^{cclxi}. The shift implies that the state governments are keen to promote user's participation in water management and while so doing is interested to maintain the idea which insist that water is for commons. In this reference, the West Bengal Ground Water Resource (Management, Control and Regulation), Act 2005, section 6(2), is remarkable because its provisions establish participatory mechanisms and emphasise on ensuring people's participation in policy planning.

While studying the nature of state undertakings on water management, the researcher noted that the legislation and policy documents offer priority to drinking water. However, in the process of implementation, priorities are not absolute. In the listed priority, change is permissible if so is required under specific circumstances as Maharashtra State Water Policy 2003, Section 5 and Rajasthan State Water Policy 1999, Section 8, states (Cullet, 2010:514). Since

the priority of water use changes as per the situation, there is a doubt if rights on water will be fulfilled, respected and protected by the state, in the desired manner.

The discussions elaborated above show that in the undertakings of the union government and the State Governments, claimability on water as a right is not clear and constant. The imprecise and shaky promise of right to water as has emerged from the undertakings made by the union government and State Governments in India allows the researcher to argue that national and regional documents are important, but are thin expounder of the idea of Right to Water.

4.1.2.3. National and Regional Documents as thin Expounder of the Idea of Right to Water: A Discussion

In view of the discussions presented above, the researcher argues that national and state documents, in the form of law, Acts, plans and programs have offered a relatively thin understanding of Right to Water. This is because the discussions are implicit in nature. However, since it is a fact that the idea and initiative to conceptualise water as a right, in the light of the broader and more inclusive concept of Right to Water is ignored globally, the ignorance of India in the matter is not uncommon. The basic argument here is that since India has a long list of fundamental Rights, expecting a place for Right to Water in government's documents is not unusual^{ccxii}. Discussions on the national and state frameworks on the theme show that in the national and state documents, the idea that water is a right is accepted only in a limited sense. During pre-independence colonial India, water was a subject of state dominance and hence it was not expected to have claim upon water as a people's right. Independence has transformed the system of governance, but this has not brought any notable changes in the system of water management which can be established and argued along the line of Right to Water. To reflect on this fact, the following Table encapsulates the understandings on water resources and on the idea of Right to Water as noted in the undertakings of the government in pre and post independent colonial India.

Table 4.1: Understandings on Water resources management and on the idea of Right to Water: British colonial India and Post- colonial independent India

Classification of the period	Identified problem	Ownership on water	Major Documents available	Status of Right to Water
British Colonial India	Water shortage and ambiguities in community management of water resources	Private ownership with dominance of colonial state and provinces on water resources	Laws and Acts	Complete absence of the idea
Independent India	Water stress, and limitations of management drinking water supply, irrigation, energy and hydropower projects	Public subject with control of the state	National and state documents including Constitution, national laws, acts, plans and programs and Acts and programs made by Indian State	Expressed idea in a narrow sense and offer limited understanding

Table 4.1 elaborates on the government's understanding and status of Right to Water in India, with a classification of the period into two, i.e. pre and post independent India. The Table presents that the documents made and released by the governments of pre and post independent India have observed water mainly as a problem of management and have not established it as a subject of right. In this view, undertakings made by colonial administration are not only incomplete but they are against the very idea of Right to Water. This is evident from the fact that during the period, the British state had realised the problem of water shortage and yet had allowed for private ownership. The facts elaborated in the above paragraphs show that the legislations on water management recognize and endorse the dominance of British government on water resources. During the British rule, there was complete absence of the right of commons over water resources is obvious and thus trying to establish right to water as existing during that period of time is futile.

After independence the situation has partly improved. The realisation of the problems has expanded and water related problems are considered as the

problem of water supply, irrigation and energy. However, the solutions are not offered in the context of Right to Water. Notably, the undertakings of the national and state governments have realised water as a need but the fulfilment of the need is not assured as a right.

The discussions presented above clarify that the idea and content of Right to Water in India is not explicitly presented in constitutional or in legal frameworks offered by the union government or State governments. Similarly, exploring the expression of right to water in planning framework is another difficult task, mainly because in the planning and programming processes water is observed and maintained as a subject of management and not mentioned as a concern of right. The researcher thinks that in the view of these limitations, the question that needs to be asked is whether India has evolved an understanding on Right to Water. To explore if India has evolved an understanding on the idea of Right to Water, in the true sense, it is essential to view right to water beyond the documents offered by the Union and State governments. The researcher argues that the significance of investigating the views and understandings of other stakeholders is essential because the international community, while arguing for right to water, has identified other stakeholders as accountable parties and they are expected to ensure right to water to all. The researcher believes that in India, stakeholders other than the government, have emerged and evolved as definers and expounders of right to water. This chapter has identified the Indian judiciary as definer and expounder of Right to Water. In this view, the following section presents the powerful position of the Indian judiciary in interpreting the ideas concerning water issues and water management.

4.1.2.4. Indian Judiciary as Definer of Right to Water: Representing Wider Perspective

The researcher in this section argues that in India it is the judiciary that has defined the idea of Right to Water and has provided a wider perspective on the same. Importantly, arguments of the judiciary are based on reasonable grounds, provided by the Constitution itself. Entitlement and enforcement of

rights in India are ensured and evolved with judicial reasoning. In the case of right to water, the contribution of the judiciary is significant as one group of academia has even stated the absence of constitutional assurances on right to water. If accepted, the arguments empower the judiciary to define the meaning and scope of water as a right. The researcher argues that the propositions of the judiciary are not plain suggestions allowed to be treated as choices but to a large extent, they are legal enforcements. Articles as Article 141 of the Indian Constitution in this regard states that the statement of the Supreme Court shall be binding on all courts within the territory of India; in this sense the verdicts of the Indian judiciary are the law of the land. The researcher thus argues that in the absence of codified national and state legal frameworks, it is the judicial verdicts which become the source of right that holds value equal to that held by a legal document.

Notably, discussions presented in the following paragraphs are based on two observations. The first is that to get proper entitlement to right to water, the verdicts made by courts are important for Indians. This is mainly because verdicts are given in reference to the Indian Constitution and these have interpreted the Constitutional provisions that have implicitly classified water as a right^{cclxiii}. The second observation is linked with the first observation which indicates that the interpretations offered by the judiciary are both, general and specific in nature and have interpreted international documents and contextualised Right to Water in the Indian context. To put the arguments in favour of these observations, the researcher has attempted to explain the major verdicts periodically made by Indian courts. The purpose of this explanation is to show that the Indian judiciary has articulated at least five aspects of Right to Water that are highlighted and discussed in Chapter Three of the present study. In the following sections these are presented as claims that are explained in five different contexts. These claims are as follows:

Claim 1. Indian Judiciary Upheld Right to Water with Reference to Right to Life

With reference to Claim 1 it can be argued that interpretations offered by the Indian judiciary have made right to water more promising and comprehensive. The question of right to life often includes all major dimensions of right to water elaborated in Chapter Three of the present research. Importantly, the judiciary has seen rights of individual on water resources as an ingredient of right to life. The comprehensiveness of Right to Life is first stated in the case of *Francis Coralie Mullin vs. Union Territory of Delhi, (1981)*^{cclxiv}. In this case the Supreme Court declared that “The right to life includes the right to live with human dignity and all that goes with it. It includes necessities of life such as adequate nutrition, clothing, and shelter”. The judgment has further included facilities as reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings. It goes on to state that the magnitude and components of this right would depend upon the extent of economic development of the country, but it must, in any view of the matter, include the bare necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. The idea of “necessities” is further expanded in the case of *F.K.Hussain vs. Union of India(1990)*^{cclxv} that has placed water as basic. The High Court of Kerala stated and noted that life “is much more than the right to animal existence . . . the right to sweet water, and the right to free air, is attributes of the right to life . . . basic elements which sustain life itself is a basic right in all conditions”. While responding to a Public Interest Litigation to fight corporate pollution (though eventually dismissed), the Supreme Court has again expressed similar views. Like in the case of *Subhash Kumar vs. State of Bihar(1991)*^{cclxvi}, it declared that the right to life “includes the right of enjoyment of pollution free water and air for full enjoyment of life”.

Claim 2. Indian Judiciary Holds Indian States as Trustee of Water Resources

The researcher argues that while giving verdicts on water management processes, the Indian judiciary has reconceptualised the idea and doctrine of public trusteeship. Significantly, it has entitled individuals against exploitation and discrimination in water supply. The judiciary in its verdicts has underlined that the idea of trusteeship is a legacy and hence it is essential to maintain it for the future. In this view, in the case of *M.C. Mehta vs. Kamal Nath (1997)*^{cclxvii}, the court declared that ‘our legal system is based on English common law which includes the public trust doctrine as section of its jurisprudence’. This means that the State is the trustee of all natural resources that are by nature meant for public use and enjoyment. The public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The verdict goes on to proclaim that a state as a trustee is under legal duty to protect the natural resources, which includes tanks and ponds. Again, the expressions are indirectly repeated in the case of *Hinch Lal Tiwari vs. Kamala Devi* (2001). Here the court said that it is important to realise that the material resources of the community as forests, tanks, ponds, hillocks, mountains etc. are nature’s bounty. They need to be protected and preserved for a proper and healthy environment which enables people to enjoy a qualitative life which is the essence of the guaranteed right under Article 21 of the Constitution of India.

Claim 3. Ideal Measures of Water Management Offered by the Indian Judiciary Corresponding with International Standards

The researcher argues here that the interpretations offered by the Indian judiciary have international significance because verdicts that are periodically given by the judiciary have taken their references from the international standards of Right to Water that have been offered and justified by international organizations. While vindicating the entitlements on water resources, the meanings and guidelines offered by international organizations are used as a major tool. For instance in *A.P. Pollution Control Board-II vs.*

Prof. M.V. Nayudu (2001),^{cclxviii} the Supreme Court recognized that right to water must not be observed as the only component of the right to life, but the definition of the right should correspond with international standards like the Mar del Plata Action Plan signed by India in 1977^{cclxix}. The Court (2004) quoted the Plan, which states that “[a]ll people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs^{cclxx}.” Likewise, while dealing with the case of *Pollution Control Board*, the Court upheld that the concept of right to have a healthy environment (as developed by the Court and again informed by international standards) includes right to water that requires to gain widespread acceptance in both regional and national courtrooms abroad^{cclxxi}.

Claim 4. Judicial Verdicts have ascertained the Indian State as being Accountable to Provide Water as a Right to All

It is known that only a definite understanding on obligated parties can ensure rights in the desired way. The researcher believes that the verdicts given by the judiciary in different cases have endorsed the obligation of governments to ensure right to water to all^{cclxxii}. Here, it is important to note that the Court does not view right to water as a Fundamental Right, but significantly, it does perceive it as the duty of the government to promote and fulfil water as a right. It has stated that the government has to ensure ‘welfare’ of the people at large and not merely of a small section of the society^{cclxxiii}. In the case of *Lucknow Grih Swami Parishad vs. State of Uttar Pradesh, (2000 (3))*, the responsibility of governments in water supply is profoundly emphasised. The court ruled that ‘it is the bounden duty of the State to assure the supply of sufficient amount of qualitative drinking water to its people’^{cclxxiv}. Similarly, in *Vishala Kochi Kudivella Samarkshana Samithi vs. State of Kerala (2006)*, the court specifically presented that the government ‘is bound to provide drinking water to the public’ and that this should be the foremost duty of the government. Additionally, the judges ruled that the failure of the State to ‘provide safe drinking water’ to citizens amounted to a violation of Article 21 of the Constitution^{cclxxv}. A violation of such kind is also taken seriously in the case of

Hamid Khan vs. State of Madhya Pradesh (1997), when the state government was sued for not taking appropriate precautions to ensure safe drinking water supplied through hand pumps in Mandla District^{cclxxvi}. Limitation of water uses in favour of public interest is further established in the case of *Venkatagiriappa vs. Karnataka Electricity Board*^{cclxxvii}. In this case the court took reference from the Articles 47 and 21 and stated that the right to water does not cover water for irrigation and business. The core of the verdict is repeated in the *Narmada Bachao Andolan vs. Union of India (2000)*. In this case the Supreme Court held that water is the basic need for the survival of the human beings and is a section of right to life enshrined in Article 21 of the Constitution of India^{cclxxviii}. Therefore, the state is accountable to ensure water to all as right to life is attached with this assurance.

Claim 5. Rubrics and Verdicts of the Indian Judiciary endorsing the Universality of Right to Water

The Indian judiciary has both, ascertained as well as assured the universality of right to water. It has assured that right to access water is an equal right and cannot be denied to anyone on any ground. The courts within their jurisdictions direct that the government cannot interpret any policy against human right to water. Recently in 2014, the Bombay High Court while addressing/dealing in the case of refusal by the Municipal Corporation of Greater Mumbai to supply water to illegal slums, disapproved the policy as a violation of human right to water, understood in context of right to life^{cclxxix}.

The above discussion shows that while offering measures for water management, the Indian judiciary has reconceptualised the fundamental right to life in favour of Right to Water. More importantly, the interpretation of the doctrine of public trusteeship in the context of protection of environment and protection of natural resources has shifted from a purely or merely a negative protection of natural resources to substantive obligations of positive enforcement. It has offered two principles of Right to Water. The first principle states that governments are the trustees of natural resources and are accountable to the people of India. The idea of public trust has re-affirmed the

idea of Right to Water, with which a trustee cannot alienate the trust nor can it fundamentally change its nature; at most it holds a usufructuary right in water in favour of the people^{cclxxx}. The second principle is based on the doctrine of public interest and welfare. Fundamentally, this principle insists that '[w]ater is the property of the people of India and is dedicated to their use that cannot be used other than for welfare purposes'^{cclxxxi}.

It is clear from the responses given that the judiciary is inspired by the human rights approach that has added to the understanding noted from the documents released by Union and State Governments. However, the judiciary cannot be held to be the sole preserver and adherent of the idea. The researcher thinks that the social understanding about a sensitive and crucial issue such as right to water is equally important because in ideal situations it contributes to policy decisions. Since the objective of the present research is to carry out a critical analysis of the water policies of the union government in India, a discussion on the role of Indian civil society with regard to right to water is essential because the arguments stated in Chapter Three of the present research are derived from their initiatives. This section elaborates on the role and contribution of Indian civil society, which according to the researcher provides continuation to the broader perspective offered by the Indian judiciary on right to water. The researcher thinks that for the present research, a study of Indian civil society has universal justification as international understanding on Right to Water has obligated civil society to support the process of entitlements of right to water^{cclxxxii}.

4.1.2.5. Perspective of Indian Civil Society: Continuation of Wider Perspective

Civil society represents the people's voice; it builds consensual communication and mobilises social action in a constructive way^{cclxxxiii}. In functional democracies, communications based in consents are emerging and evolving in the form of community pressure. In the decision making process these evolve as a bottom-up approach and are usually recognised as community initiatives. Importantly, their working patterns are not politically

competitive, but ideally they offer strength to democratic settings by intellectually objecting to the unjust decisions of governments. Since their approach is participatory, they create space to offer meaningful suggestions that are socially desired by the communities^{cclxxxiv}. In water sector, the role of civil society is seen to have augmented after liberalisation. At the global level, civil society has come together as part of the water justice movement. In the process of water management, civil society members have objected to the plan of liberalisation of water resources and have insisted on water justice^{cclxxxv}. Notably, the involvement of civil society in water management represents the values of Post-neoliberalism that has articulated the voices against neoliberal practices in water management and argued for the social and cultural significance of water.

The researcher in this study noted that in India, the responsibility assumed by civil society is taken up at the organisational and individual levels. The researcher classifies them as initiatives of Non-Governmental Organisations and intellectual contributions by water scholars and water activists. The researcher argues that the contribution of NGOs is required to be studied in the context of the working objectives adopted by Indian NGOs as it intent to preserve key aspects of Right to Water. The researcher further argues that the second contribution i.e. by individuals, is intellectual in nature and is required to be analysed in the reference of the arguments made by the water studies as they have advanced the idea of Right to Water with reference to post-neoliberalism. According to the researcher, the contributions of these two can be discussed under two claims that are as follows:

Claim 1. Objectives of Indian NGOs Intent to Preserve Major Aspects of Right to Water

In water sector, Indian NGOs have been active in the global justice movement, which is basically concerned with protecting/preventing water from getting privatized (Murthy, 2013). To struggle against water marketing, Indian NGOs has developed alliances of regional NGOs that are mainly divided into two groups known as the Water Liberation Campaign^{cclxxxvi} and

the Citizens for Water Democracy^{cclxxxvii}. As a result of these alliances, the influence of NGOs that was limited to a region has extended to the national level. Consequently, in the progression of water management, Indian NGOs have emerged as national actors^{cclxxxviii}. A number of studies carried out in this relation present that NGOs in India have emerged as the critics of water privatization^{cclxxxix}. However, the researcher with reference to Chapter Three holds that NGOs as part of civil society are not only protesters, protesting against water privatization, but they are also a mediator between the State and society. In the process of decision making, NGOs inform governments about the desire of the people (D'Souza, 2014). While doing so they offer a desired meaning of right to water, which is commonly taken as the expression of the entire community. In view of this, one can state that NGO initiatives have developed a practice of democratic decentralisation of water planning. They connect people to people and make them an effective planner in decisions makings^{ccxc}. The researcher argues that each of the issues brought in by the NGOs represents at least one key element of Right to Water. The objective of NGOs is to fulfil one or another aspect of Right to Water, as the following table explains^{ccxci}-

Name of the NGO	Objective of the NGO	Aspect of right to water that the NGO has ensured
Paani Morcha	An organization that works to alleviate the growing water crisis in India particularly in Delhi through public interest litigation and for the purification of Ganges water.	Duty to play a role of stakeholder
Tarun Bharat Sangh	An NGO that brings people together on issues of management of forests and water resources.	Encouraging participation of people in water management
Dehat Morcha and Bharatya Kisan Union	A farmer's movement which fights for the rights of farmers over land and water	Advocate to ensure farmers as one of the beneficiaries of water resources
Bhartiya Jagriti Mission	A religious and charitable trust working for the welfare of rural poor and to save the water of Goddess (as quoted on website) Ganges. Their main goal is to confront the challenges of pollution, privatization and construction of Tehri dam on the Ganges.	Protecting and preserving water for culture i.e. one of the priorities of Right to Water
Citizens for Water Democracy	Created by other NGOs and the people of Delhi to fight against water privatization.	Water for commons and for all
Resident Welfare Associations	Formed in every housing locality to take care of the welfare and basic needs of the residents in that locality.	Offers effective people's participation
Water Workers Alliance	NGO of middle and lower rung of bureaucracy in Delhi Jal Board to fight against water privatization.	Right to water is a post neoliberal phenomenon
National Federation for Indian Women	The women's wing of the communist section of India to intervene on water issues	Ensuring Women's participation in water planning

Table 4.2: NGO Objectives and Major Aspects of Right to Water

Table 4.2 demonstrates that the objectives argued by Indian NGOs are in harmony with the core principles of Right to Water. Importantly, they have conceptualised Right to Water in its social and cultural context (for instance, as done by Bhartiya Jagriti Mission) and have connected the concept of Right to Water with the idea of water justice that is absent in the national and state documents. Addition of the principle of water justice has reconceptualised the idea of participation and has argued for right to water with reference to self-water governance, where each individual has the capacity to manage water

resources by his/her own. To make participation in water planning a reality, NGOs offers space that enables people to be the part of the decision-making process. NGOs like Tarun Bharat Sangh, Citizens for Water Democracy, Residential Welfare Association and Water Workers Alliance are some of the organisations that fulfil the purpose to ensure water to all.

The researcher realises that for the Indian NGOs, the right of commons over water resources includes right to participate in water planning. For them it is a privilege which entitles people to stake a claim against water privatization. Notably, in the process of water planning management their agitation against water privatization has ascertained NGOs as organisations that are: (a) *goal oriented* which aim to abolish the system of water privatization, (b) *duty oriented* (Paani Marche) as they have made agitation their duty, (c) *future oriented* (Bhartiya Jagriti Mission), because they believe that agitation will secure water resources in future (d) *participation oriented* (Tarun Bharat Sangh, Dehat Morcha, Resident Welfare Association and Bhartiya Kisan Union) as they encourage optimum participation of people; and (e) *gender oriented* as they particularly encourage women's participation (National Federation for Indian Women). Table 4.2 shows that NGOs have commonly recognised women and farmers as suppressed classes and major sufferers of water stress. To entitle them their rights, NGOs offer them specific platforms and space for decision making. Clearly, this is a duty which has been identified and argued in philosophical understanding and endorsed by international organisations and is taken up by Indian NGOs. Notably, the understandings of Indian NGOs like other nations are inspired by post-neoliberal arguments (as Water Workers Alliance) which are rooted in intellectual debates.

Claim 2. Intellectual Offerings Have Strengthened Post Neoliberal Perspective

Globally, intellectuals, academicians and activists are considered as social agents, who are commonly committed to social and political change. In political and philosophical discourses, the conceptions offered by them are

argumentatively justified in favour of commons that generally argue for substantive equality. Significantly, in the process of water planning, the understandings given by them are appreciated because they look at the fundamental aspects of right to water and insist on adding non-discrimination as one of the core promises. It is noted that in the process of water planning, their argumentative behaviour has established them as active advocates of water justice and as those who have passionately debated on the issue of water privatization. Significantly, to ascertain the idea of water justice, Indian water scholars have not only condemned water privatization but while doing so they have also conceptualised the idea of Right to Water in the context of rational and equal right to use water. Such a conceptualisation in the context of priority has provided the world an Indian perspective on the issue that has added to the post neoliberal approach. This is extremely valuable for developing states. Indian scholars, in the line of post neoliberal approach, have argued on water as an issue, whose uneven and unpredictable availability requires to be conserved for the commons. They emphasise that “no one holds a right to destroy water” as “it cannot be substituted” (Shiva, 2002:35-36). To struggle against water privatization, Indian water scholars have offered a framework that explains the concept of Right to Water with reference to powers, privileges, claims and immunities (Anand, 2007).

The researcher argues that the contributions of Indian water scholars to the world are not exceptional but are additional and have helped to evolve the idea to expand in scope and to decide on entitlements with prioritisation. The discussions made by Indian water scholars have offered different perceptions to the idea, which significantly include arguments made by eco-feminists. For instance, while viewing water privatization and arguing for right to water, they argue that women should be the first beneficiary of the right to water (Shiva, 1983). Further, the discourse on the question of right to water in India has attempted to inculcate democratic values in water planning. Thus, the concept of right to water is reconceptualised in the context of democratic principles and is recognized as part of Water Democracy. The researcher noted that in this respect, Shiva’s observations are significant as she has elaborated upon

the idea of Right to Water in the context of nine principles that collectively insist on assuring free water for sustenance needs along with preserving it for commons (Shiva, 2002:35-36).

Additionally, in order to maintain the principle of priority and to argue against water privatisation, Indian scholars, mainly Ramaswamy Iyer (2010: 616), Sangameswaran (2007:15–16) and Khadka (2010:40–41), have highlighted and underlined the differences between terms as ‘Right to Water’ and ‘Water Rights’. Their contribution has redefined the entire argument which urges to define water as a right mainly in the context of Right to Water. These scholars have argued that ‘Water Rights’ do not hold the same meaning as it is held by the term, ‘Right to Water’. They explain that the term ‘Water Rights’ entitles individuals and groups to use water for developmental purposes, the aim of which is to maximise production (Iyer, 2007: 142). The Indian scholars argues that the arguments presented with reference to Water Rights are economic in nature that allows one to distribute water for non-domestic purposes, which ultimately ignores the priority management in water distribution. Use of water irrespective of priority, disturbs the major concern of the idea which has otherwise argued to consider water as a basic biological need. Iyer’s objection to the use of terms as demand and supply in water rights has further added to this new understanding. He underlines that the use of such terms has made water a subject of water economy, which justifies profit oriented use of water resources and allows privatisation of water resources. In order to preserve water for biological and social needs against profit oriented use of water, Indian water scholars as Vandana Asthana (2010) and P.B. Anand (2007) have interpreted Right to Water as a matter of security and emphasise its realisation as rights, duties, immunities and privileges. In view of their discussions, the researcher argues that the understandings offered by Indian scholars have sharpened the post neoliberal arguments and lent support to the idea of Right to Water. This is indeed a contribution to the global community.

4.2. Emergence, Evolution and Recognition of Right to Water in India as a Process: A Discussion

From the above discussions it is easy to derive that in India, the idea of Right to Water is not conceptualised in technical terms. However, at the same time this does not denote a complete absence of the concept of Right to Water. The researcher believes that the thin presence of the value of the concept of Right to Water in different government's documents cannot be ignored as it is constantly evolving with the understandings, renewed and underlined by the judiciary and civil society. According to the researcher, in India, the idea of Right to Water is evolving as a process in which the judiciary and civil society are a co-party to the union and state governments. The contribution of these two, however, is not the same as the undertakings of union and state governments have implicitly mentioned the idea and have offered a very narrow perspective of the same. On the other hand, the judiciary and civil society offer a wider perspective to the concept and provides required expansion to the idea.

Here, the government's interpretations are being considered as narrow and thin because governmental frameworks, including the Constitution, laws, acts and plans, while highlighting the need of water in various sectors, have not valued water as a claim of individual rights. On the other hand, the Indian judiciary and civil society are considered as expounders who present a wider perspective because in their perception, water is considered as life-giving and in the process of water distribution and management, they have argued and insisted upon water justice. Their arguments present water as a claimable right of an individual. The researcher noted that the judiciary and civil society have actually filled the gap that was left unfilled by the union and state governments. While dealing with water related issues they have adopted and incorporated international understandings on the topic and have conceptualised the idea in the Indian context. The researcher thinks that taking into account international measures by the judiciary in their verdicts and adoption of post neo liberal views of civil society has expanded the values of water as a right in India. Significantly, in the progression of the idea,

inclusion of judicial and social understanding has helped in proceeding towards realisation of the idea of Right to Water in India. In the researcher's view, progression of the idea can be divided into two stages. Stage 1 is represented by national and state documents which represent the emerging point of the idea and Stage 2 denotes undertakings of the judiciary and civil society that offer expansion of the understanding. Importantly, the intention of the researcher to present a division is not to argue that the idea has developed separately, but in fact, the aim is to argue that in the process of evolution of the concept, each party has made a different contribution. This can be understood from the following Figure-

Figure 4.3: Major Contributors in the rise of the idea of Right to Water in India

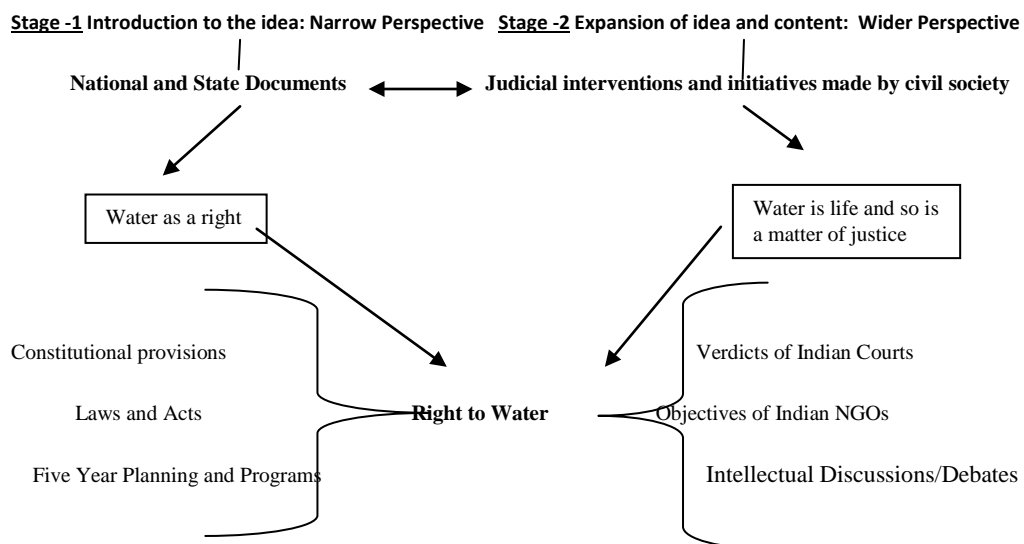
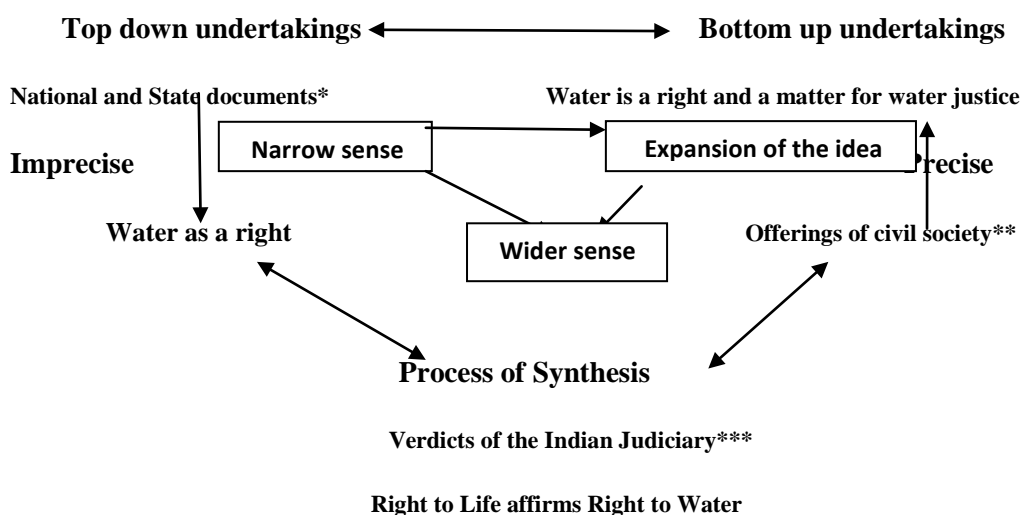


Figure 4.3 presents that the national and state documents, evolved in Stage 1 hold Constitutional provisions, laws, Acts and planning frameworks. Stage 2 comprises verdicts of Indian courts, established objectives of Indian NGOs and intellectual debates/discussions. The Figure demonstrates that the evolution and progression of the idea of Right to Water in India, represented as Stages 1 and 2, are horizontal developments and not vertical ones. The researcher emphasises on the horizontal aspect of the development to show that both are equally important. For the researcher, both stages are equally significant as they are both progressing to attain Right to Water. The process

of attainment is slow but constant, which can be understood by the following Figure-

Figure 4.4: Process of Identifying and Endorsing the idea of Right to Water in the post-colonial independent India



Note:

* Constitutes constitutional, legal and planning documents of union government and state governments

** Comprises perspectives of NGOs and perceptions of water scholars

*** Includes interpretations of the verdicts of the Supreme Court and High Courts of India

Figure 4.4 demonstrates that in India, the idea of Right to Water has evolved as an interactive process. To realize the evolution of the idea in the Indian context, one needs to understand the progress with reference to three undertakings: top down undertaking, bottom up undertaking and the undertaking that synthesises the two. In the figure, top down undertakings are illustrated as national and state documents. They are referred to as imprecise because their contents do not clearly focus on the individual entitlements on right to water. The bottom-up approach, on the other hand, underlines the role of the Indian civil society in the process. Since NGOs have mobilised society on the issue of water justice and argued for right to water, the researcher has considered their initiatives as social representation. In the figure, the role of

the judiciary and civil society has been clubbed together; however, the level of legitimacy enjoyed by each of them is different. In the view of this fact, the judiciary is placed here as the synthesiser, for it has synthesised the undertakings of the government and civil society to ensure entitlement of Right to Water in a wider sense.

Figure 4.4 provides continuation to Figure 4.3 however, in a different way. In Figure 4.4, limited understanding gained from government's documents has been expanded by adding the perspectives offered by civil society, of which NGOs and scholars are a vital part. The Figure points that in India expansion of the idea of Right to Water arises because undertakings of the governments and the ideas of civil society are synthesised by the Indian judiciary. This has sharpened the idea and has legitimised the broader understanding offered by civil society. The Figure draws attention to the fact that realisation of Right to Water in India combines the three perspectives, offered by the government's documents (both union and state), judiciary through its verdicts and civil society by initiating to argue right to water to all. While each understanding enjoys its own space and significance, the judiciary is of central significance^{ccxcii}.

Significantly, the Figure 4.4 denotes the constant interaction that happens between the government in the form of national and state documents, the judiciary with reference to its verdicts and civil society in the form of social mobilisation. In India, these streams have together have understood and ascertained water as a right to all. However, the scope of another major aspect of Right to Water has not been sufficiently focused upon. It is important to remember that the power of the judiciary and civil society in water planning mainly with reference to right to water is limited as their influence in water planning is not equivalent to that of the union government and state governments. Their role in planning is secondary in the sense that in the process of realisation of right to water, they act as responders; they react/respond when a case or issue comes up. Further, the views and response of the judiciary and the civil society need not be the same. Often, one witnesses a completely different response from the judiciary and the civil

society in similar situations that further lends different meanings to the idea^{ccxciii}. In the view of such limitation, the researcher argues that to ensure right to water with a definite and constant meaning, the government needs to consolidate the initiative either in the form of a law or as a policy.

4.3. The Need for a National Water Policy

In the Indian context, the question whether a national water policy is required, refers to two aspects. One, it enquires into the fact if there is a need to have public policy on water “uses as a whole” and if the same is required in the national context and why.

In the process of water management, the question of water supply is linked with the use of water for households, irrigation, energy, hydropower and industry. Since the use, in all these sectors has increased, supplying water to one sector affects the availability, accessibility and affordability of water supply in the other sectors. This implies that a government’s document while dealing with the requirement of one sector has to consider the needs of other sectors. In such a situation there is a serious need to have a Water Policy that is drafted after a systematic analysis of water availability and requirements for water use. The researcher thinks that it is very important to have a document that allows flexible planning with a view on water supply that is just and has a comprehensive approach. A policy document on water would be an appropriate measure in the present Indian situation as unpredictable rainfall, especially with the increasing impact of global warming does not allow India to make a decision that can be enforced in all situations of water stress.

The requirement of a national policy document, which is the second question, will provide reasons for having a water policy in the national context. The researcher, advocates for having a national water policy as usually, provisions of it bring states in common agreement and make it obligatory for each state to support other states. Since water availability in India varies from region to region, mutual state obligations would entitle a state which is facing problem of water stress or scarcity, to claim right to have water for its region.

In federal setups as India, it is noted that the unequal distribution of natural resources is expected to be addressed by the union government. In this context, the Preamble to the Indian Constitution has clarified the status of the union government by insisting on the development of the UNION of STATES and not merely of a STATE. The union government of India, in the context of such a declaration, has to make policies not for one or two states but has to offer a national perspective for all states. The federal setup in India has insisted upon ensuring equality not only among individuals; rather, equality is expected to be introduced, preserved and sustained among the states as well. Accordingly, the obligation on the union government in regard to right to water is larger as it has to focus on the major problems of water availability and has to offer suggestions to ensure accessibility of same, based on values of non-discrimination and affordability^{ccxciv}. The union government is thus required to prepare a workable national plan. Here, the prerequisite is to formulate a national water policy that can offer solutions to fundamental problems that are linked and concerned with all states. The problems concerning to availability, accessibility and affordability, usually asks that-

- How to calculate the present water requirements and how to predict future possibilities?
- How to ensure water availability and accessibility to all, including individuals and states?
- How to distribute water among different users and ensure benefit of equity? and
- How to ensure national growth without disturbing individual's rights over water resources?

Since policy is a document which address what, when, how and to whom, the possibility to address these question through a national water policy is relatively high. The researcher believes that since water is a rare resource and as there is no alternative to it, a national perspective on the use and usability of it can send an important message to state governments. A National Policy can

provide direction to the Indian states as to what is to be done in a given situation. It can help state governments to identify the actual reasons for the problem of water distribution and management and offer democratic solutions for the same.

In view of the structure of Indian federation, the researcher advocates for a national water policy to create moral obligation on states to persuade them to work under the principle of “union of states”. A further emphasis is made that the national water policy directs states to make water plans with broad parameters. The researcher argues that the significance of National Water Policies is beyond political, social or economic objectives. It is a tool to solve complexities of water distribution and management and has the potential to enable water entitlements in favour of both, citizens of the Indian nation and the states as an inseparable part of the nation.

4.4. Origin and Salient Features of the National Water Policy in India: A Historical Note

In India, the history of the origin of national water policy is inseparably linked with the organisational history of three government departments: the Ministry of Water Resources, the Department of River Development and the Department of Ganga Rejuvenation^{ccxcv}. A study of the rise of these departments reveals that the idea to have a national water policy has evolved with the process of institutionalisation and departmentalisation of these organizations, initiated by the colonial administration. Notably, the initiative was started as a responsibility towards the irrigation sector, which was initially given to the Department of Public Works and later shifted to irrigation experts. With the inaction of the Government Act of 1919, irrigation became the subject of Provinces, the responsibility of which was transferred to the Department of Industries and Labour in 1923^{ccxcvi} that was reconstituted in 1927 as the Central Board of Irrigation. In the subsequent year, in 1937, the Department of Industry and Labour was bifurcated into the Department of Communication and Department of Labour. With this, irrigation became a responsibility of the Department of Labour that was further shifted to the

Department of Works, Mines and Power in 1937. Clearly, water in colonial era was seen as a subject of irrigation management, the obligation of which was transferred from one department to another.

After independence, the relation between water and irrigation was combined with power (energy) management and supplemented with development planning. The meaning and purpose of water management thus got redefined under different setups that have witnessed multiple institutional and departmental shifts as: -

1. In 1951, water management was linked with the new Ministry of National Resources and Scientific Research;
2. In 1952, a separate Ministry of Irrigation and Power was introduced to look into the matter of water management;
3. In 1969, the question of water management was attached with the Irrigation Commission to look into the matter of future irrigation development programme;
4. In 1974, a separate department called Department of Irrigation came up to manage water resources;
5. In 1980 the Department of Irrigation was brought under the new Ministry of Energy and Irrigation. In the same year, on 9 June 1980, the Ministry of Energy and Irrigation was bifurcated and the erstwhile Department of Irrigation was raised to the level of Ministry.

The practice of departmental shifts stopped in 1985 when the Ministry of Irrigation was combined with the Ministry of Irrigation and Power and the Department of Irrigation was reconstituted as the Ministry of Water Resources. In water planning, the constituting of the Ministry of Water Resources has brought key changes in water management. This has called for nationwide planning for water resources. With its establishment, India for the first time felt a need to formulate a national water policy, and chose to decide on the priorities for water uses. To look into the matter, the National Water

Resources Council, under the leadership of Prime Minister Rajiv Gandhi, was constituted that adopted the first national water policy in 1987.

It is important to note that the first national water policy (hereafter NWP), does not hold a claim of change as before 1987 there was no “independent document” on water governance or water management, that can be termed as “Policy”. (Mohile, 2007). Here, the claim of first document does not mean making a document without a background^{ccxcvii}, but the meaning here is that there was absence of a written document that can be called and placed as a policy. Before the first draft of the national water policy was prepared, ideas that could be defined as policy were available in the form of guidelines that were offered and suggested in different reports. In this context, the Report of the Second Irrigation Commission, 1972, is the finest example. The report is known to be a statement made in the Parliament regarding policies about flood control and various other official documents related to water management. The statements that were being used as policy documents had diversified the idea of water management. There was no common understanding to tackle the problems as water stress, drought and floods. In this sense the first NWP is an outcome of the incompleteness and inefficient measuring of previous documents. While analysing the NWP of 1987, water scholars argue that though the document is thin, it took note of the emerging environmental and equity concerns and has covered major aspects of water management including drought, food and irrigation management and development of groundwater (Iyer, 2002). Importantly, the NWP of 1987 has highlighted the need of farmer’s participation in irrigation development. The researcher noted that the policy while covering all mentioned areas has not suggested specific details that are actually required for policy implementation. In view of this limitation, the need for a “new” national water policy was soon realized^{ccxcviii}.

By the late 1990s there was a general recognition that it was necessary to review the NWP of 1987 and make essential changes^{ccxcix}. The required changes were referred by the National Commission for Integrated Water Resource Development Plan in September 1999. In the light of the Commission’s suggestions, a meeting of the National Water Resources

Council was held on 1st April and the amendments proposed to the NWP of 1987 were approved. Consequently, a New NWP 2002 came into being under the leadership of Prime Minister Atal Bihari Vajpayee^{ccc}. Like the first NWP, the second NWP too has covered almost all areas concerning water management and focuses on developing groundwater, irrigation, food control and management system, use of science and technology. The policy emphasises the promotion of conservation consciousness and people's participation. Significantly, it has extended the participation of beneficiaries and other stakeholders in water management and insisted that all stakeholders should be made part of water planning. The researcher finds that this policy has internal contradictions that have created confusion on the issue of water entitlement. Notably, the policy is not very popular with water scholars as it has made provisions that have led to water privatisation and environmental damages.

Just as the second NWP was drafted to overcome the limitations of the first NWP, the third NWP was drafted to overcome the limitation of the second one. The third NWP was planned under the leadership of Prime Minister Manmohan Singh in 2010. It was realised that the NWP of 2002 which called for involvement and participation of beneficiaries and other stakeholders was not very clear on the aspect of planning. There was no clarity on the precise nature of entitlements, participation and obligation of the government on water management. Significantly, the NWP of 2012 was prepared to address this gap that has initiated towards participatory planning and management.

In comparison to the first two policies, the third NWP was a participatory initiative and included discussions with the academia, experts and professionals^{ccci}. Importantly, the government placed the draft version of the policy in the public domain to seek suggestions from citizens that were later incorporated in the document. The final revisions in the policy were made by the National Water Board and the same was circulated among all the States and Central Ministries/ Departments, for their comments^{ccci}. Finally, the Council adopted the NWP of 2012 as per the deliberation of its sixth Meeting held on 28 December 2012 and released the third national water policy (2012)

on 8 April 2013 during the India Water Week, 2013^{ccciiii}. The policy has comprehensively focused on the different areas of water management and has addressed the problems of participation and environment damages. However, the idea of public private partnership proposed by the policy is a subject of criticism.

Tracing the origin of the national water policies in India shows that the history of national water policy in the country is not very old but is exceptionally long. The drawing of the first NWP is actually an indication of a paradigm shift as it offered a broader perspective on water management. To understand the objective and nature of water policies of the union government of India, it is essential to make normative inquiries on their policy contents. The researcher in the present study has thus identified Right to Water as a value of normative inquiry. The next chapter critically analyses the three National Water Policies of 1987, 2002 and 2012, with reference to Right to Water.

4.5. Summary

This chapter has provided an understanding about the emergence of the idea of Right to Water in India and has focused on the Indian understanding of the same. To attain an Indian perspective on the concept of Right to Water, it has presented a historical overview by dividing Indian history into two periods: colonial British India and independent India. The chapter encapsulates how during the colonial rule in India, water management emerged as a key issue and a subject of state control. In the national and state documents as the Constitution, legal or planning frameworks which evolved in the post-independent decades, water is accepted as a right but it is not ascertained and ensured in the context of Right to Water. The chapter exemplifies that the judiciary and civil society have tried to fill the gap and contributed to expanding the understanding of the idea in the context of right to life, mainly while arguing against water privatization. The chapter argues that the concept of Right to Water in India is introduced and evolved as a process rather than a product. Importantly, in the process Indian judiciary and civil society have played a major and crucial role. The chapter has highlighted on the need for a

new national water policy which would take into account the context of an individual's rights over water and the state's rights over water resources.

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End Notes

^{ccxxi} Indian water literature underlines that India has recorded less talks on Right to Water (Singh & Jairaj, 1997; Shiva, 2001; Sangameswaran, 2007; Iyer, 2010; Vani, 2012; Cullet, 2010 & 2013; Thielbo"rger, 2014). The ideas concerning right to water is evolved at different levels and with different references that actually do not observe/maintain a chronological order.

^{ccxxii} The researcher has argued this in Indian reference only as the influences that are philosophical and in line with organizational beliefs which comprise understandings evolved through the declarations made by international and regional organizations as well as arrangements made by national constitutions in nature, have already been discussed in Chapter Three.

^{ccxxiii} The divide of narrow and wider is explained in Chapter Three of this study. In the subsequent paragraphs the meaning of the terms like narrow and wide is required to be read in the same context.

^{ccxxiv} For details, see D. D. Kosambi (1965) *Ancient India; A History of its Culture and Civilization*, India: Pantheon, D. N. Jha (1998), Romila Thapar (1966) *A History of India*, Penguin Books, Harmondsworth, Middbsen England. Chakravarty, S. 1998. *Development Planning. The Indian Experience*, New Delhi: Oxford University Press A.L. Basham (1967), Shiva (2002), *Water War: Privatization, Profit and Pollution*, Sage India, Ratnagar (2001).

^{ccxxv} Available at <http://www.ielrc.org/content/w0701.pdf>

^{ccxxvi} Kudimaramath was a system of water management that empowered village communities to preserve, repair and maintain water resources.

^{ccxxvii} Northern India Canal and Drainage Act, 1873. Section 5 of the Act provided that whenever it appeared expedient to the Provincial Government that the water of any river or natural stream should be applied or used for the purpose of any existing or projected canal (which term included a reservoir) the Government may, by notification in the Gazette, declare that the water will be so applied or used after a specified date not being earlier than three months from the date of the notification. Under Section 7, the Collector had to give public notice of the intended application or use of the water, inviting claims for compensation. Section 8 laid down that compensation may be awarded only in respect of certain specified matters. For example, under clauses (a) to (d) no compensation was to be awarded for damage caused by stoppage or diminution of percolation, or floods, or by deterioration of soil, or by stoppage of navigation, or by displacement of labour. But under clause (e) compensation may be awarded for stoppage or diminution of supply of water through any natural channel to any defined artificial channel in use at the date of the notification. For details see Philippe Cullet (2007-01), *Water Law In India Overview Of Existing Framework And Proposed Reforms*, can be downloaded in PDF format from IELRC's website at <http://www.ielrc.org/content/w0701.pdf>

^{ccxxviii} Taken from Videh Upadhaya, *The Ownership of Water in Indian Laws in Water and the Laws in India*, ed Ramaswamy Iyer (2010), Sage Publication New Delhi.

^{ccxxix} It is important to note that in all these Acts, the meaning of government's control over water resources is not negative. For instance, in the Jharia Water Supply Act 1914, the government was made obligated to pay attention to drinking water supply.

^{ccxxx} See A Narayanamoorthy & R S Deshpande, *Where Water Seeps! – Towards a New Phase in India's Irrigation Reforms*, New Delhi, Academic Foundation. page 201.

^{ccxxxi} It is important to note that D. Kosambi (1965), Chakravarty, S. (1998), D. N. Jha (1998) and Romila Thapar (1966), while exploring history of water management in colonial India have not studied water in reference to rights but have discussed the process of water management in the context of ownership. For details, see D. D.Kosambi (1965) *Ancient India; A History of its Culture and Civilization*, India: Pantheon, D. N. Jha (1998), Romila Thapar (1966) *A History of India*, Penguin Books, Harmondsworth, Middbsen England. Chakravarty, S. 1998. *Development Planning: The Indian experience*, New Delhi: Oxford University Press A.L.Basham (1967), Shiva (2002), *Water War: Privatization, Profit and Pollution*, Sage India, Shareen Ratnagar (2001).

^{ccxxxii} While responding to one of the researcher's email, Professor Cullet clearly insists that India does not provide right to water, it is nor a constitutional right so far, nor a legal right (till 2016). According to him it is a justified right, which is acknowledged by Indian judiciary. For similar opinion further see: Erik B. Bluemel (2004), *The Implications of Formulating a Human Right to Water Ecology Law Quarterly* September, pages 957-1008.

^{ccxxxiii} Mentioned in Abhishek Tripathy and Prajna R. Mohapatra (2009) *Right To Water: Debating The Human Rights Perspective*, NUJS LAW REVIEW 2 NUJS L. Rev. (303- 319).

^{ccxxxiv} Ins. by the Constitution (Forty –Second Amendment) Act 1976s.10 (w.w.f.3-1-1977).

^{ccxxxv} Responsibility of rights is also arranged into two i.e. centre and state, divided into Union list (List I), State list (List II) and Concurrent list (list III). For detail see: Lyla Mehta with Oriol Miroso (2004), *Financing Water for All: Behind the Border Policy Convergence in Water Management*, published by Canal Institute of Development Studies Brighton, Sussex BN1 9RE England September.

^{ccxxxvi} According to Kamala Shankar (2009), Entry 14 List II, among other things, relate to agriculture and so to water, similarly Entry 18 of List II, speaks about land improvement which also includes water and so required to be read with reference to List 17, which specifically deals with water. However, since this inclusion is too indirect, the researcher has not taken them into consideration. For details see: Kamala Shankar (2010), *Water in India: Constitutional perspectives*, in R. Iyer (ed) *Water and Laws in India*, Sage Publication, New Delhi.

^{ccxxxvii} See for details S. Muralidhar (2006), *The Right to Water: An Overview of the Indian Legal Regime* in Eibe Riedel & Peter Rothen eds., *The Human Right to Water* (Berlin: Berliner Wissenschafts-Verlag) p. 65-81

^{ccxxxviii} While pointing to the status of water laws in India, T.N. Narasimhan (2010) emphasises that there are many different laws relating to or having a bearing on water at the level of central government, see *Water Laws for India: Science and Philosophical Perspectives in Water and the Laws in India*, ed, Ramaswamy R. Iyer, Sage publication, page 535.

^{ccxxxix} Here, instead of using the term water laws in India, the researcher has used the term Indian laws on water management because the discussion mentioned in the following paragraphs will not only discuss water laws but it will provide brief on all those laws that implicitly expressed the need to establish water as a right.

^{ccxl} Deals with the subject matter of laws to be made by Parliament and by the Legislatures of the States

^{ccxli} The Parliament may, by law, provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

^{ccxlii} Parliament may, by law, provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).

^{ccxliii} The River Boards Act, Act No. 49, Sep 1956, <http://www.indiankanoon.org/doc/1608688>

^{ccxliv} The Inter-State River Water Disputes Act, Act No. 33, 28 August 1956, [http://theindianlawyer.in/](http://theindianlawyer.in/statutesnbareacts/acts/i90.html)

[statutesnbareacts/acts/i90.html](http://www.indiankanoon.org/doc/1048477), amended by Act No. 14, 28 March 2002, <http://www.indiankanoon.org/doc/1048477>

^{ccxlv} Available at <https://indiankanoon.org/doc/1663327>

^{ccxlvi} The Water (Prevention and Control of Pollution) Act, 1974 was amended in 1978 and revised in 1988.

^{ccxlvii} For the implementation of the functions, the Board is linked with Ministry of Environment and Forest Affairs.

^{ccxlviii} To attain national consensus on right to water, on 3 June 2016, a new draft of water bill i.e. 'water for life' for all was proposed by the Water Ministry. When the chapter was written the draft was put on public domain for comment and suggestions. With the draft of National Water Framework Bill, every person would be entitled to Water for life as a basic requirement that is necessary for the fundamental right to life of all human beings including drinking, cooking, bathing, sanitation and personal hygiene and related personal and domestic uses. This includes additional requirements for "women" for their special needs. It proposes that the minimum water requirement would be determined by the appropriate government from time to time that has an obligation of the state.

To build a comprehensive governance structure on water, the draft deals with water conservation, preservation, and abatement, pricing, administration and river and aquifer management. Binding national water quality standards for every activity or product the draft draws that it is a duty of everybody to reduce water pollution and wastage footprints. With prohibitive penalties it indicates that industries in particular will be asked to state their footprints in their annual report along with an action plan to progressively reduce its overtime. To constitute a hydrological unity, the draft law asks governments to strive for rejuvenation of river system by assuring Aviral Dhara (continuous flow), Nirmal Dhara (unpolluted flow) and Swachh Kinara (clean and aesthetic banks). An integrated river basin is supposed to be drawn up and all water resource projects in that basins or its sub basins need to confirm to that plan.

A separate draft bill for conservation, protection, regulation and management of groundwater has also been placed. At the same time to deal with interstate water disputes, the draft proposes the establishment of appropriate institutional arrangements.

^{ccxlix} Mangala Subramaniam (2014), in his article 'Neoliberalism and Water Rights: The Case of India, in Current Sociology', Vol. 62, 393-411, emphasis that in India, Five Years Plans reflects India's policies for allocation of resources for water needs such as in health, agriculture and water.

^{cccl} For certain years the Five Year Plans are not mentioned as Annual Plans were in place then and water was placed in their Schemes.

^{ccli} 40 litres per capita per day (lpcd) for humans to meet the following requirements - Quantity (LPCD) Drinking 3, Cooking 5, Bathing 15, Washing utensils & house 7 and Ablution 10.

^{cclii} Here, the decision making process includes participation in drinking water scheme, planning, design, implementation, control of finances and management arrangements.

^{ccliii} National Rural Drinking Water Programme Guidelines 2013, <http://www.ielrc.org/content/e1308.pdf>.

^{ccliv} In water management, India has adopted the Integrated Water Resource Management approaches. It has recognized that management of water resource needs to be done in an integrated and holistic manner rather than being managed in a compartmentalized approach as it aids suitable water management.

^{cclv} At the national level there are several institutions that are working to protect, preserve and maintain water resources. Eg. The Central Water Commission (CWC) is established to control water resources for which it offers Policy/planning of water resources (WR)/design consultancy/surface-water data. It is linked with Ministry of Water Resources (MoWR). Central Water and Power Research Station works to bring Research/Solution to complex WR problems. Water Quality Assessment Authority, monitors Water Quality throughout India and is attached with MoEF/MoWR/CPCB/CWC/CGWB/State Governments/Local bodies. Ministry of Drinking Water/Sanitation initiates for Rural water supply/sanitation associated with Ministry of Drinking Water/Sanitation Ministry of Urban Development focuses on the Urban water supply/sanitation/industrial water/ desalination plants and is associated with the Ministry of Urban Development Water Resources Division, Planning Commission that works for Planning of Water Resources linked with the Planning Commission.

^{cclvi} http://www.maharashtra.gov.in/english/gazetteer/WARDHA/local_municipalities.html.

^{cclvii} The Act states that sinking a well for the purpose of extracting or drawing water within a distance of 500 metres from a public drinking water source without obtaining permission of the Appropriate Authority is prohibited.

^{cclviii} The Act has more importantly defined the meaning of drinking water purposes, definition 2 (2) provides that drinking water purposes means consumption or use of water by human population for drinking and for other domestic purposes and includes consumption of water for similar such relevant purposes. The Act emphasises that while using ground water it is essential to preserve and respect the meaning of drinking water purposes.

^{cclix} The Acts has made special provisions to protect water from extra extraction of water. While providing regulation of extraction of water from wells in water scarcity areas, section 5. (1), of the Act states that "Upon declaration of any area as water scarcity area under section 4, the Appropriate Authority may, for the duration of the water scarcity period, by order, regulate the extraction of water from any well in such area by restricting or prohibiting such extraction for any purpose other than for drinking water purpose where such well is within a distance of one kilometer of the public drinking water source."

^{cclx} The researcher believes that the attempts made by the governments of Himachal Pradesh are important to be noticed as in this region of India, geographical difficulties are exceptional.

^{cclxi} This is to substitute the policy Swajaldhara that entitled people to have drinking water in deserts but with a condition to pay.

^{cclxii} The discussion is based on an argument that as in the list of fundamental rights, when all major rights are directly enshrined in the Constitution why water was not considered as a subject of direct and independent right. It is strange that a state that has experienced many droughts during the colonial rule has neglected to place water as an independent right.

^{cclxiii} For detail studies see: Ingrid Winkler, *Judicial Enforcement of the Human Right to Water: Case Law from South Africa, Argentina and India* *Law, 2008 L. SOC. JUST. & GLOBAL DEV. J.* 1, 15 (2008), http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2008_1/winkler

^{cclxiv} For the details of the cases, see: <https://indiankanoon.org/>

^{cclxv} *F.K. Hussain vs. Union of India*, A.I.R. 1990 Ker. 321 (India), *available at* <http://www.elaw.org/node/2497>. The judgment by J. Sankaran Nair is identical to his judgment in the related case *Attakoya Thangal vs. Union of India W.P.* in the same Court just one month back. Both are cited interchangeably, though the Hussain decision is included by COHRE in their litigation guide. See COHRE(b), *supra* note 212, page no 116.

^{cclxvi} *Subhash Kumar v. State of Bihar*, A.I.R. 1991 S.C. 420 (India), *available at* <http://www.ielrc.org/content/e9108.pdf>

^{cclxvii} *M.C. Mehta v. Kamal Nath* (1997), 1 SCC 388 (Supreme Court) (13 December 1996), *available at* <<http://www.ielrc.org/content/e9615.pdf>>.

^{cclxviii} *A.P. Pollution Control Board-II v. M.V. Nayudu*, 2001 I.L.R. 4 S.C. 657 (India), *available at* <http://www.ielrc.org/content/e0010.pdf>

^{cclxix} “Exercise of such a power in favour of a particular industry must be treated as arbitrary and contrary to public interest and in violation of the right to clean water under Article 21 of the Constitution of India.”

^{cclxx} The Court referenced Principle 2 of the Stockholm Declaration, noting that the natural resources of the earth must be safeguarded for the benefit of present and future generations. See *Perumatty Grama Panchayat v. Kerala*, 2004 K.L.T. 1 (Ker.) 731, page 13 (India), *available at* <http://www.elaw.org/node/1410>.

^{cclxxi} *A.P. Pollution Control Board-II*, 2001 I.L.R. 4 (S.C.) 657 page 9 (citing the European Court of Human Rights, Inter-American Commission, Constitutional Court of Colombia, and the Constitutional Court of South Africa).

^{cclxxii} This argument is found in a case called *Venkatagiriappa vs. Karnataka Electricity Board*, Bangalore, 1999 (4) KarLJ 482 (High Court of Karnataka) (15 July 1998), *available at* <http://www.ielrc.org/content/e9813.pdf>.

^{cclxxiii} For details, see Philippe Cullet, (2009) *Water Law, Poverty and Development: Water Sector Reforms in India* (Oxford University Press, New York, 2009).

^{cclxxiv} *AWC 2139 High Court of Allahabad (Lucknow Bench)* (20 April 2000), para. 4, *available at* <http://www.ielrc.org/content/e0013.pdf>

^{cclxxv} See: *Vishala Kochi Kudivella Samarkshana Samithi vs. State of Kerala*, 2006 (1) KLT 919 (High Court of Kerala) (20 February 2006), para. 3, *available at* <http://www.ielrc.org/content/e0642.pdf>.

^{cclxxvi} See: *Hamid Khan vs. State of Madhya Pradesh*, AIR 1997 MP 191 (Madhya Pradesh High Court) (30 October 1996), *available at* <http://www.ielrc.org/content/e9613.pdf>. Similar judgment was given in the case of *Dr K.C. Malhotra v. State of Madhya Pradesh*, AIR 1994 MP

48 (Madhya Pradesh High Court) (7 May 1993), available at <http://www.ielrc.org/content/e9310.pdf>.

^{cclxxvii} Case of Karnataka High Court, 15 July 1998, available at <https://indiankanoon.org>.

^{cclxxviii} Para 244; AIR 2000 SC 3715; Source: www.ielrc.org/content/e0008.pdf

^{cclxxix} Pani Haq Samiti Vs. Brihan Mumbai Corporation, Bombay high court, 2014. Available at www.indiakhanoon.com.

^{cclxxx} Cited in Philippe Cullet (2010), Water Sector Reforms and Courts in India: Lesson From The Evolving Case Law Published in *Review of European Community & International Environmental Law* (2010), p. 332.

^{cclxxxi} D.M. Singhvi v. Union of India, AIR 2005 Raj 280 (High Court of Rajasthan (Jaipur Bench)) (2 May 2005), para. 15, available at <http://www.ielrc.org/content/e0513.pdf>.

^{cclxxxii} While studying the Indian position on right to water, Phillip Cullet commented that in recent times, the legal framework generally and especially around water, is changing under increasing pressure from two directions: one from the rights perspective and the people's movements from below. He took Pani Panchayat movement of Maharashtra as pioneering in the development of right to water that was attached with the demand of livelihood, For details see: Philippe Cullet, Suhas Paranjape, Himanshu Thakkar, M. S. Vani, K. J. Joy, M. K. Ramesh (2012), *Water Conflicts In India: Towards a New Legal and Institutional Framework* published by Forum for Policy Dialogue on Water Conflicts in India.

^{cclxxxiii} Civil society is recognized as the voice of human rights groups, local communities, small farmers, peasants and indigenous people who demands for social justice.

^{cclxxxiv} For instance, a New Delhi based non-governmental organization called Centre for Science and Environment working in the area of the environment is providing publications which argue for making water everybody's right as a practice and policy of water harvesting with traditional knowledge systems and to encourage community management of water resources.

^{cclxxxv} The water justice movement strives to offer an alternative source of knowledge and policy prescriptions to those provided by the World Bank and other powerful actors on the global water stage. Legally, it does not have the power to directly influence governments on water policy. Their approach is to support local initiatives, insisting on constitutional amendments and banning privatization. This movement expresses support for policies that increase people's participation and community oversight. At the same time, they advocate for providing funding for public companies to improve service and support public-private partnerships as an alternative to Public Private Partnerships.

^{cclxxxvi} The Water Liberation Campaign consisted of other non-governmental organizations like Paani Morcha, headed by Commander Sureshwar Sinha, Tarun Bharat Sangh, led by the "Water Man," Rajendra Singh; Dehat Morcha; Bhartiya Kisan Union (a farmers' organization); and Bhartiya Jagriti Mission (a religious organization).

^{cclxxxvii} The Citizens for Water Democracy consists of all these organizations as well as Resident Welfare People's Associations, Water Workers Alliance and National Federation for Women that were opposing privatization of water projects in Delhi. Citizen's for Water Democracy Activists in India are Sundar Lai Baghuna Gandhian Activist, Medha Patkar Gandhian Activist, Vandana Shiva NGO- RFSTE, Shrikunj - Bhartita Jagriti Mission, Arvind Kejeriwal – Parivartan, Sudhirendar Sharma - Ecological Foundation, Mantram Nagar- Kisan Morcha, Rajender Singh

- Tarun Bharat Sangh, Rakesh Jaiswal - Eco Friends, Capt. Sureshwar Sinha - Paani Morcha, Vimal Bhai - Matu Peoples Organization, Rakesh Tikait, Bharitya Kisan Union

^{cclxxxviii} The researcher found that in India NGOs are working regionally, all are not discussed here as the focus here is not regional but national.

^{cclxxxix} To ensure right to water to all contribution of Indian NGOs are highlighted by various scholars. To find the literature in this regard, besides works of Shiva Vandana (2001) Bakker K (2010) one should see works like Agarwal, B. (1992). *The Gender and Environment Debate: Lessons from India. Feminist Studies* 18(1): 119-158; Shrivastava, A. and A. Kothari. (2012). *Churning the Earth: The Making of Modern India*. New Delhi: Penguin Viking; Alison Brysk & Michael Stohl, (ed), (2017). *Expanding Human Rights: 21st Century Norms and Governance*, Edward Elgar, new Delhi; Lawrence PG, Maria CB. 2011, NGOs and HIV/AIDS Advocacy in India: Identifying the Challenges. *South Asia-Journal of South Asian Studies* 34(1):65-88; Mohan R.V.R. (2003). Rural water supply in India: Trends in institutionalizing people's participation. *Water International* 28 (4):442-453; Nair N, Vohra N. (2011). The case of OD in an NGO in India. *Journal of Management Development* 30(2):148-159.

^{ccxc} For instance, in Bangalore, the NGO called The Public Affairs Centre, has pioneered a new approach to the regulatory oversight of public service provision. It has conducted a social audit about the public services provided by the municipal authorities. The objective of the "citizens' report card" is to highlight deficiencies in the provision of water and sanitation, and this in turn has led to a process of structured consultations between the State Government, the municipal authorities, local citizens' groups and residents' associations. It should be noted that the social audit begun to register real improvements with poor households reporting a sharp reduction in bribes for connections and improvements in efficiency. Source: www.pacindia.org.

^{ccxci} It should be noted that the interpretations offered in the Table are based on the details elaborated in Table 4 of Chapter Three of the present thesis.

^{ccxcii} In the above discussions, civil society has provided a wider conception that has been legitimised by judicial verdicts.

^{ccxciii} Cullet (2010) has presented this argument.

^{ccxciv} The challenge is addressed through two setups: one is legal and the other is policy. It is not a case for either-or; it should be noted that often policies lead to legal frameworks or a law may represent a policy framework. In the present study, the researcher gives preference to policy over law because law is a hard power of a State and has the nature of force. Laws are binding forces but the fundamental question is how many people in India are in a position to claim water as a right or as a sanction of legal assurance. In comparison to legal arrangements, policies are soft powers and based on the will of the state. If water stress is a reality than law may not be as effective as a policy can, for it maintains moral obligations on the state.

^{ccxcv} Details discussed in following paragraphs are taken from India's water ministry website.

^{ccxcvi} This was on the recommendation of the Inchcape Committee Wherein Public Works Department was merged with the Department of Industry in 1923 and a combined department known as 'Department of Industries and Labour' was established.

^{ccxcvii} Here, policy does not mean policy document but it means policy as an idea.

^{ccxcviii} A need of change is realised under the international influences. During 90s principles of liberalisation were adopted in water management that has asked to consider changes in policy frameworks.

^{ccxcix} Details regarding this development is available on the water ministry's website, see document called "Background Note for CONSULTATION MEETING WITH POLICY MAKERS ON REVIEW OF NATIONAL WATER POLICY" published by Ministry of Water Resources.

^{ccc} Prime Minister Atal B. Vajpayee's speech at the Fifth Meeting of the National Water Resources Council in 2002, in which he promoted the revised National Water Policy in these words: "The policy should ... recognize that the community is the rightful custodian of water. Exclusive control by the government machinery, and the resultant mindset among the people that water management is the exclusive responsibility of the government, cannot help us to make the paradigm shift to that participative, essentially local management of water resources. ... Wherever feasible, public-private partnerships should be encouraged in such a manner that we can attract private investment in the development and management of water resources.

^{ccci} To take inputs from water scholars, activities, farmers, water associations, and industries, meetings were held periodically. For instance, a meeting was held on 26/10/2010 at the India Habitat Centre and again has held on 21/03/2011 at Vigyan Bhavan, New Delhi, both under the Chairmanship of the Hon'ble Union Minister of Water Resources.

^{cccii} National Water Board's revision was recommended by the Drafting Committee at its 14th Meeting held on 7 June, 2012.

^{ccciii} Taken as it is from the Ministry of Water Resources Website i.e. wrmin.nic.in.