

A Critical Analysis of Right to Water in India
in the Context of Water Policies of the Union Government (1987-
2012)

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1. Background and Objective of the Present Study

Water scarcity and mismanagement of water resources has poses greatest challenge, facing the humanity for providing equal food, energy and clean and fresh drinking water to every person. Since water resources are agreed to be used for multiple purposes, the situation is increasingly complicated in India, due to population explosion, here per person average water availability is reduced to 3450 (2011). As per the Grail research report 2016, by 2050 demand for drinking water in India is going to increase, industrial growth will certainly make the demand more than double to the present figure. Facts reveal that realities of scarcity will appear as rural versus urban, agriculture versus industry and public versus private. Insensitive attitude towards problem gives intellectual priority to the subject that demands comprehensive study on issues that can provide practical solution with democratic rationality. Since democratic arrangements are the concerns of constitution, it is important to make an inquiry about constitutional interpretation of water management. India has certainly got constitutional relief on water management; idea is brilliantly mentioned in Article 15, Article 39 (b) and Article 51-A (g). Subsequent desires of constitution are further well maintained by the Supreme Court of India. For instance, verdicts like *M C Mehta versus Kamal Nath* (1997) and *Narmada Bachao Andolan Versus Union of India* (2000) are the milestones in progress of the idea of Right to Water. However, due to constitutional and judicial confirmation on entitlement on water, as a right, study on water is specified more under legal frameworks than theoretical one. Accordingly, water availability and accessibility is studied more as legal assurance without preferring to the normative understandings and ability of a state. One side observations have created a serious gap between expectations and realities. This has made issue unfinished, especially in academic sanity; to acquire holistic perspective on the subject it is important to explore normative dimensions of the idea of Right to Water and to study its major elements in the context of water policy. In this respect, present study has analyzed the idea of Right to Water and has examined it in the context of union water policies of India. This is done-

- To analyse water as a right in theoretical and global context.
- To explore the status of Right to Water in India, particularly with reference to Constitutional provisions, legal frameworks and judicial interpretations.
- To critically investigate the water policies of the union government of India covering the period from 1987 to 2012 in the context of Right to Water in India.
- To offer recommendations for assuring the Right to Water in India and to suggest a practical approach to achieve the principle of water democracy.

In order to achieve these objectives, the adequate answers has been explored for the following questions-

- What are the theoretical understandings and implications, in general, and as per global standards on Right to Water?
- What are the provisions relating to the Right to Water in the Indian Constitution?
- What are the major developments in the legal framework of Right to Water and how the judiciary has interpreted the Right to Water?
- What was the water governance framework with regard to the Right to Water from 1947 to 1987?
- How were the water policies of 1987, 2002 and 2012 formulated and how did these address the issue of Right to Water?
- To what extent did they commensurate with the global standards and framework to ascertain Right to Water?
- And lastly, what changes are required in the water policies in India? How do we strengthen the Right to Water in India so that it is congruent with the idea of water democracy?

2. Research method and findings

To address these questions this research has adopted eclectic method and has used hermeneutic, explanatory, descriptive and critical content analysis as major and found that –

2.1. In previous studies, idea of Right to Water is not been conceptualized in the context of national water policies of India (Chapter Two).

This study has found that in the previous studies, a fact that water is a right is studied in different contexts and to explain the issues concerning to rights of individuals over water resources, scholars have used three terms: Water Rights, Right to Water and Human Right to Water. There studies that gives importance to the idea of Right to Water over Human Right to Water and Water Rights, however while arguing to use the term like Right to Water, the studies have not offered definite meaning of Right to Water. Instead of focusing on the issues concerning to ensure water to all, the studies has focused on the other related issues, like water privatization, water pollution, water disputes and water conflicts. From the available literature it is evident that the previous studies though has contributed in water discourses, but has not focused on the issues concerning to the idea of Right to Water and has not studied the same in the context of India's national water policies. The study has underlined that the method and style used for water policy analysis in the past studies has made Right to Water a secondary idea. As while discussing on a fact that water is a right, they have focused more on the pros and cons of water privatization.

2.2 The concept of Right to Water is not just a definition but it is a process, which progressively evolved with the argumentative discussions and institutional arrangements made at international, regional and national levels (Chapter Three).

Present study has explained that a fact that water is a right is endorsed in modern political thought but same is not theorized in traditional senses. The argument that

water is a right is discussed in water discourses, for which scholars have commonly used three terms: Water Rights, Human Right to Water. The study has elucidated that to ensure right to water to all, the term like Right to Water, is most appropriate. The understanding in this regard are evolved with argumentative discussions, known as post-neoliberalism and institutional undertakings, made at international, regional and national level. According to this study the institutional undertakings made at international, regional and national levels are not just the guarantor of right to water but are the interpreter of the concept of Right to Water. The study in this respect hold that internationalisation, regionalization, nationalisation and argumentative discussions on the same, has explained the idea of Right to Water as a condition that preserves water and guarantees its availability, accessibility and affordability in future.

2.3 Meaning of Right to Water is comprehensive, which holds elements and scope of the same (Chapter Three).

This study has argued that right to water is a condition, the entitlement of which is claimable as per the priority of water uses. It implies that every human being has a right over water and so it needs to be preserved and secured for the future. To entitle right to have and use water in future it is important to treat Right to Water as a shared responsibility of each individual and of governments, working at different levels. It is indeed important to ensure availability, accessibility, acceptability and affordability of water not as a need but as a right. The governments in this respect has duty to respect, protect and fulfill right to water to all.

2.4 In India, the concept of Right to Water is evolved as a process (Chapter Four).

This study has argued that in India, right to water is a post-independence phenomenon. In government's documents, including Constitutional provisions, legal and planning frameworks, the elements of Right to Water is discussed in narrow senses. The wider interpretations are noted in the initiatives of Indian judiciary and

civil society which mainly includes intellectuals, water scholars and Non-Governmental Organisations. The study has described that in India the evolution of the idea is required to be understood in the reference of three undertakings: top down i.e. government's documents, bottom up i.e. arguments of civil society and undertakings that synthesises the two i.e. verdicts and statements of Indian judiciary. The study has found that in the process of the evolution of Right to Water, in India, judiciary has played a role of synthesiser that has synthesised the government's undertakings and arguments of civil society. The study shows that it is Indian judiciary and civil society that actually has defined the meaning and scope of Right to Water. However, since their legitimacy and power in the implantation of Right to Water is limited, there is a need to have a national water policy that can ensure individual's rights over water and the state's rights over water resources.

2.5 India's national water policies are ideal but are not embracing the values and elements of Right to Water (Chapter Five).

This study has argued that in India's national water policies, water is measured as a need and not as a right. The norms and regulations, national water policies together have considered water as a source of development and growth and hence distribution and management of water resources is maintained and preserved, mainly in favour of irrigation and industry. The priority list made available in the three national water policies gives priority to drinking water but the same has not ensured in distribution and has not been strategized in management planning.

The study has proposed that the three policies propose to ensure availability, accessibility and affordability of water to all, however, not in the sense of Right to Water. This is because in the three water policies, the idea of beneficiary and obligation is not suggested appropriately. While suggesting for the entitlement of poor and weak, the policies ignore children and disabled. Similarly, while proposing obligations of public and private water supplies, the three policies create ambiguity. In this respect, the status of private sector is more confusing as even in case of privatisation of water resources, government is remaining accountable, to ensure

water to all. In the three water policies a duty of individuals, different sectors and researchers has not been defined. This has disturbed the right- duty pairing, which is an essential condition for the realisation of Right to Water.

The study claimed that the three national water policies fulfill the regional needs of the Indian states but not in the line of Right to Water, meaning of which is quite comprehensive. The participatory approach, introduced in the policy is incomplete as it is not providing platform for the same. The three policies have least focus on transparency, accountability, non-discrimination, absence of dominance, sustainability and monitoring of water uses, which actually has affected the real entitlement of Right to Water.

The study has claimed that the three national water policies are not effective in reference to Right to Water because-

- (1) The policies offer the priority orders but instead of maintaining the order, follow a changeable approach.
- (2) The policies place stress on the principle of social justice and equity but to maintain the same, insist upon adopting the public private partnership model, where the private sector is the real authority and is entitled to supply water and manage and maintain water resources.
- (3) While proposing water sufficiency to urban and rural people, the term 'sufficient' is not defined.
- (4) The policies insist on maintaining minimum flow of water resources for social consideration, however, the standard of minimum flow of water and what social consideration stands for, is quite undecided.
- (5) The policies give priority to use of water for irrigation and agricultural purposes, but whether this separates the use of water for substantive life and business, is not clear.
- (6) The policies call for people's awareness, especially for the farmers. However, the purpose of their training in this respect is to make aware them about the problem

of water scarcity. However, the policy does not propose to inform them about their rights over water resources.

(7) On one hand the policies insist on protecting water from pollution and wastage while on the other hand, they propose that the polluter can be set free if s/he pays for the same.

(8) The monitoring measures work to ensure efficiency in water uses, however; their duty is not to check if the management processes entitle people to use water as their right and if water resources reach every individual and household, adequately.

(9) In the policies, the failures of public and private sectors in water supplies are subjected to penalty, but what failure exactly means is not defined.

(10) The policies emphasise on people's participation but forget to provide a platform for the same.

2.6 In future, the idea of Right to Water is required to be explored in multiple contexts and policy makers, while drafting the water policies should integrate the values and elements of Right to Water (Chapter Six).

This study has suggested that the comprehensive nature of the idea of Right to Water is require to be studied in context to different disciplines like law, international water disputes, comparative management, gender and so on. In future the idea of Right to Water can be studied with reference to caste and class and also in context to the water policies drafted by Indian States.

2.7 To ensue right to water to all, there is a need to draft national water policies in the context of right to water (Chapter Six).

This study has recommended that in the national water policy documents, distributive and management should be strategised appropriately. The content should ensure that management strategies harmonise fully with distribution strategies. Simultaneously, contents of national water policies should suggest a mechanism that can distinguish between water rich, water middle and water poor areas or communities, and prepare a list of chargeable amount as per the economic status.

Publications From the Study are -

Deepti Acharya (June, 2017). *Conceptual Debates On Water As A Right And Emergence Of Policy Frameworks: A Discussion*, IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 22, Issue 8, e-ISSN: 2279-0837, p-ISSN: 2279-0845, pages 10-20.

Deepti Acharya (December, 2017). *The Question of Right to Water: Some reflections on the major debates in Political Discourse*, IOSR Journal of Humanities and Social Sciences Volume 24, Issue 10, e ISSN 2279-0837 and p-ISSN 2279-0845 Pages 1-8.

Paper presented:

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25th -27th Oct 2015- *Right to Water vs. right to trade* on the theme rethinking Politics in India, organized by the Department of Political Science, Banaras Hindu University, Varanasi, UP

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