

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

**Synopsis of the thesis to be submitted in partial fulfilment of
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Background

In the discourses on rights, the idea of the right to life is discussed and argued to have life with development. Since water is a source of life and imperative to development, in idea of water governance, use of water resources other than for biological needs are justified by different arguments and claims. As the contexts and references to claims on water uses are multiple, it becomes essential for the states to define the scope of use of water. Modern water discourses, in this view, have introduced the concept of Right to Water, which insist upon treating water as a right of an individual and argues to ensure its availability to all. The idea of Right to Water, while arguing for implementation, obligates states to follow and ensure egalitarian values in water management and insists placing them in policy or legal frameworks.

The present study goes with the argument and seeks to set specific priorities for water policy, in favour of Right to Water. The study in this sense explores the idea of Right to Water and analyzes it in the context water policies of India's union government, covering the period from 1987 to 2012. In the respect to this argument, the study makes three inquiries which set the stage for three investigations that are inter-linked. The first inquiry explores, introduces and discusses the idea of Right to Water in the global context. This broad understanding on Right to Water leads to the second inquiry which looks into the status of Right to Water in India. With the background of these inquires, the third inquiry scrutinizes the concept of Right to Water in the context of the water polices of India's Union Governments, respectively drafted in 1987, 2002 and 2012.

The study in the view of these inquiries, studies conceptual and theoretical frameworks of Right to Water as a part of political studies and analyzes its values in the context of water policy frameworks of the union governments, which is the area of policy studies. It underlines that most of the literature presently available on water governance is more concerned with the technical aspects of water management and the concept of Right to Water is hardly explored. To fill this gap the present study analyses the idea of Right to Water in the context of India's National Water Policies. The study hopes that the findings will create new policy frameworks for water management and may help the government to establish and ensure egalitarian values, while framing water policies.

Study draws discussions in six chapters that are as follows-

Chapter One: Introduction: Objectives, Significance, Methodology, and Scope of the Research

Chapter one is the introduction to the study. It introduces the readers to the significance, objectives, research questions, methodology, and the scope of the present study. The chapter draws out that the study like the present one is significant as it selects to analyze value of Right to Water in reference to contents of the national water policies and discusses water not merely as a need but argues its use as a right of individuals. The chapter lays out the objective of the present study to explore the meaning and scope of the idea of Right to Water. The objective raises fundamental questions as:

What are the contending interpretations of Right to Water?

- 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?

To pursue these research questions, the study adopts a qualitative approach. The study, to attain normative understandings on Right to Water and to analyze its values in reference to national water policy frameworks, combines critical hermeneutics with critical content analysis. While

justifying the use of this methodology, the chapter argues that for the present study, a combination of the two is essential as the use of critical hermeneutics helps to understand the complex argumentative narrations which have emerged and evolved in the idea of Right to Water and critical content analysis identifies and explores how a policy text should be studied and interpreted in view of Right to Water. The chapter lays out the boundaries of the study by clarifying that the study engages with the ideas and claims of Right to Water alone. Since the study concerns water as a right, it does not focus on other issues of water governance as, water privatization, water disputes, and water pollution. It focuses only on the national water policy of India and does not get into a critical evaluation of water policies formulated by the Indian states.

Chapter Two: Review of the Related Literature

Chapter Two draws on literature review concerned with the idea of Right to Water and examines the national water policies of the Government of India. While discussing the ideas expressed in the literature review, the chapter highlights research gaps that has stimulated this study. The chapter presents that most research on water has been carried out on water conflicts, water disputes, water pollution and more recently on the idea and practice of water privatization. Further, a large volume of published studies discusses Right to Water as synonymous to Water Right. However, works of Ramaswamy Iyer, P. Sangameswarean, and Vandana Shiva have attempted to draw a fine distinction between Right to Water and Water Rights and while doing so they have introduced the idea of Right to Water and have argued for it to be implemented.

The chapter extensively discusses the arguments and discussions of Ramaswamy Iyer, Vandana Shiva, Vandana Asthana, Phillip Cullet, A. Mohile, Karan Barker, Chattrapati Singh, Upendra Baxi, Binayak Ray, Kamta Prasad. Salman M. Salman, Inga Winkler, S. M., McInerney, P. Lankford, P.Thielbo`rger, P. Sangameswaran, P. Anand and Radha D'Souza with others, as their works elaborates on the conception of Right to water and provides Indian perception on the same. The development of the idea of institutional and legal framework is well elaborated in the works of Salman M. Salman, McInerney, P. Lankford and P. Thielbo`rger. Their works suggest that globally the concept of Right to Water is well defined by Comment 15. P. Thielbo`rger is relatively more extensive as he presents theoretical discussions on the concept and argues it in context of Right (s) to Water.

The chapter draws largely from the publications of Ramaswamy Iyer and P. Sangameswaran as they have had a major impact on the water policy analysis in India. To attain critical insight, chapter reviews and comments on national water policies, covering major comments published in the newspapers and magazines. The chapter presents discussions on right to water available on water literature have separated the theoretical arguments and institutional arrangements. This, instead of offering meaning and scope, has created confusion about the concept. Similarly, much of research on national water policies of India has discussed the contents and structures of water policies in context of privatization and pollution of water resources. The chapter argues that literature on water resource management is not understood in the line of Right to Water and hence studies on national water policies has ignored to discuss the elements of Right to Water.

Chapter Three- The Concept of Right to Water: Background, Understandings and Major Elements

Chapter Three is descriptive as well as normative in nature. It addresses the first and second question of this study that seek to explore the meaning, elements and scope of Right to Water. To comprehend the meaning and elements of Right to Water, the chapter distinguishes between narrow and wide interpretations and lays the philosophical and normative foundations of the idea of Right to Water. The chapter divides the discussions into four sections.

Section one and two contains philosophical and normative discussions, which addresses questions regarding what are rights, how they are defined in the Liberal, Marxist, Feminist and Human Rights school of thought and if and how the idea that water is a right is accepted and defined in modern political thought. The chapter argues that in modern political thought, water has been considered as a right however, the same is not theorized in the traditional sense. The chapter finds that the arguments in the favour of Right to Water are emerged and evolved in the discourses on rights and are been institutionalized by declarations, resolutions, and conventions, made by international, regional and national institutions. The chapter, while presenting details on institutional initiatives, presents that at the international level the concept has evolved in two contexts. The first context is theoretical in nature that is an argument against Neo liberalism called and discussed as Post Neoliberalism. The arguments emerged in this view condemns the neoliberal practices in water management and insist upon considering water as a source for the

commons. The second context pinpoints to the evolution of normative content, which has been offered by General Comment 15. The chapter gives special attention to General Comment 15, namely the Right to Water, released by the Committee on Economic, Social and Cultural Rights Committee (ESCR) in 2002, as it offers the core values and components of Right to Water. The chapter notes the significance of initiatives made by regional institutions and highlights regional understanding on Right to Water. It presents the major declarations of European, Asian and African Charter. The chapter clarifies that there are some national constitutions that have realized and endorsed right to water to all even much before international and regional declarations. The chapter argues that in the progression of the concept Right to Water, theoretical perception and institutional frameworks interacts argumentatively, and their approach towards each other provides meaning and scope to the concept.

Section three and four of the Chapter deals with the meanings, component, and scope of Right to Water and describes the significance and uses of Right Based Approach for the fulfillment of the idea. The chapter, while highlighting the elements of Right to Water, elaborates on the difference between the concepts of Water Rights and Right to Water and argues for Right to Water over Water Rights. The chapter in its discussion presents what Right to Water is not. The chapter argues that the concept needs to be understood in three references: water for commons, scope of right to water and in the co-relation of right and duty. The chapter argues 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 ensure right to water, the chapter insists on drafting water policies with reference to Right to Water and adopting a right based approach for the same. To pinpoint the significance of right based approaches in drafting water policies, the chapter presents the strengths of the right based approach and gives arguments in its favour. The chapter argues that the principles offered by Right Based Approach have established “minimum standards to ensure right to water”. With this, it is easy to set specific priorities for water policy, which is the core objective of the present study.

Chapter Four - Background and Evolution of Right to Water in India

Chapter Four is descriptive and exploratory in nature and addresses the third, fourth and fifth question of this study. In continuation with Chapter Three, it attempts to explore and introduce the idea of Right to Water in the Indian context. To investigate the status of Right to Water in India, the chapter addresses three questions. Firstly, if in India, constitutional, legal or planning and program frameworks have introduced and enshrined the value of Right to Water. Secondly, if initiatives of the Indian states have identified and approached the idea of Right to Water and lastly, what is the role of judiciary and civil society in evolution and expansion of the idea.

To deal with these inquiries, the chapter examines water management approaches developed in colonial India and post-independence India. While exploring the understanding of the British administration about water, the chapter argues that the Acts introduced during the British rule in India have created a public system of water management. However, the system has not entitled people to claim water as their right. The use of water was permissible on the ground of ownership of land and was in the hands of the State governments. The chapter, while describing the status of Right to Water in post-independence India, argues that the initiatives and undertakings made by national and state governments provides narrow understanding of the idea of Right to Water and so implicitly advocates for right to water; whereas, the initiatives made by the Indian judiciary and Indian civil society are explicit and provides wider perception on the idea. The chapter, while presenting the constitutional and legal status of Right to Water in India describes that Indian Constitution implicitly argues for right to water, however same is not codified in Indian water laws. The chapter describes that the components of Right to Water are attempted to be preserved under the Five Year Planning System and is highlighted in the guidelines of the schemes and programs. The chapter argues that frameworks of planning and programs has adopted an integrated approach and cover almost all the sectors of water users whose contents define and preserve major elements of Right to Water.

The chapter, while highlighting the initiatives of the states, points out that the state governments usually focuses on the some major aspects of Right to Water and initiates to ensure availability and accessibility of water resources and give priority to drinking water. The chapter notes that in the union and state government's documents, priorities of water uses are not maintained as

absolute. In the listed priority, change is permissible if so required under specific circumstances. The chapter, in the light of limitations of national and state documents, argues that in the governmental documents, claims on water as a right are not clear and constant and hence the understanding of the judiciary, as the third organ of state, need to be explored in the context of Right to Water. The Chapter finds that judicial interpretations, in form of verdicts and rubrics have ascertained states as accountable to ensure water to all. By citing judicial cases, the chapter claims that the statements and verdicts of judiciary have upheld the concept of right to water and has ensured the universal entitlement of the same. While highlighting the civil society as the wider exponent of the idea, the chapter takes into account the undertakings, and initiatives made by Indian NGOs and Indian water scholars. The chapter argues that the objective of NGOs preserves key aspects of Right to Water and arguments of Indian water scholars have advanced the concept in reference of post neoliberalism. To underline the contribution of Indian water scholars, the chapter elaborates on the works of Vandana Shiva, Ramaswami Iyer, and P. Anand.

The Chapter while detailing the evolution of Right to Water argues that in India the concept is yet in the evolving stage, the progress of which is a result of collective initiatives by different stakeholder including the Union and state governments, Indian judiciary and the Indian civil society. The chapter argues that in water governance, the position and status of state governments, judiciary and civil society is not equivalent to the power and position of the union government. The chapter argues that in the process of assurance of right to water to all, the role of the judiciary and civil society is secondary and the undertakings of the states are not claimable at the national level. Hence, for the undisturbed entitlement of right to water at the national level, it is essential to have a national document that ensures right to water in every region of India. To attain national clarity, the chapter argues in favor of the requirement of national water policies. While briefing on the origin of national water policies in India, the chapter highlights on the salient feature of each national water policy and argues that the rise of first National Water Policies in 1987, is actually an indication of paradigm shift as it has offered broader perspective on water management.

Chapter Five- A Critical Analysis of the National Water Policies of 1987, 2002 and 2012 in the context of Right to Water

Chapter Five is exploratory, explanatory and analytical in nature. The chapter analyses the idea of Right to Water in the context of Union water policies that addresses the sixth and seventh question of present study. For the analysis, the chapter throughout holds on to the meaning of Right to Water, understanding of which is attained in Chapter Three. The chapter aims to present a critical account of existing national water policies of the Union Governments of India, drafted respectively in 1987, 2002 and 2012. For this purpose the chapter raises some fundamental questions that are explicitly linked with the analysis of national water policy documents.

The chapter argues that the purpose of any water policy should ideally is to present a goal and pattern for water distribution and to propose how it will be maintained and managed. The chapter, accordingly, recognizes that water policy documents are based on two elements: distribution of water and management of water resources. To explore the goals, patterns, and strategies for water distribution and management, with the center stage of Right to Water, the chapter divides the discussions broadly in two sections, each of which focuses on different set of questions. The first section examines water distribution strategies and the second section scrutinizes water management strategies. To explore the distribution strategies, the chapter addresses two broad questions. Firstly, whether the patterns and strategies of water distribution offered by policies ensure right to water to all and secondly, what measures are offered to fulfill right to water. Since the strategies of water distribution are linked with the right holders and duty bearers, it further addresses the questions: who are the right holders and who are the duty bearers. The section explores if freedom to use water is understood and balanced with equality and whether cultural acceptability and sensitivity towards marginalized groups are imbibed with reference to Right to Water. To identify the duty bearers, the chapter further explores who are placed as duty bearers and assigned the responsibility to ensure water to all. While addressing the question, the chapter holds that the national water policies drafted in 1987, 2002 and 2012 have identified and acknowledges poor and subalterns as right holders of water. However, in the documents, women and children are not separately considered as the beneficiary of the right. The chapter argues that none of the policies has ensured freedom of use of water and has given the

least focus to equal accessibility and affordability of water. The fulfillment of right to water is doubtful as responsibilities of water distribution are confusingly assigned to public and private sectors. The chapter draws attention to the limitations of the contents of the three national water policies and claims that in the pattern of water distribution, none of the policies has defined and assured sufficient and continuous water supply, which is an essential condition to fulfill, respect and protect to Right to Water.

To analyse the management strategy of national water policies with reference to Right to Water the chapter focuses on five major questions. The first question focuses on the fact whether the policies documents offer mechanisms to facilitate, promote and protect water as a right. To examine the provisions of people's entitlement to right to water, the chapter further inquires if the policies adopt management strategies to enable people to fulfill their right to water and if it has offered benchmarks to ensure equality with efficiency. It further questions if rules and regulations sufficiently define the roles and responsibilities of the stakeholders. The second question elaborates on what measures have been offered to make people aware of their entitlements on water use and how use of water is controlled with respect to water sustainability and if and how accessibility, affordability, acceptability of water is been ensured. The third question focuses if the three national water policies have offered monitoring systems for state and non-state service providers. The fourth question asks whether the policies establish transparent administrative and legal institutions, mechanisms and rules. And the final question seeks if the policies, independently or together establish dialogue, feedback, complaints and redressal mechanisms. The chapter, argues that none of the national water policies have any serious measures to facilitate, promote and protect water as an individual right. In the policy documents, water is measured as a need and not as a right. The chapter concludes that in view of norms and regulations, national water policy of 2012 holds better measures as it defines and ensures responsibilities of stakeholders of which the private sector is a party. The chapter notes that the 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 been strategized in management planning.

Chapter Six – Concluding Observations and Recommendations

The concluding chapter gives an overview of the findings and observations of the study and makes recommendations for water policy frameworks and future research. The chapter restates the arguments and observations discussed in previous chapters and claims that the concept of Right to Water is a global argument. The chapter argues that the meaning of Right to Water is comprehensive that holds the scope of the same. The chapter insists that to entitle and fulfill the idea of Right to Water, it is essential to understand right to water with reference to duties, which lies with the governments as well as on citizens. While making observations on the status of right to water in India, the chapter establishes that implicit mention of right to water, in constitutional provisions are unavoidable as it allows individuals to stake claim on water as their right and permit judiciary to give judgment in their favor. It claims that in the absence of definite legal frameworks, influence of planning frameworks and role of civil society and judiciary increases as they together advocates for right to water and while doing so they offer components of Right to Water. The chapter argues that the components of Right to Water are absent from the water policies of Union Governments i.e. of 1987, 2002 and 2012. It claims that the national water policies accept water as a right, however so is not ensured in water distribution and management.

The chapter while recommending areas for future research gives suggestions to policy researchers and policy makers. The chapter insists that Right to Water is an area which requires to be studied in the context of state laws and policies. The study of the implementation of water policies unarguably can be an important part of future research. To policy makers it recommends that before making a water policy, it is essential to focus on the meanings and components of Right to Water and design policy frameworks accordingly. It emphasizes that floods and drought management need to be framed with reference to Right to Water. The chapter insists that the participation of the people must be ensured by organizing lectures and discussions, in which each aspect of the proposed policy must be discussed in detail.

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