

## **Chapter Two**

### **Review of the Related Literature**

#### **Introduction**

This Chapter reviews literature on Water Studies and seeks to understand the previous understandings about Right to Water and its status/inclusion in India's national water policies. This chapter is divided into eight sections and subsequent sub-sections. The review in Section One reviews literature on water with two perspectives/references. Further, it gives both, a global as well as an Indian overview of the same. Section One, while presenting a global overview, focuses on the literature evolved in the context of water injustices because the idea that water is a right has evolved in the context of prevailing water inequalities. The second section reviews that body of literature on water, which argues that water is a right. This section again is divided into two sub-sections. The first sub-section focuses on studies that argue that water be considered as a human right. Reviewing such literature is important for the present study as the values of water distribution and management argued by such studies are identical to the value of Right to Water. The second subsection reviews literature that has identified and argued for the differences between the terms, Water Right, Human Right to Water and Right to Water. Discussion of such literature is important as the researcher, while exploring literature on Right to Water, found that the idea of Right to Water is not discussed directly but has evolved with the differences underlying as the terms, Water Right, Human Right to Water and Right to Water. The next section discusses and critically looks at literature that analyses India's national water policies which further go on to review the literature that analyses the idea of Right to Water in the context of the water policies made by the union government of India. The subsequent section highlights the research gaps, which is followed by the summary.

## 2.1. Water Related Writings in Social Sciences

A review of literature on water shows that the changes which have occurred in social, political and economic life have brought alterations in the nature and approach to Water Studies. Studies on water resources attempt to address contemporary problems. Understandings offered by such studies have enriched literature on water by making it interdisciplinary. The interdisciplinary nature of water studies is noted at both the global as well as the regional level.

### 2.1.1. Global Overview

Globally, the multidimensional nature of water has been studied with multiple approaches and while doing so the studies, in the form of research studies and reports, argue that water is a source of life and development. They present water as an invaluable natural resource facing acute crisis (Molden, 2007). The researcher noted that literature on water has plentiful of research studies and reports that consistently highlight water stress/scarcity and further express concerns for the depleting quality of water resources (Moss, 1967; Anderson, 1983; Gleick, 1993; Rogers, Llamas, Cortina, 2005; Gupta, 2008; Shiva, 2010; Colopy, 2012; Kallen, 2015; Chellaney, 2015; Steenhuis & Warhaft, 2016)<sup>xx</sup>. With the change of time and requirement, developmental discourse has added new areas in water studies, where use of water resources is re-conceptualized in favor of developmental process. Accordingly, water that has so far been studied in the context of *floods, drought, food, irrigation and pollution* (Jairath and Ballobh, 2010; Kumar, 2009; Vaidyanathan, 2001, 2006, 2013; Vaidyanathan, 1999; Mollinga, Doraiswamy and Engbersen, 2001; Sridhar et al 2006; Maloney, Clarence, and Raju, 1994), has gradually become a part of *Developmental Studies* (Sharma, 1998; Bogaert, 1997; Mollinga, 2004). Studies that have examined the use of water resources in the developmental context have analyzed water uses with *economic perceptions* (Kumar, 2010; Criffin, 2006) and insisted on efficiency and water privatization (Frederiksen: 2002; Swyngedouw, 2005; Beckedorf, 2010; Harris, 2011; Loshaj, 2016). Further, the practices of water privatization are presented as water injustices

(Shiva, 2002; Bakker, 2003; Crase, 2004; Baxi 2009; Iyer, 2003, 2010) because these have caused *social* (Rastello, 2007), political (Iyer, 2010) and economic injustices (Shiva 2002; Bakker, 2010).

Due to this shift in perspective, the problem of water stress has been studied in the context of political, social and economic injustices (Bakker, 2010). In such studies, rights over water resources are argued with complex values as identity, power and citizenship (Mosse, 2008). There are a number of researchers who have studied the idea of water injustice in the global context. To explain the idea, these studies have used terms as “water haves” and “water have nots”, the meaning of which changes as per the context. In the context of social and economic injustices “water haves” are understood as those who have the ability to pay and “water have nots” are those who are poor and cannot pay for the cost of water uses (Shiva 2002; Bakker, 2010; Roy, 2001). The studies which point out political injustices, highlight the unequal riparian divergences (Iyer, 2002, 2009; Shiva, 2002; Chellaney, 2015) and use these terms in the context of inter-state disputes and trans-boundary conflicts. In such studies water haves are described as upper riparian states and the have nots as lower riparian states.

Some studies, while highlighting the issue of social injustices, focus on neo-Marxist perception. Such studies have looked upon water as a part of human geography (as a biological need) and have explained the problem of unequal distribution of water as a problem of social structure (Bakker, 2003; Kaika, 2003; Swyngedouw, 2004; Ganday, 2008; Budds, 2009; Loftus, 2009; Linton, 2010; Roy, 1999). In the literature on water, such studies have evolved with gender studies (Mellor, 1997; Shiva, 2002, 2005; Nair (ed.), 2009). In such studies, the link between availability and accessibility of water resources and its implications on women’s health have been documented under the title of ‘Eco-feminism’ (Dufaut, 1988; Swaminathan, 1997; Seaforth, 2001; Shiva, 2002; Griffin, 1978; Gaard, 1998; Plumood, 1999; Yamin 2005, 2012). These studies commonly observe that use of drinking water and household water may affect men and women differently for especially in the situation of water

scarcity it is the women who suffer more than men (Griffen, 1978; Gray, 1979; Spretnak, 1982; Shiva, 1983; Plumwood, 1993; Bleisch, 2006).

Other kinds of studies which highlight water injustices in the context of interstate and trans-boundary conflicts argue that the negative and insensitive control of upper riparian states over water resources creates acute water crisis for the lower riparian (Iyer, 2007). Such studies while drawing on the situation of lower riparian states argue mainly for riparian rights. According to some studies, treaties made to address unequal riparian divergences are unjust and create environmental imbalances (Iyer, 2002 & 2007; Chellaney, 2011 & 2015; Johnston, Hiwasaki and Klaver, 2011). In fact, there are a number of researchers who have viewed these imbalances as environmental injustices (Hardberger, 2005; Baviskar, 2005, 2007, 2008; Shah, 2008; Bandyopadhyaya, 2009; Mehta & Rayer, 2010) and have discussed them as the part of interstate and transboundary water politics (Waterbury, 1979) and hydro-politics at the regional level (Mirumachi, 2015).

Notably, in the body of literature on water, there are some studies that have highlighted all kinds of water injustices and have discussed them in legal (Cullet & Konan, 2010; Iyer, 2009; Riedel, Rothen, & Auswartiges, 2006; Gleick, 1996, 1999), policy and security contexts (Asthana, 2009). These have argued that it is the global justice movement that has identified water injustices and raised voice against it (Shiva, 2002; D'souza, 2009; Bakker, 2010). The studies argue that the prevailing water injustices have disregarded the idea of human rights and hinder/obstruct/obliterate the fact which states water as a right (Pleyers, 2010; Sultana, & Loftus, 2013; Robinson, 2013; Angel, 2017). These studies insist on placing water in the discourse of human rights (Riedel, Rothan & Auswartiges, 2006; Amanda, 2011; Winkler, 2014), which has again brought a major shift in water studies.

### **2.1.2. Indian Overview**

In India, the literature on water has evolved in different contexts that includes normative as well as empirical studies. Studies by Ramaswamy Iyer, (2002, 2009), Vandana Shiva (2002), Radha D'Souza (2009), P. Anand (2014),

Vandana Asthana (2014) and Bhram Chellaney (2015) are some examples of these. The most known studies have evolved in the context of water conflicts between India and other countries as Pakistan (Indus river), China (Brahmaputra), Bangladesh (Ganges River) and Nepal (Kosi river). Studies by scholars as Ashok Swain (2004), Sharad K. Jain, Pushpendra K. Agarwal, Vijay P. Singh (2007), P Malhotra (2010), Jerome Delli Priscoli, Aaron T. Wolf (2010), Rickin Th Singh, (2011), Amitendu Palit, Gloria Spittel, (2012), Dharendra K. Vajpeyi, (2012), Brahma Chellaney, (2013 & 2015) and K. J. Joy, Partha J. Das and Gorky Chakraborty, (2017) are some of the important works in this area.

Literature on water in India has covered other areas of water conflicts as well and dwelt on the economic, social, political, legal and judicial aspects of the same (Indian Law Institute, Srimandir Nath Jain Alice Jacob, 1971; Dodda Srinivasa Rao, 1998; Ramaswamy R Iyer, 2003 & 2009; Cullet, 2002, 2009, 2013; Radha D'Souza, 2006; John R Wood, 2007; Vishwa Ballabh, 2008; Joseph F. Zimmerman, 2012; Paula Hanasz, 2017). Studies made on the consequences of water privatization (Binayak Das and Ganesh Pangare, 2006; Vandana Asthana, 2009; Vandana Shiva, 2002; Vicky Walters, 2013; Jeremy L. Caradonna, 2017), the hydropower politics between two or more states (Rajesh Sinha, 2006; A Amarendra Reddy, 2016), the politics of dam and displacements and the suffering caused by displacement (Bogaert 1997; Hemadri R, Mander H, Nagaraj V, 1999; McCulley, 2001; Khagram, 2004; Rehmat and Shripad Dharmadikary, 2006; Hari Mohan Mathur; 2013; Vishal Narain and Annasamy Narayanamoorthy, 2016) are some of the studies that highlight the conflicts arising in the social, political and economic lives of individuals. There are a few studies that draw upon hydro-politics prevalent in the Asian region and discuss India's position on the same (Upreti, 1993; Elhance, 1999; Gyawali, 2000; Shiva, 2000; Chellaney, 2015).

In water studies, water management is studied in the context of irrigation. Works of Maloney, Clarence and Raju (1994), Vaidyanathan (1999), Gulati, Meinzen- Dick and Raju (1999) and Mollinga, Doraiswamy and Engbersen's (2001) are some of the important works on this aspect. There are a number of

researchers and studies that focus on water management and while so doing they study the problem of water stress in the regional context (Mahesh Rangarajan, 2007). These studies highlight the water problems/issues of different states, including Rajasthan (Agarwal S. K., 2005; Indian Planning Commission, 2006; V. S. Vyas, 2007; Hem Lata Joshi, 2008; Saurabh Gupta, 2015; Nandita Singh, 2016), Gujarat (Indira Hirway, S. P. Kashyap, Amita Shah, 2002; T Shah, 2000; R. Swaminathan, 2008; MC Shah, 2008; Lancy Lobo and Shashikant Kumar, 2009) and Maharashtra (R.K. Mishra and Samanta Sahu, 2013).

Indeed, in India, literature on water has evolved in multiple contexts and cover different subjects. However, since the aim of the present study is to present a critical analysis of Right to Water in the context of Union Water Policies of India, the subjects other than Right to Water and Water Policies in India are not included in the review on water literature.

## **2.2 Literature on Water is a Right**

One finds that so far, in the literature on water, the idea that water is a right has been studied mainly in two contexts. Some studies, while arguing that water is a right, emphasize on the requirement of efficiency in water management and advocate the privatization of water resources (Brennan and Scoccimarro, 1999; Brookshrie, Burness, and Chermack, 2002, 2004; Yang and Weersink, 2004; Yang H. Z., 2003; Richter, 2013, 2014; Buddes, 2004; Perreault, 2006; Frederiksen: 2002). However, some studies view efficiency of water management as water equality and rigorously argue for equality in the same. These studies condemn the idea of water privatization as “*liberal environmentalism*” (Bernstein, 2001), “*green neoliberalism*” (Goldman, 2005), “*market environmentalism*” (Bakker, 2004) and as “*neoliberalization of nature*” (Bridge, 2004; Mansfield, 2004; McAfee, 2003; McCarthy, 2004; McCarthy and Prudham, 2004; Perrault, 2006) and argue that practice of water privatization will increase the problems of water inequality (Allouche & Finger, 2003; Crespo, 2003; McDonald & Ruiters, 2005; Parker, 2012; Bakker, 2013; Pawar, 2014; Schiffler, 2015). Importantly, all these studies

together argue for the use of egalitarian principles in water management (Roy, 1999; Shah, 2002; Shiva, 1998) and insist upon ensuring universality of rights of the commons over water resources (Baxi, 2002; Abbas, 1984; Gleick, 1996).

### **2.2.1. Water Literature: Human Right to Water**

This study has noted that to argue water as a right, scholars have used the human rights approach and hence in the literature on water, the concept of Human Right to Water has been studied with notable consistency. It has been argued that human right to water can be adopted over other approaches like need based approaches because for an individual, it is the source of authority that makes her/him a claimer of right instead of pleading for it (Baxi, 2001; Cahill, 2005; Thielbo`rger, 2014; Winkler, 2015).

The most distinct argument in favor of Human Right to Water is found in the works of scholars as P.H. Gleick (1999), Angela Cassor Noemes (2004), Salman M. A. Salman, & Siobhan Alice (2004), McLnerney Lankford (2004), Kunt Bourquaim (2008), E. Riedel (2008), Annanda Chahill Ripley (2013) and Inga T. Winker (2014). These are significant. These studies have discussed and upheld water as a basic need and further considered water as a basic right, entitled to all and in all circumstances (Martha, 2003).

The literature which argues for Human Right to Water extensively focuses on the features of General Comment 15. Studies by Alvarez (2003), Mehta (2003), Salman M. A. Salman and Siobh N McLnerney Lankford (2004) and Amanda Cahill (2005) are important. These studies while focusing on the main points of Comment 15, insist that Comment 15 is a document that has conceptualized the meaning and scope of Human Right to Water and has helped to institutionalize the idea at the global level. Thielbo`rger, Pierre (2015)'s work, however, presents a different view. He points out that globally, there is an absence of clarity on the meaning of Human Right to Water as it is been "derived" from broader human rights recognized therein. Notably, in his work, instead of arguing for Human Right to Water, he argues for Right (s) to Water.

### **2.2.2 Water Literature: Difference between the terms Water Rights, Human Right to Water and Right to Water**

In the literature on water, scholars have used three terms to argue about water as a right: Water Rights, Human Right to Water and Right to Water. Importantly, the meanings of the terms are understood in two references, which in turn create two kinds of literature. The first kind of literature includes studies that have highlighted and discussed the differences between these terms and argued that differences between these terms are fundamental (Iyer, 2002, 2007; Bakker, 2007; Shiva, 2002; Sangameswaran, 2007). These studies argue that each term holds different meanings of entitlement over water resources as a right. The second type of literature comprises studies that have used all the three terms as synonymous with each other and have not identified any difference between them (Cullet, 2007; Anand, 2007; Salman, 2000).

Notably, in both types of literature, rights over water for basic needs has emerged as less controversial than the rights over water resources for livelihood or the ecosystem needs or socio-cultural needs that includes multiple dimensions of water uses (Report published by Forum for Policy Dialogue on Water Conflicts in India, 2015). The difference, however, is noted in two areas i.e., on choices of priorities of water uses and the authorities where claim-ability on water as a right can be exercised. Works by scholars as Lindquist and Gleick (1997), Ramaswamy Iyer (2003), K. Bakker (2010), P. Sangameswaran (2007) and Khadka (2010) implicitly mention such differences. Studies by Lindquist and Gleick (1997) differentiate the terms as Right to Water and Water Rights on the basis of their origin. According to them, Right to Water has emerged in the context of needs and the second, i.e., Water Right has emerged in the context of development. Studies made by them point out that the idea of Water Rights is profit-oriented and shapes needs as demand and argue to possess rights over water even other than for life. Clearly, according to them, the term Right to Water focuses on “needs”, whereas Water Rights focus on “demands”.



Karen Bakker (2010), while arguing for right to water, pinpoints the difference between the idea of Human Right to Water, Right to Water and Water Right. While objecting to the use of the term Human Right to Water, as synonymous to Right to Water, she argues that to entitle an individual's rights over water, the idea of Right to Water is more appropriate than the idea of Human Right to Water, as it maintains water as a local issue and disallows external intervention. She further condemns the idea which states that Right to Water and Water Rights hold the same understanding. She rejects the claim that the idea of Water Rights is rights-oriented. While arguing against the idea of Water Rights, she explains that the values underlying the concept of Water Rights have not assured entitlement to all. The principle of pay and use has excluded the poor from claiming water as a right and hence Water Right cannot be considered as Right to Water.

In Ramaswamy Iyer's (2002) perception, the difference between the terms as Human Right to Water, Water Rights and Right to Water is fundamental. In his major works, while differentiating between the three terms, he clarifies that Right to Water is a fundamental right in terms of the Indian Constitution which entitles all individuals to use water resources for drinking and domestic purposes. Since it is based on egalitarian values, it is indeed different from Water Right which preferably allows the use of water resources for economic purposes i.e., for agricultural and industrial gains. For him, Human Right to Water offers understandings of United Nations and has a more global rather than local significance. Like Bakker, he argues that water is a local issue and hence right over water is required to be respected and ensured at the national level.

Like Iyer, Sangameswaran (2007) and Khadka (2010), in their articles, argue that the concepts of Right to Water and Human Right to Water should not be confused with 'Water Rights'. According to them, the idea and practice of Water Rights refers to property rights. To make water accessible, the idea of Water Rights has developed mechanisms that have evolved as water markets. According to their studies, the rise of new mechanisms has defined water as a property and commodity to be sold. In this sense, "Water Rights" often works

against securing “Right to Water”, particularly for the marginalized, poor and vulnerable populations. Similarly, the understandings offered by Human Right to Water emphasise on universalisation of right, which is not possible as entitlement of right to water is a State subject.

The researcher found that in the studies that emphasise water as a right, the concept of Right to Water is observed to be more significant than Water Rights. This is because arguments and ideas presented under the title of Right to Water focus on the local realities and address a fundamental question which is who will be accountable to allocate and manage water as a right and how (Mehta, 2000). The articles published in newspapers explicitly argue that the government is the sole accountable party. However, this is not true in view of releases made by the international organizations. According to international documents (World Bank, 1993; United Nation, 2000; World Health Organization, 2002), to ensure water as a right, the private sector, including corporates and NGOs, has to work actively with the public sector.

### **2.3. Literature on the Idea of Right to Water**

This study noted that literature on water loudly argues for individual rights over water, however, to attain and understand the appropriate meaning of Right to Water, one has to read in-between the lines and that too very deeply. In the literature on water, studies by scholars like Vandana Shiva, (1983, 2002& 2005), Ramaswamy Iyer, (2002, 2007 & 2009), P. Anand (2007), Thielbo¨rger, Pierre (2015) are exceptionally important. These scholars have actually drawn the literature which defines the meaning of Right to Water.

The most detailed argument and meaning of Right to Water is found in Anand’s (2007) conception. In his article, accountabilities to ensure water as a right are explained and argued in the context of right to lay claim on water. Without mentioning the terminological differences (of Water Rights, Human Right to Water and Right to Water), he focuses entirely on the idea which states that water is a right and while doing so he actually explains the meaning of Right to Water. To argue that water is a right, he establishes obligatory relations between different parties and suggests that water as a right should be

interpreted in terms of powers, privileges, claims and immunities. The basic argument of his study is that assuring water as a human right may not help in itself. Since the idea is complicatedly attached with other needs of human life, execution of the promise of Right to Water is an important issue. And hence, the idea of water as a right is not an independent phenomenon, but it is a concept that develops with related issues that are deeply interlinked. He clarifies that an ideal co-relation maintained between the concerned issues can ensure entitlement of right to water to the present and future generations.

In his article, the co-relation between the terms as power, privileges, claims and immunities are explained with complex narrations, and are placed as primary and secondly order right. According to him, in the idea of right to water, power, as the first order of right emerges as a positive right, but it is not the absolute power to use water. Anand, with the help of the notion of rule of law as a related issue, puts limits on the use of water and argues for the need to preserve water as a right for the next generations. According to him, the idea of water as a power is linked with duty of the government, which obligates the government to create the ability to access water and assure claimability on the same, by providing best public services. Accordingly, the first order i.e. power of the individual to use water becomes his/her claim over water resources, as the government is obligated to ensure such claim-abilities.

According to Anand, ideas as privileges and immunities are second order rights and are negative. Here, privileges given to an individual entitle her/him (not to) to use water as per cultural preferences. Here again, like primary order i.e. power, cultural value preferences are not free from responsibilities and immunities. But they are linked with the duty of participation and accountability, attached with water users. The links present that water as immunity is a right which is to be consulted, while taking decisions related to his/her entitlements. Clearly, in Anand's understanding, entitlement of right to water depends on the fulfillment of duties, to which both governments and citizens are party.

Another major explanation of the idea of right over water that can be placed as Right to Water, is found in Vandana Shiva's works (1983, 2002 and 2010). According to Shiva, right over water means providing free water to all. In her works she repeatedly argues that water is a gift of nature and since water is essential for life, it must be freely available for substance needs and must be given to all. Importantly, in her work, the argument for right over water is not presented in the theoretical context but it is argued in the context of planning and management. Her major books are actually a critique of centralized practices in water management that argue that practices have massed up water distribution and hindered the entitlement to right to water (2010). In almost all her works Shiva laments that both public and private sectors are incapable of handling the water stress and have failed to translate democratic governance in water management. She opines that in water management, inefficiency of the public sector creates water markets. Their profit-oriented principles have turned water into a priced/rare resource and placed the availability, accessibility and affordability of water out of reach of the commons. To condemn the commoditification of water resources that is managed by the private sector, Shiva claims that water privatization has led to water injustices and is the biggest hurdle in entitling citizens with right over water. To preserve and maintain water for commons she insists upon improving the system of water management and practicing the principles of Water Democracy. This study noted that Shiva's contribution to water studies is remarkable in many senses as she has re-conceptualized the idea of Water Democracy and systematically argued for rights of commons over water resources. In one of her books (*Water Wars: Privatization, Pollution and Profit* 2002), she explains nine principles of Water Democracy, each of which seeks to preserve and sustain water for commons.

Interestingly, in Pierre's (2015) perception, Right to Water is not singular in its entitlements but is plural in nature. Hence, while discussing the question of water as a right, he elaborates on the Right(s) to Water, instead of Right to Water. To present the idea, he demonstrates the process of institutionalisation of the idea of Right to Water and provides normative and empirical aspects of the same. He demonstrates that rights of commons over water cannot be

realized through a single document which is international in nature, but it can be done only with the recognition of water as a right, through domestic constitutional and non-constitutional law, that is actually the important source of entitlements.

A review of literature on water shows that in India, the idea and status of Right to Water is popularly studied in the constitutional and judicial contexts. Scholars as Phillip Cullet, Ramaswamy Iyer, Pierre Thielbo'rger and Upendra Baxi read the Indian Constitution as a philosophical text, and argue that it has actually upheld governments to be accountable to facilitate water as a right for all.

Another group of scholars as Sangameswaran, Priya and Roopa Madhav, Subramaniam, M, and others focus on the judicial contribution in the entitlement. They argue that in India, rights of commons over water are being identified and upheld by the Indian judiciary. According to these scholars, the judiciary while exercising their power of judicial review, ascertain that water is a right of all and the state is a trustee of water resources. Iyer (2007), in his works, identifies that the concept of Right to Water in India is a result of judicial and extra-judicial activities of the judiciary but this has yet not been noticed/acknowledged in policy making.

#### **2.4. Literature on India's National Water Policies**

Globally, water policies are studied in the context of a new way of thinking (Philip Arestis, Malcolm Sawyer, 2014). The researcher made note of India's national water policies, studied these policies in their social, political and economic contexts and while exploring their major features, has attempted to explore what can be called as the comprehensive/ideal water policy for India and how, India, in given conditions can attain the most out of it. Policy studies on water have undergone many shifts. These have been in the context of *neoliberalism* (Vicky Walters, 2013; M Subramaniam, 2014; Jeremy L. Caradonna, 2017), *Post-neoliberalism* (V. Asthana, 2009; I Alcañiz, 2015), *modernism* (Anne Cooper, 2002; Vandana Asthana, 2009) and *post*

*modernism* (Anne Cooper , 2002; Vandana Asthana , 2009; R.K. Mishra, Samanta Sahu ,2013)<sup>xxi</sup>.

Studies on national water policies focus on different aspects of water policies and are critical as well as suggestive in nature. Since the subject matter of each study is different, they are placed in different categories within the body of literature on water. While reviewing the literature on water, the researcher identified four major categories. The first category of literature focuses on the policy processes and elaborate on who are included and excluded in the policy-making process (Arora, 1993; Mathus, 2001; Mooij & Vos, 2003; Molinga, 2000; Asthana, 2009). The second category of literature analyzes the content of the policy. Literature in this category studies national water policy in the context of different issues. The arguments presented in this category are mainly against the arrangements and measures of the policy, which encourage involvement of the private sector in water management (Shiva, 2002 & 2011; Asthana, 2009; Kamdar, 2008; Baijal , 2008; Iyer (ed), 2009; Cullet, 2009; Walters, 2013; Pink, 2016). The third category of literature focuses on policy implementation (Harries, 1988; Wood, 2007; Cullet, 2009; Gopakumar, 2011; Asthana & Shukla, 2014; Narain & Narayanamoorthy, 2016). The fourth category of literature is an evaluation of national water policies (Shiva 2002; Iyer, 2003; Mollinga, 2003; Asian Development Bank, 2008; Asthana, 2009; Nath & Sharma, 2017). Significantly, literature of the fourth category is suggestive in nature and proposes increase in people's participation in policy making (Shiva, 2002; Singh 2004; Lahiri and Dutt, 2008; Narain (ed), 2000 & 2014).

Studies carried out in all the four categories focus more on the issues as water privatization, water pollution and water conflicts. While so doing, they argue for the consideration of water as a right. Significantly, even the studies made on different lines arrive at the same conclusion. These studies conclude that India's national water policies do not have any punitive measures against wrong-doers. The policy assumes incorrect agricultural and industrial priorities and has created water crises in large parts of India (Iyer, 2002, 2007, 2009, 2010, 2012; Bansil, 2004; Shiva, 2010; Cullet, 2012). Some studies

argue even against the idea of a national water policy itself. Such studies claim that a national perspective on water management may not work in India, as in India's federal set-up the authority to formulate, legislate and implement policies in water supply lies in the hands of Indian states (Narain (Ed.), 2000).

This study noted that in the discourse on India's national water policies, the contribution of Ramaswamy Iyer is notable and his analysis is important for the present study. While pointing to some of the weaknesses of India's national water policies, he emphasizes that the language of water policy is creating dual standards in water management, and therefore each of them is far away from the principle of water democracy. The National Water Policy, 2002 comes in for a good dose of criticism as it does not recognize the changes in approach to natural resource management that are now a part of natural resource management. He argues that there is a clear mishandling of federal governance in water policy issues as the policy does not take a note of the existence of local self governments after the 73<sup>rd</sup> and 74<sup>th</sup> Amendments in the Indian Constitution.

## **2.5 Literature on Union Water Policies of India in the Context of Right to Water**

This study noted that the ambiguity about the concept of Right to Water and the long absence of policy framework in water management in India, has affected the nature of water studies. Since water policy frameworks developed very late in India, the literature that argues for right to water with a policy perspective is not only limited but also oblique/indirect and offers only a thin discussion on the subject. While exploring the literature on Right to Water in the context of national water policies, the researcher found that a number of authors and policy institutions, including research centers and think tanks, have studied water as a right. However, the same is rarely argued in the context of Right to Water and hardly analyzed in the context of Union Water Policies drafted by the Government of India. The most common trend in research is to read policy texts in the context of arrangements made to ensure drinking water. Most of the studies by researchers, governmental and non-

governmental organizations and also by policy institutes and policy think tanks argue that India's national water policies give priority to drinking water. However, whether the same comes under the value of Right to Water or not has not been studied so far.

Water scholars have a mixed opinion about India's national water policies which is reflected clearly in their studies. A few studies are appreciative, some studies are moderately critical and many are extremely critical in nature. The most detailed analysis is noted in Iyer's studies. Iyer, in his works, analyzes all the three policies and highlights various facets of the national water policies of 1987, 2002 and 2012, and within the discussion focuses on the issue of right to water. Iyer, in his analysis, explains that India's national water policies together focus on demand outstrips supply, which has been clearly stated in NWP 1987. For him, NWP 1987 is thin but yet an important document as it has given highest priority to drinking water.

Iyer criticizes the second National Water Policy drafted in 2002 in exceptional length; the criticism is so wide that even while discussing the 1987 policy, he criticizes NWP of 2002 (noted in his book *Towards Water Wisdom*, 2007, pages 169, 206 and 215). According to him, in India's water policy frameworks, NWP 2002 is a disturbing development that has many repetitions and even lesser clarity. He underlines that the policy brings out a list of priorities, which are meaningless, as they place irrigation for sustenance and commercial agriculture at the same footing and devalue the idea of using water primarily for life. Iyer (2007) argues that the idea of water management, drawn from the policy text, seems confused on the question of whether or not to treat water as a commodity. He argues that the policy prioritises right of market on water which denotes that the right to water is being denied to those who are not able to pay market price for water uses. In one of his articles (2002), Iyer further condemns the policy by saying that the policy has not recognized the problem of involvement of water giants in water management, which is a serious weakness in the NWP 2002. He opines that water markets serve some useful purposes but can also do great harm. He insists that in policy formulation facts as these cannot be ignored.



In his most recent article (2013), Iyer claims that a threat to right to water is evident even in NWP 2012 as the major clauses of NWP 2012 call for privatisation and private sector participation. He argues that the policy is weak for three reasons. Firstly, there is a poorly conceived understanding of the nature of water crisis in India. Secondly, water is treated as a human need, and not as a human right, and finally, the progressive privatization of water services in policy offerings has proposed withdrawal of the Indian State from its duties related to water, and has insisted on commodification of water in general.

This study found that the purpose of Iyer's analysis is not merely to point the strengths and weaknesses of the policy documents but to suggest how a policy document ought to be drafted and what it should contain. To present an ideal draft, Iyer (2002; 2007; 2010; 2012) insists on adopting a rights-based perspective and insists upon avoiding the use of the terms like 'demand' and 'supply' in water policy discussions. To make his point, he argues that the use of these terms misleads and implies production that makes market involvement an obvious arrangement and encourages use of water for profit over water for life. While commenting on India's national water policy frameworks, Iyer claims that since the idea of public trust doctrine in relation to water resources is quite unclear, in all the three water policies, it is doubtful that the arrangements made by the policies will entitle individuals to have entitlement of water for life.

A review of his works shows that Iyer calls for a radical review of all the water related requirements. He insists that policy documents must ensure absolute priority, i.e. water for life and livelihood must be met before any other use is taken into consideration. However, there are some contradictions in his understanding. So while his primary focus is to ensure water as a right, in his analysis he has debated upon an environment-based approach rather than a rights-based approach.

Like Iyer, Shiva's observations are also critical; however, the analysis is not of equal length. Her works focus on mainly two arguments, the first is that water

is for commons and the second is that in water management, privatization is an ill-practice. Clearly, Shiva (2002), while arguing for the commons' rights over water resources, maintains a rights-oriented approach. Without an explicit focus on the idea of Right to Water, she condemns national water policies by saying that Union Water Policies cannot ensure rights of commons over water resources as their implementation encourages water privatization. This study noted that her idea to maintain water as a right is less argued in the context of policies. The reason is found in one of her articles (2012) where she argued that the role of the state in entitlement of right to water is doubtful as sovereignty of the State has been lost under IMF and Bank conditionality, and under GATS (the General Agreement on Trade in Services).

Vandana Asthana (2009), like Shiva, discusses India's national water policies in the context of water privatization and studies it in the context of liberalization and globalization. In one of her books she argues that the water policy of 2002 is important as it makes a departure from the 1987 as the policy of 2002 includes socio-economic aspects in policy planning and the needs of individual states. She points that the major problem lies in Sections 11, 12 and 13 of the policy as reformative reflections introduces a neoliberal framework in water management. She claims that the policy under the influence of neoliberal values has stressed on creating water markets and has ignored water equality in the process. In her joint work with Shukla, Asthana (2014), she argues mainly in the context of the two water policies 2002 and 2012. Her analysis points that the measures offered by these two water policies have rolled back the powers of the state and bureaucracy. While analyzing the idea of water security she argues that water policies have failed to recognize the natural limits of water cycle, and therefore the idea of right to water cannot be viewed under water security framework (Asthana, 2014). She insists that considering the limitations of the three water policies, entitlements over water resources as a right cannot be decided on the basis of national water policies.

This review of the literature on water found that Phillip Cullet unlike others provides more balanced observations. A review of his works reveals that policy analysis is not the prime focus of his studies; however, there is some

reflection on these lines in some of his books and articles, which he wrote periodically in 2007, 2009, 2010, 2011, 2012, 2013 and 2014. Cullet argues that policy documents have not completely ignored the issues concerning right to water. One notes that all the three policies have mentioned the insufficient water availability and have elaborated on how this has affected the social and economic development of India. According to him, with regard to fulfillment of rights of individuals over water resources, India's national policy documents are important as they call for non-conventional methods of water utilization such as inter-basin water transfer and seawater desalination as large scale, high technology solutions to improve overall water availability. He underpins that the major problem with India's national water policies is that while insisting for water availability, they insist for affordability as well. In his opinion water cannot be a subject of affordability as it is a basic human need and a matter of priority. He insists that a National Water Policy has no choice but to work out prioritisation within the context of a hierarchy and must ensure it in the form of fundamental right to water.

Importantly, Baxi's (2010) criticism is theoretically organized and is based on his understanding of human rights. In one of his articles he argues that to ensure water as a right, India's water policies are less effective because they are more exploratory than action-oriented. The absence of concerted action has led to the failure of policies to provide obligations of conduct as well as results. While pointing to the major drawbacks of water governance, he says that the inclusion of heterogeneous elements in water policy frameworks has created the biggest confusion in justice management across generations. According to him, the absence of India's contribution to the human rights domain is the real cause of imbalances, appearing in political regimes and human rights oriented water policies. He adds that the heterogeneous society of users, planners and policy makers at different levels is fractured by asymmetrical power relations. In his conclusive remarks, he emphasizes on paying serious theoretical as well as analytical attention on the new terms as privatization, public-private partnership and also on some newly instituted regulatory cultures.

Since socialist ideology is deeply rooted in India, the policy of privatization referred to by the Union Water Policies of India has been further criticized by a number of studies, with an argument that it has actually suspended the rights of commons over water resources. Works of scholars as Radha D'Souza (2006), Lohiri & Dutta (2008), Mishra & Raveendra (2011), Dinesh Kumar (2012), Vandana Asthana (2014) and Kamta Prasad (2015) are significant in this regard. Their submission is critical on the three water policies.

Radha D'Souza (2006) identifies neoliberal aspects in national water policies. Like Asthana, she points mainly to the limitations of India's national water policy of 2002. She argues that the second national water policy is far away from the value of right to water as it holds neo-liberalist values, and on issues of water equality, it virtually remains moribund. She insists that the policy offers nothing to commons as it focuses only on the supply side which concentrates on the technical aspect of water governance.

Kamta Prasad (2015), in his book, adds to D'souza's observations and claims that despite its importance, water was not factored into input-output matrices in the policy framework. According to him, in all the three national water policies, water is treated like cement and steel. He argues that in the policy contents, the Constitutional provisions towards right to water are increasingly politicized for dam construction. This has made the policies contractor-centric rather than water-centric. And so, in the given situation, expecting assurance to rights of commons over water through water policies is a vain effort.

Like others, Mishra & Raveendra (2011) have less hope from the national water policies. In one of their articles they pinpoint that the planning for water resources and its development in India is increasingly viewed as a techno-managerial and bureaucratic exercise. And hence so far water policies in India are framed for socio-hydro changes and are far from the idea and practice of right to water.

By being more critical about water policies in India, Lohiri & Dutta (2008) conclude that water polices in India have failed to recognize the uniqueness of India's social context(s) as well as to control the biased political culture. They

point that in Indian water policy frameworks, the space for dialogue among state, civil society and citizens is missing.

Dinesh Kumar (2012) in one of his article criticizes NWP 2012. His main objection is the use of the term 'Water Pricing'. He argues that water pricing is a broad term and requires further clarifications. He insists that to maintain the idea of appropriate priorities it is essential to make a distinction between price of water (as a "resource") and charges for water-related services (like domestic water supply, irrigation water supply). To pinpoint the difference, he explains that while the first term i.e. price of water considers the resource cost (value in alternative uses), the second concerns the cost of appropriation and supply.

Reviews undertaken in this research noted that the list of the study that criticizes national water policies is long. Studies declare that in none of the policies since 1987 is the right to water protected (Nastar, M., 2014). Studies by Mohd Shawahiq Siddiqui (2004) and Anil D Mohile (2007) points to some fundamental problems of water policies. Mohd Shawahiq Siddiqui (2004), while analyzing the national water policies of 1987 and 2002, point that absence and uncertainties regarding rights of commons over water resources, is the biggest problem. In the context of National Water Policy 2002, he clarifies that the policy recognizes water as a 'negative community' in which only usufruct rights can exist and hence it has no place for water rights.

Anil D Mohile (2007), in his studies, underpins that the major problem of India's national water policies is that they are driven by past experiences and directly ignore the future. While analyzing NWP 2002, he points that due to privatization, in future the role of the government sector may be reduced to that of controlling and analyzing the situation and of regulating the development and management of water.

To overcome the problems, K. M. Singh, R.K.P. Singh and M. S. Meena and Abhay Kumar (2013), propose suggestions and insist that water policies must be participatory in nature. They maintain that local governing bodies like

Panchayats, Municipalities, Corporations and Water Users Associations shall be involved in planning and implementation of the projects.

A review of literature provides that like individual studies, researches made at organizational level, highlights the limitations of India's national water policies and provides some suggestive measure to ensure right to water through policy documents.

A study Forum for Policy Dialogue on Water Conflicts in India (2015) gives a critical note on India's national water policies and while highlighting the limitations of the NWP 2012, expresses doubts on the ability of water policies to fulfill right to water to all. The report says that policies are not legally binding on implementing agencies and therefore there is no guarantee that water for basic needs will be given high priorities. The report further states that the priority of water for basic needs was a part of national water policies of 1987 and 2002 but these two cannot be considered as sufficient from a right to water point of view. The report laments that despite repeated assertion of the right to water by activists and civil society movements, the national water policy of 2012 failed to recognize the right to water. Releases by the NGO Tarun Bharat Sangh put a different angle to the problem. Founder of the NGO, Rajendra Singh, argued that India's national water policies have framed the idea of right to water under the light of international declarations; however, they fail to identify that the idea of right to water as understood and introduced by the United Nations is in conflict with right to trade contained in GATS. And hence with the measures of international organisations it is difficult to fulfil right to water in India.

On other hand, releases by the organization Center for Science and Environment in New Delhi, are mainly suggestive in nature and insist on making water everybody's business as a practice and encourage community management of water resources (Agarwal, Narain, and Khurana 2001). Similarly, for the future of water usage, a think tank called Institute of Policy Research, New Delhi suggests the placing of new alternatives in policy documents (Iyer, 2000). Discussions and analysis published by NGOs as

‘Parivartan’ and ‘India Together’ urge that to ensure right to water policy documents must adopt broader ‘alternative development perspectives’ that can ensure development without disturbing the basic requirements of water users.

The World Bank (hereafter the Bank)’s observations are also critical and suggestive in nature; however, in a different way (Ray, 2008; Iyer, 2010; D’Souza, 2006; Prasad, 2015). Different from the national NGOs and think tanks, the Bank proposes that to ensure water to all, India’ s national policies are required to reframe their strategy, specially over the question of affordability. The bank, in this view, suggests for the reduction of the role of the government from being the sole provider and regulator of water and allowing the private sector to be a facilitator and provider of water.

## **2.6 Research Gaps noted in Previous Studies**

Discussions on water studies mentioned above present existence of excellent literature on water issues. But in the abundance of literature on water, one can’t remain ignorant about the serious absence of the combination of the two, i.e. water as a right in India and water policy analysis in respect of the same. Reasons can be found in the study of Antonio Embid and Schad. Embid (2008) who noted that the right to water is a term that is in vague in these days, it has serious problems of accessibility of water because it is highlighted more in international jurisprudence than in to the regional one. Similarly, in case of water policy, Schad (1999) viewed that policy is a difficult term that has a difficult future in respect of water due to the geographical, cultural and population differences. He emphasised that whatever is argued to be placed in policy as essential for one is not essentially suitable for the others. Therefore, there can’t be a universal definition of an ideal water policy (Brown, Flain & Postel, 1991: 19, 87, 88). Perhaps, India’s exceptional federal structure also has created unidentified limitations in the studies. Whatever the reason, in the case of India, the fact is that right to water is conceptualized more with the perspectives of law, environment, conflicts, disputes, management and economy and less as a policy. The analysis is done on individual capacities. The universities and colleges have shown less interest in this regard.

A review of the literature on water presented above shows that the studies made in the past few years offer narrow understandings on right to water. In the view of such limitations, India's national water policies are not studied in the context of Right to Water but focus on other aspects of water management highlighted in the policy like water privatization, irrigation, hydropower and construction of dam and displacements. It is clear that in the previous studies the idea of Right to Water is discussed as secondary. The major focus of these researches is on the issues of privatization and pollution. The studies subsume all aspects of water uses and management and this has diluted the focus of the reader and creates doubts on the purpose of the study. Policies are analyzed merely in the federal context and focuses if riparian rights of lower riparian states are maintained or not.

This review of literature on water noted that for the content analysis, required attention is not paid to methodological reasoning. For the analysis, use of multiple approaches like need based, right based, developmental based, conflict based approaches has created confusion in policy understanding and a doubt as to why a national water policy must be argued for. Also, ideas presented in the analysis of union water policies in India are repetitive. It provides information but does not hold argumentative orientation. The replication of facts and ideas noted, dilutes the reader from the real focus, i.e., to understand Right to Water and analyze it in the context of India's national policies.

The researcher found that previous studies have not provided a conceptual framework that can be used to analyze national water policy in the context of Right to Water. Such limitations draws upon two kinds of literature. The first kind of literature discusses the idea of Right to Water and the second kind of literature provides detailed analysis on national water policies. Notably, the combination of the two is rare, limited and thin in discussion. This is because of two reasons. Firstly, because India's contribution to the idea of Right to Water is limited as even Baxi (2007) identifies. And secondly, because so far India has witnessed only three national water policies that have given limited scope to research and investigation. The researcher in the view of this fact



argues that the analysis of the idea of Right to Water in the context of water policies of the union government has still not become the focus of any study. This research in this view is an attempt to fill the gaps identified in the previous studies.

## **2.7 Summary**

This chapter has reviewed the literature on water. The chapter, while reviewing water studies, explores the prevailing understandings. The chapter, to attain a conceptual background for the same, highlights the trends in water studies developed globally and sheds light on the works that have focused on the idea of Right to Water. The chapter further discusses the nature of the literature on National Water Policy of India and argues that the studies concerning the national water policies sum almost all the aspects of water uses and water management that actually creates confusion in water governance. While reviewing the literature concerned with the idea of Right to Water in the context to the union water policies of Indian government, it underlines that the method and style used for water policy analysis in the past has made Right to Water a secondary idea. The analysis focuses more on the pros and cons of water privatization and reads policies with reference to various subjects, mainly other than the context of Right to Water. The chapter while highlighting the limitations of the previous studies, points that the idea of Right to Water is increasing complex and so is yet not studied in the context of India's national water policies.

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## End Notes

<sup>xx</sup> Water scarcity: when a country or region's annual water supply is less than 1,000 cubic meters per person per year.

Water stress: when a country's or region's annual water supply is less than 1,700 cubic meters per person per year (for reference, US per capita total water used is 2,500 cubic meters per year) or a high water withdrawal ratio (WWR). See foldout chart.

<sup>xxi</sup> Globally, policy documents are analyzed with various perceptions including neo-liberalist perceptions (Vaux and Howitt, 1984; Easter et al., 1998; Hearne, 1998; Sunding, 2000; Chong and Sunding, 2006; Griffin, 2006; Grafton et al. 2011; Freedman 2010; Peter Debaere, 2014), post - neoliberal perception (Saden, 2009; Brand, 2009; Burdick, Oxhorn, & Robert, 2009 & Escobar, 2010) and post modernism and social movements (Cooper, 2002).

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