International Journal of Research in Social Sciences

Vol. 9 Issue 9, September 2019,

ISSN: 2249-2496 Impact Factor: 7.081

Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com

Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gage as well as in Cabell's

Directories of Publishing Opportunities, U.S.A

Water as a Right in India's National Water Policies: A Critical

Analysis of Water Literature

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ARTICLE DETAILS

Article History

Published Online:

Keywords:

Literature, Water, India, Right to Water, National Water Policy

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Abstract

A fact that water is a right is argued in theoretical discourses. Since the demand to endorse water as a right is substantive, it is expected that an ideal government will give first priority to its implementation and will place it as a center in a policy document.

In this stance, the obligation of a government is wider, which requires to be assessed and discussed academically. In this view, this paper investigates the past literature and explores if the discussions evolved in water literature focuses on the India's national water policies. The paper further investigates that while so doing if the literature has focused on the idea of the right to water.

Notably, this paper while reviewing the literature has focused only on India's national water policies. This is because in India rights are constitutional promises and hence implementation of the right to water through a water policy is expected and argued in the larger sense.

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Introduction

In India, combination of constitutional democracy and federal setups have made an effective political functioning challenging. The complicated institutional arrangements like such has obligated union governments to ensure national interests without compromising the interests of individuals and of the States. The obligations become more challenging when it comes to the distribution and management of natural resource like water. Since Indian States are diverse by their geography, availability of water and water resources in different States are not same and so accessibility is not equal to the inhabitants of these states. The union governments, in the view of this reality, has to treat natural resources as national wealth and is expected to assure fair and equal distribution of water, to the states and to individuals. To meet the principles of the democracy and the expectations of the federation, a union government has to draft a union water policy that can embrace the rights of individuals and States, over water, equally. Since the requirement of water is directly linked with the human existence and development, it is expected that the policy will assure water for all and shall confirm water as a right. The academia in this respect has an obligation to investigate if the policies made by the union governments, addresses the problem concerns to right to water.

In the view of this requirement, following sections of this paper reviews water literature evolved in Indian academia and discusses if the water discourses in India have reviewed India's national water policies in the context the of right to water.

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. Astnana, 2009; I Alcañiz, 2015), *modernism* (Anne Cooper, 2002; Vandana Asthana, 2009; R.K. Mishra, Samanta Sahu, 2013)ⁱ.

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 lterature 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 paper noted that in the discourse on India's national water policies, the contribution of Ramaswany 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 73rd and 74th Amendments in the Indian Constitution.

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

Present paper 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 Shulkla, 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 polices 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 technomanagerial 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 policies 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 policieshave framed the idea of right to water under the light of international declartions; 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.

Conclusion

Discussions on water studies mentioned above present existence of excellent literature on water issues. However, 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. An unavoidable fact is that the universities and colleges have shown less interest in this regard.

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¹ 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).