

Analysing Water Concerns through the Lens of Selected Works of Iyer, and Thielbo`rger

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Abstract

With its changing needs and dynamic character, water has become a top concern for international academia in the twenty-first century. The focus of water studies and research has significantly changed throughout the past century. Water-related research was previously limited to management studies, such as engineering and technology management, flood and drought management, pollution control management, conflict management, and hydropower management. But as the value of water has come to be understood beyond development, contemporary studies have demonstrated their interest in humanitarian issues relating to the issue of accessing and using water as a fundamental human right.

Indeed, numerous studies have been conducted on this topic, but among them, those by Ramaswamy R. Iyer (2003), and Pierre Thielbo rger (2014) stand out because they emphasise the fundamental right to water, which all people should be guaranteed to have access to in all situations while also addressing water-related issues. This essay aims to analyse the main arguments from their most important works in order to understand and argue for the value of their work. Understanding how these four academics have defined the fundamental problems with water, as well as if and what remedies they have suggested, is the goal of this discussion. For the same, the paper attempts to analyse the two books, i.e., *Water: Perspectives, Issues, Concerns*: Ramaswamy R Iyer (2003), *Privatizing Water: Governance Failure and the World* and *The Right(s) to Water: The Multi-Level Governance of a Unique Human Right*: Pierre Thielbo`rger (2014).

Background

The present paper's focus and goal are formed against the backdrop of widespread water injustice, which affects both water-rich and -poor areas. The widespread occurrence of water injustices calls into question the workings of the water governance system; the actual problems are water unavailability, inaccessibility, and affordability of water. Water experts have attempted to analyse these issues and explain the problems, among other things, along humanitarian lines. This is strongly stated in the works of Iyer, and Thielbo rger. They are considered crucial because, along with the legal reasons, they jointly cover the areas that must be examined in relation to the idea that water should be valued as a right. Notably, these works are significantly independent in their subject, approach, technique and style. For instance, Iyer's (2003)

explanation in *Water: Perspectives, Issues, Concerns* has been developed in the Indian context, which has contributed to the constitutional interpretation of the right to water and provides a critical analysis of the water policies of the Union Government of India. The book attempts to understand the constitutional arrangement of water management and elaborates on how the Indian federal structure has understood the idea of water management. To study problems concerning water sharing, the book develops the riparian approach¹ and highlights the significance of international and interstate treaties, and discusses conflicting areas of the same. However, the reasons for choosing this book are different. This work is among some of the first which highlight the requirement of considering water as a right and is extensively focused on the Indian water policies.

The study by Pierrri (2014) is unusual when compared to Iyer (2003). This paper will go into more detail about his work because, as a master of water studies, he has incorporated all the significant aspects of water. His analysis in this work reveals the global implications of the right to water and responds to its philosophical considerations. Because he elaborates on regional and national documents, including domestic, European, and international legislation, and analyses them in the context of the right to water, his contribution to water studies is noteworthy. It is true that the book is groundbreaking and incredibly significant because it contains remarkable details on the judicial interpretations of the right to water.

Ramaswamy R Iyer (2003): Water injustice is a legal concern for India which is inseparably attached with disputes and policies

As an administrative scholar, Iyer has researched the legal aspects of water. The aim of his piece titled "Water: Perspectives, Issues, Concerns," like his other works, is to analyse problems with water-sharing agreements and disputes that frequently arise during dam building. The book is also a pioneer in the investigation of water policies. It calls for the creation of an effective national water policy and makes a number of criticisms of the national policy that was enacted in 2002. In this sense, chapters 4 and 5 are crucial for academics studying water policy because they offer insightful views on water policies from 1987 and 2002. Chapters 7 and 8 go into further detail on many viewpoints on water.

Numerous interrelated topics and concerns are covered throughout the book's analysis and debates. It elaborates on India's relationships with neighbouring countries and interstate conflicts observed in the Indian Federation in order to emphasise water conflicts. Iyer concentrates on the issue resulting from India's federalism, gives riparian treaties a lot of room, and also discusses the more significant dam debates. The book is deemed to be very intriguing and fully instructive and discusses the nature of India's water dilemma and makes remarks on how river concerns are

¹ Riparian approach is focusing on the rights to the waters of a flowing river inhering in, or claimed by different uses located alongside of that river (page 82).

related to one another. Iyer makes the case that cooperation on water sharing is feasible while analysing the agreements among South Asian nations. He uses the water accords between India and Pakistan and Nepal and Bangladesh to highlight the possibilities. Iyer is quite upbeat about interstate conflicts, particularly the Cauvery River issue, which he has extensively discussed.

Major Offerings

Iyer makes an appearance as a storyteller in the book with a straightforward, down-to-earth style. This book makes the case that water management in India was created through federal arrangements and is protected by the Indian constitution. The section identifies the issues facing various states and investigates workable remedies. Riparian viewpoints are crucial in understanding the issues because they highlight how unfair arrangements have been formed through riparian treaties. He clarified that some states have bad water management issues as a result of not making the fundamental adjustments needed for successful management. The second section describes many viewpoints on water and rights and connects to perceptions, perspectives (including federalist, legal, civil society, human rights, and riparian) and legislation (Indian laws on water and international treaties). The third portion, which focuses on the Narmada dam debate, offers historical context for it and discusses the problems with the Sardar Sarovar project. The next section focuses on the challenges of water security and draws attention to water disputes between India and Pakistan, Bangladesh, and Nepal.

The first two portions of this work are crucial for studies pertaining to water policy since they provide basics for the study of water policy analysis by critically evaluating India's two water policies, the NWP 1987 and NWP 2002. Unexpectedly, Iyer introduced the topic of water rights and security before discussing national water policies. He notes that prior to 1987, India did not have a water policy since water concerns were viewed and handled as an integral aspect of agriculture. While narrating the ideas and concerns of NWP 1987, he highlights the contribution of the Rajiv Gandhi government in water management processes. In this regard, Chapter 4 presents a historical note and offers unique historical information that demonstrates that the initial policy was the result of an effort by the central and the states. He claims that while it was a nice beginning, it was undoubtedly insufficient. In Chapter 5, which analyses the national water policy of 2002, he argues that the strategy does not significantly advance the development of water resources. His observations have prompted discussion on the importance of the 2002 adjustments. He makes the unpleasant observation that the widely known practise of community management of common pool resources has no place in the national water strategy of 2002. He emphasises how the function of local self governments in formulating and carrying out policies has been disregarded.

The key missing points:

This book has a repetitious style. The text lacks an argumentative focus and ideas seem like information since they are not adequately organised. The repetition of ideas and information distracts the reader from the main point. Recent disputes over the Indus Treaty between India and Pakistan are only one illustration of how his optimism on the cooperation of water sharing neglected the issue of international politics. The book overemphasises riparian viewpoints on water management and pays less attention to the human rights perspective, which is important, particularly in light of United Nations Comment 15².

The national water policies' specifics are well-documented, which may aid scholars studying water policy in assessing the Indian polity with regard to its water policies. However, the conflicts rather than the rights have been used to evaluate water policies, which perhaps is the weakest point of this book.

Pierre Thielbo`rger (2014): Water is a right and so is supposed to be guaranteed in the reference of the legal frameworks

In his presentation of a thorough legal study with normative consequences on the central problem of the right(s) to water, Pierre is successful. The book's contribution is unparalleled in that it provides a rare understanding of the normative and empirical components of the right to water. The study demonstrates that having access to water is an appropriate subject matter for a human right. It examines the institutionalisation of the right to water and provides theoretical perspectives on it (with certain restrictions). It's interesting to note that in Pierre's research, the concept of a right to water is plural in nature rather than single. Therefore, when he discusses whether or not water is a fundamental right, he instead focuses on the right(s) to water. The author, Pierre, contends that the human right to water must be viewed as sustaining minimal standards of protection that may be exceeded but not subverted by national legislation.

Pierre makes it clear that the goal of his research is to illustrate how the concept of a right to water is becoming more and more institutionalised. He has posed several fundamental queries, such as whether the declaration of water as a right would have any impact on national legal procedures and if using the legal system to uphold human rights is logically consistent with the effort to recognise water as a right. He also queries if a philosophical argument can guarantee water as a right. There are three main sections to the discussion of the subject.

A detailed analysis of the current state of the right to water under international, European, and domestic law is provided in the first section. It's unusual to see a legal method applied in this

² General Comment 15 is named as "The right to water", released by the Committee on Economic, Social and Cultural Rights (ESCR Committee) in 2002. This is a document which provides details on the international understanding on right to water. Since it has global implications, it is an importing reading for a water researcher.

area. Pierre's analysis goes beyond a simple examination of international organisations; it also provides adequate consideration to regional water rights initiatives and accords national constitutions with similar weight. In this sense, Chapter 1 emphasises the international treaties, conventions, practises, and general principles of law acknowledged by civilized states.

Concerns about theory are examined in the second section, which also examines right's conceptual and theoretical challenges. The goal is to investigate the most accurate conceptual understanding of what is right, for which a combination of legal analysis, economic justification, and philosophical argumentation is used. Documentation like this offers important insights that cut between legal systems and academic fields, which aids in comprehending one of the largest problems facing contemporary humanity.

He describes how the right to water has been institutionalised but also argues that common human rights instruments do not clearly recognise the right to water as a fundamental human right. Only the more general human rights acknowledged therein may be used to "derive" it. The Human Rights Commission (HRC) and the United Nations General Assembly (hereafter UNGA) are the only bodies that aim to grant the right to all humans, although this goal is not legally binding. Legal documents that explicitly recognise the right do so only for specific groups (such as women, children, etc.), not universally for all people.

The third and final section shows the components required to guarantee that the right can have practical significance. The section clarifies the issue of legal derivation and illustrates the benefits and drawbacks of this legal strategy, which is being promoted more and more on the global agenda. It asserts that for a right to be successful, it must be successfully monitored, upheld, and realised. In this section of the book, he explains the function of international organisations, the public and commercial sectors, and even nongovernmental organisations.

Chapter 2 of the current work is significant since it concentrates on the theoretical and normative facets of the right to water. The chapter discusses broad philosophical issues surrounding the right to water. Pierre is adamant about viewing a right as a complicated web of several local and international rights rather than as a single international human right. He makes it clear that "the human right to water" only exists as a unique form of right. Furthermore, it is unclear if it is a component of treaty law, customary law, or both. He shows that the right to water cannot be realised by a single text, but that it is vital that it is recognised in domestic constitutional and sub-constitutional legislation and that the right is closely related to it.

South Africa and India were cited in the book as significant non-European examples. He draws attention to how assertions of the right to water in various legal systems throughout the world have assumed quite varied forms. The variations come in diverse forms and range in categories: explicit recognition versus derivative recognition, subjective recognition versus recognition as an expression of general principles, recognition as a negative right versus recognition as both a

positive and negative right, recognition as a socio-economic right versus recognition as a partially civil and political right, recognition as a negative right versus recognition as both a positive and positive right,

According to him, recent events like the HRC and UNGA decisions are crucial stages in the "cascade model" of international law-making that link the right to water. But no enforceable legal right to water has been created as a result. He contends that declarations have failed to guarantee water is a distinct human right that applies to all people. Simply said, states haven't been able to agree on these matters yet. This has a very clear cause. The ESCR-Committee has no authority over the interpretation of civil and political rights; it merely oversees how the ICESCR is applied. In this case, a person's moral position is that they have a right to water.

According to him, nations have a moral obligation to make sure that the realisation of fundamental rights does not become impractical. They must exert great effort to safeguard and advance the few resources that are vital to human life. He maintains that for this reason, the Special Rapporteur's monitoring must receive a very high rating. As a result, states would have a clearer need to take extra care to defend and advance their citizens' right to water at all stages of privatisation, especially before any problems ever emerge.

Major offerings

Pierre views General Comment No. 15 as a valuable resource for potential international obligations despite the fact that it is not legally obligatory. He has put in an impressive amount of work to list both beneficial and detrimental international water commitments. All the chapters, drawn in the book, makes the case for taking action on a global scale to promote the realisation of the right to water. He makes it clear that the goal of international declarations is to set basic standards of right to water by referencing the European Chief Justice's approach.

The right to water is not presented in Chapter 3 as a single-sided right, but rather as a right with several levels. Since there is no law that can categorically define a claim to water as a right, it cannot be enforced through a single particular court or according to a single particular process. According to him, the assertion is contingent upon the specific facts. Since certain entitlements regarding the right to water are related to life, others are related to a sufficient quality of living, and others are related to health, one should simply keep in mind the complexity of the claims that underlie this common reality.

The conflicts between the market concept, which serves as the foundation for privatisation, and the notion of a human right to water in particular are discussed in Chapter 4. If acknowledged as a human right, he contends, water cannot readily be considered as a private good. He concludes by insisting that without significant international water aid, the world's water situation cannot be resolved. According to the study, there are good philosophical grounds for assuming that it is the

responsibility of the international community to address the water issues facing the world's poorest nations

The key missing points

The biggest limitation of this book is language. The ideas and arguments are developed in a complex way; sentences are so long that it is difficult to understand what the author intends to convey. The theoretical arguments are not elaborated well, which makes the task to ascertain water as a right unaccomplished.

Bibliography

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