

**Conclusionary Remarks: Workshop on
'Water, Law, and the Commons'.**

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CONCLUSIONARY REMARKS

The International Environmental Law Research Centre (IELRC) has done well to organize this cross-disciplinary and activist dialogue concerning several dimensions of water rights as human rights.

While I thank Drs. Ramanathan and Cullet for their warm invitation, I remain disappointed that I am unable to participate in this deliberative event, owing to indisposition on my return to Delhi on the 5th instant. I hasten to add that the indisposition, at least this time round, has not been caused by any direct or indirect violation of my human rights to ‘safe’ access to water! In any event, the discursive loss remains entirely mine; I realize this in an abundant measure from a close study of the stimulating papers presented at this Workshop.

In the early nineties, I was privileged to ‘lead’ a water law and rights project with a distinguished team of colleagues at the Indian Law Institute. This yielded at least five valuable monographs. Unfortunately, this effort still remains insufficiently acknowledged in the Indian and Third World literature and has had entirely *nil* desired impact for curricular reform and specialized advocacy and research.

This inadvertence remains puzzling indeed as we had hoped to make a modest contribution towards an understanding of law, social policy, theory and histories of the distinctive, yet not entirely incomparable, Indian water law and jurisprudence.

May I exploit this moment to briefly remind concerned colleagues of the existence of this rather ‘ancient’ corpus, ‘ancient’ not chronologically but in terms of the internet-based forms of thought and solidarity that consign to oblivion with rapid ease ‘local’ scholarly labours, insufficiently interpellated in the Web-worlds. Fortunately, I may add, these publications remain not merely easily affordable but also, I believe, still continue to provide a critical resource for some contemporary engagements.

We conceived our common project via two overarching yet intertwined categories: water as a *resource* and *water-based* resources. If the former all too easily yielded to diverse, and contested, regimes of national water policy, the latter

accentuated human rights to sustainable livelihood. Each category, in turn, stood resolutely addressed in terms of three key concerns: *access*, *equity*, and *participation*. As collective human resource, ‘water’ on these three axes led us to consider complex areas signified by practices of contentious politics of national policy and constitutional adjudication. *Water-based resources* led us more directly, again on these axes, to complex, even contradictory, concerns regarding community versus state ownership of ‘water’ and more crucially to an imagination of basic human rights and fundamental freedoms ingrained in the metaphor.

We anticipated somewhat, but these were not yet fully at hand, the emerging approaches to ‘water-based resources’ in terms of a universal human right, now in full efflorescence in its so many different sites. These bear a fuller testimony to the power of the name and a tradition of thought. I refer obviously here to a forbidding Hegelian notion conceiving forms of ‘liquid’/‘fluid’ logics,’ contrasted with formal ‘logical’ thought-ways, fully apt for our discourse at this Workshop.

May I still suggest that this ILI framework, now obviously in need of further refinement, may still hold amidst the explicit United Nations recognition of ‘water’ as a human right? No doubt, it further stands now besieged at the same moment by the many-sided perfidies of multinational capital opposed, at the same moment and zodiac, by forms global civil society induced mutations of ‘water rights.’

In particular, I have here in view two momentous steps forward.

First, the General Comment No. 15 (2002) concerning the right to water (elucidating Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.) And, second, in relation to the ongoing GATS discourse a ‘major U-turn’ by the European Commission now in some fecund forms, hopefully not eventually perishable insists (as late as February 2006) that the proposed regime of GATS ‘collective requests’ would not include ‘*water for human use.*’ Although the eventual status of this phrase–regime remains rather indeterminate, it at the very same moment marks with adequate clarity that ‘water’ MNCs within the ‘Unholy Trinity’ of ‘the IMF, the World Bank and the WTO’ combinatory global prowess remain *somewhat* accountable under the signature tunes of the dynamic universality of the future of human rights.

How may the General Comment 15 of the United Nations Committee on SECR assist some new approaches, in theory and movement remains an open but still a crucial question. The Comment, in Para 11, speaks to us thus:

‘The elements of the right to water must be *adequate for human dignity, life and health*, in accordance with articles 11, paragraph 1, and 12. The *adequacy* of water should not be interpreted *narrowly*, by mere reference to volumetric quantities and technologies. *Water should be treated as a social and cultural good, and not primarily as an economic good*. The manner of the *realization* of the right to water must also be *sustainable, ensuring that the right can be realized for present and future generations*’ (emphasis added.)

The italicised phrases above speak to us heavily concerning diplomacy of human rights, interspersed with some arcane performatives of high econometric theory concerning global ‘public goods.’ Further, this talk/discourse also registers some historically constituted limits of the activist, and diplomatic, registers of human rights enunciatory practices.

Even so, all this stands further concretized in Para 12 of the General Comment stressing the norms described in terms of some intelligible, though never wholly so, ‘physical availability,’ ‘economic accessibility,’ ‘non–discrimination,’ and ‘informational accessibility.’ Our rather NGO-induced romantic, and often hallucinatory, fascination with these developments always needs moderation by some instant reality checks!

As Radha D’Souza now reiterates in her contribution to this workshop, even these enormous normative ‘global civil society’ activism achievements must be subjected to strictest realist scrutiny. How may we, she asks, appraise these achievements on the landscape of ‘the wider processes of transformations in global capitalism, forms of colonialism, and the ways in which structuring and restructuring of social orders occurs?’ She acutely, and wisely, alerts us to the fact that ‘[n]arrow empiricist approaches to social and natural phenomena, reductionist methodologies, and disciplinary closures cast a veil over social relations over water.’

I do not know how this message was received, if at all, in our workshop deliberation. Nor do I now how some of us may have proceeded to deconstruct Radha's important message in our deliberations. I say this because of the impression I gather from an overview of the papers that many indeed regard 'empiricist approaches,' 'reductionist methodologies,' and 'disciplinary closures,' as important ways of moving forward. At this distance from the event, I remain simply unable to configure how the distinguished agricultural economists, development, policy scientists, and human rights experts, among others, chafed at, as well as responded to, Radha's indictment.

The issue at stake, all the same moment, remains this: Does this very characterization run the same 'reductionist' risk and if so to what effect? The issue put another way is this: How may we address the newly-fangled human water rights as providing future registers, if not histories of struggles for human emancipation? How may these remarkable normative itineraries of the discipline of human rights produce some arrest warrants for the 'runaway globalization' practices and performances?

How indeed may this indictment speak, if at all, to the manifold, even when non-mutinous concerns articulated by the specific talk concerning the Dalit rights to water? I have here in view the two superb, though if I may say so analytically brief, papers by Rizvi and Soni. Many contributions [especially by Sangmeswarn, Nagraj, Gualtieri, Coleho, Panicker, Madhav and I think Vani, or did I imagine her contribution?] do indeed speak to us beyond the enclosures of mind entirely neglectful of local, colonial and postcolonial histories and geographies.

All this being fully said, Radha raises an important future task to be further addressed. The inquiry that she behind, in the concluding sentence of her paper, matters decisively now: Who may indeed *speak* on 'behalf of the dispossessed?' And in which ways 'our' presently constituted ways of speech reinforce dominant ways of silencing human rights insurrectionary talk in relation to struggles over water rights? How may be those dying of thirst, of contaminated water, from floods and outrages of huge irrigation projects, speak to 'us' when we construct the logics and languages of a human right to water? In sum, adapting here poet Coleridge, human right to water remains everywhere but without a 'drop to drink!'

One way, perhaps, is to address this issue entirely afresh in the water rights discourse, which presents an inaugural potential. By this I mean that unlike the ‘solidified’ past human rights enunciations, ‘water-rights-in-the-making’ offer us whole new vistas for ‘liquid’/fluid imaginative and reflexive thinking and articulatory practices for the future of human rights.

By way of a still further explanatory word, allow me to say that our imagination of this ‘new’ human right must, as I think Radha after all suggests, remain profoundly insurrectionist. It is simply not *enough* in this oeuvre to powerfully critique the globalizing the postcolonial, important as this remains. What is needed then is an order of an epistemic break/breach in the sphere of human rights enunciation.

No longer may remain apt the fatigued, and even superannuated languages of human rights; ‘water rights’ talk goes now much beyond and farther, in ways that recast habits of thought and action concerning human rights. How may we then after all take the first step? The workshop deliberations, in my view, constitute fully both a challenge and opportunity.