



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## Is there a Need for a legal Right to Water for Livelihood in India?

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**Abstract:** This paper focuses on policy options that States have to fulfil the right to food and in how far access to water resources is necessary to accomplish this aim. The right to water, being a fundamental human right, signifies a universal right. This means every individual is entitled to it. Water is essential for every form of life, for all aspects of socio-economic development, and for the maintenance of healthy ecosystems. Access to safe water and sanitation is of essence to enable healthy and productive livelihoods and has important links to nutritional outcomes and gender equality. In India, the Right to water has been secured as a basic human appropriate by the Indian Supreme Court as a major aspect of the Right to Life ensured under Article 21 of the Indian constitution. This paper inspects whether right to water restricted only to drinking/domestic purpose or the right to water should include water for livelihood, water environmental needs and water for socio-cultural needs. This paper discusses the legal context, the content and different dimensions of water.

**Key Words:** Agricultural Water Use, Human Right to Food, Human Right to Water

### I. INTRODUCTION

The human right to water has gained broad recognition in recent years. It covers water for personal and domestic usage. Yet, water is also a critical factor in producing food. Water is essential for every form of life, for all aspects of socio-economic development, and for the maintenance of healthy ecosystems. Water is the fundamental requirement for the survival of people and is a piece of the privilege to life and human perfectly fine in Article 21 of the Constitution of India. Access to water is also required for other purposes. It has rightly been pointed out that in particular people living in poverty do not only require water to satisfy their personal and domestic basic needs, but that it is also critical for other uses such as food production and income generation pertaining to the broader goals of poverty reduction and enhancing livelihood security. Many activities that enhance livelihood security including small-scale farming, gardening, watering livestock as well as micro enterprises, e.g. laundry services, and small-scale manufacturing such as brick-making and pottery require access to water. This paper puts its focus on people who rely on subsistence agriculture for their livelihood security and thus on water for food production. Some documents on the human right to water also stress the significance of water for agricultural production. But the question is whether this water use is in fact guaranteed by law. This paper aims to explore this question in more detail.

### Is there a Need for a legal Right to Water for Livelihood?

Water is of fundamental importance for agricultural production as no food can be produced without access to water. Overall sufficient water resources have to be allocated for agricultural production. However, food can easily be transported from regions with high water availability to those with low water availability. Apart from access to land in general and soil fertility in particular, access to water resources is a decisive factor in determining the possibility of agricultural production in a given region as well as its outcome and success. Severe poverty is often found where access to water resources is uncertain due to the unpredictability of rainfall and flooding. Therefore, reliable access to water for subsistence agriculture, home gardens and livestock rising is a key to improving food security of those most vulnerable to hunger and malnutrition. A direct link between undernourishment and the lack of access to water resources can be observed here. For this group of people, local access to water resources is critical to ensure access to sufficient food and thus the realisation of the human right to food. Thus, there is a need to consider access to water for food production from a human rights perspective.

### Water Resource is a Basic Need to Agriculture in India

Agriculture is the largest water user worldwide, accounting for 70 per cent of total freshwater withdrawals on average<sup>i</sup> but these amounts can reach as much as 95 per cent in some developing countries.<sup>ii</sup> Agriculture sector consumes about 89 per cent of the total water use in India.<sup>iii</sup> Agriculture and allied sectors like forestry and fisheries accounted 13.7% of the GDP (Gross Domestic Production) in 2013, and employed 50% of the workforce.<sup>iv</sup> It is of utmost importance to focus on improving water use efficiency in agriculture in the interest of water security. Its proper management would require the involvement of a number of stakeholders, principal among them being the farmers.<sup>v</sup>

### Right to Water In India

#### Constitutional Recognition

As a result of judicial decisions, the right to water is a part of the fundamental right to life under Article 21 of the Constitution. There are a number of judicial pronouncements which make the fundamental right to water part of the fundamental right to life. The Supreme Court of India, in the Subhash Kumar case<sup>vi</sup>, held that: The right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. The fundamental right to water casts various

duties upon the state and imposes both negative and positive obligations on the State and on the other hand, the State is required to take positive measures to ensure the progressive realisation of the fundamental right to water. As per Article 141 of the Constitution, law declared by the Supreme Court is the law of the land and all other courts in the country are bound by it. Thus the fundamental right to water has become the law of the land and therefore, the government as well as other courts are bound to respect, enforce and implement it.<sup>vii</sup>

### Statutory Recognition

In India water rights are connected to land ownership. That essentially means that the land owners have rights to extract water through wells on their lands. Also, they are encouraged to collect rain water on their land. The Supreme Court and High Courts judgements envisage a universal right to water. Therefore, denial of water supply to anyone, on the basis of any reason whatsoever, would be a blatant violation of the fundamental right to water. Even though the National Water Policy, 2012, shies away from recognising the right to water explicitly, it has recognised the priority of water for basic needs in the context of water allocation.

Various aspects and issues of rights such as riparian rights, easement rights, property rights, natural rights, prescriptive rights, and fundamental rights have evolved, emerged and developed from the water law cases. The Easements Act, 1882 has been applied in many cases dealing with water law in order to come up with rights of individuals, riparian owners, etc. Having regard to the use of water by riparian owners, the law states that the upper riparian owner could direct the water by any method provided that he did not materially injure the right of the lower riparian owner.

In **Fischer Vs. Secretary of State**,<sup>viii</sup> a case was filed under the provisions of the Easements Act, 1882, the court ruled that the Government had the power to regulate, in public interest, the collection, retention and distribution of water of rivers and streams flowing in natural channels or in manually constructed works, provided that they do not thereby inflict sensible injury on any other riparian owners and diminish the supply that they have traditionally utilised.

The Government can regulate the collection, retention and distribution of water for irrigation and it is the duty of the government to compensate, in the event of damage.

### International Law and Policy Context

The human right to water is well recognised under international law particularly under international human rights law. A number of core International human rights treaties such as the Convention of Rights of the Child, 1989 (Article 24); Convention on Elimination of All Forms of Discrimination against Women, 1979 (Article 14); and the Convention of the Rights of Persons with Disability, 2006 (Article 28) explicitly mention the right to water. India is a party to the human rights treaties that endorse the right to water.

### Conclusions

Judicial activism has been very much the hallmark of a number of cases and the concept of rights has changed from mere riparian rights to easement rights, natural rights and fundamental rights. The legal recognition of the right to water in India is partial, as it stops at formally recognising the right. The nature and scope of the right to water is still in an evolving stage. Even though the Constitution and various laws recognise the right to water (explicitly or implicitly) the laws are, by and large, silent on the detailed contents of the right. There are many other instruments (both legally binding and non-binding) that provide guidance on the scope of the right to water. Various aspects of the right to water, thus, have to be derived from the existing legal and policy sources such as case laws, and rules and norms of specific programmes of different departments working on water (at the central, state and sub-state level). It is to be noted that most of these instruments are framed by the Central Government.

In terms of water, basic needs include drinking, bathing, hygiene (including water for menstrual hygiene management), cooking and other domestic uses. These are treated as fundamental rights. Additionally, basic needs may also include the needs of livestock. Water, along with the basic need for water, is important for meeting livelihood needs. Most of India's population is dependent on land and water to meet their livelihood needs. Hence, at least in the rural areas, there should be a guaranteed access to at least a certain minimum quantity of water for various types of livelihood purposes.

### End Notes

<sup>i</sup> FAO. 2011. The state of the world's land and water resources for food and agriculture (SOLAW): managing systems at risk. Food and Agriculture Organization of the United Nations, Rome and Earthscan, London...

<sup>ii</sup> FAO. Water at a Glance: the relationship between water, agriculture, food security and poverty. Rome. 15 pp. (also available at <http://www.fao.org/nr/water/docs/waterataglance.pdf>)

<sup>iii</sup> WWF, "Problems and Prospects of Saving Water and Energy in Agriculture in Upper Ganga River Basin", Retrieved March 28, 2015 from, [http://assets.wwfindia.org/downloads/water\\_and\\_energy\\_use\\_efficiency\\_study.pdf](http://assets.wwfindia.org/downloads/water_and_energy_use_efficiency_study.pdf)

<sup>iv</sup> International Cooperation with Asia, co-funded by the Federal Ministry of Food and Agriculture (BMEL) report 2017.

<sup>v</sup> Sonali Mitra, Rudresh Sugam, Arunabha Ghosh (2014), "Collective Action for Water Security and Sustainability: Preliminary Investigations", CEEW-2030 WRG Report, August 2014.

<sup>vi</sup> Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

<sup>vii</sup> Vishala Kochi Kudivella Samarkshana Samithi v. State of Kerala, 2006 (1) KLT 919 (High Court of Kerala, 2006), Hamid Khan v. State of Madhya Pradesh, AIR 1997 MP 191 (Madhya Pradesh High Court, 1996).

<sup>viii</sup> Ind Cas 325, Madras High Court, 1908.

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7. Ind Cas 325 Madras High Court, 1908. And civil cases on right to water for irrigation.

