According to Indian law it could be argued that wastewater farmers are entitled to such water, while the government has the obligation to ensure the suitability of the water. In order to make the government comply with this obligation, farmers can turn to the court. As often, there is a huge gap between the theory and practice of the law. There seems to be little awareness among wastewater users, grassroots-level NGOs, and the local authorities on the legal possibilities and constraints. This article aims at making a small step in creating legal awareness by offering a constitutional view on the right of access to water suitable for agriculture.

THE FUNDAMENTAL RIGHT TO LIFE

Like in the constitutions of other democratic countries, the Constitution of India contains a catalogue of fundamental rights. These rights together form the boundaries of India’s legal framework; all other laws and regulations as well as all activities of the government at any level have to be in accordance with this framework.

Article 21 of the Constitution guarantees the right to life: “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Although this article does not seem to have anything to do with water, the Supreme Court of India, the highest judicial authority of the country, has given a series of decisions in which it interpreted Article 21 to encompass the right to a healthy environment:

“Enjoyment of life (...) including [the right to live] with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation, without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to a healthy life and it would be impossible to live with human dignity without a human and healthy environment”110.

This excerpt is regarded as an example of how the Supreme Court extended the scope of the right to life also to the environment: a healthy environment is required not only to enjoy the constitutional right to life; it is also an essential prerequisite to be able to live with human dignity. Furthermore, this decision made clear that a “healthy environment” includes the absence of water pollution.

Translating this passage to the context of wastewater agriculture, it could be argued that people who are largely dependent on wastewater, and who, as a consequence, are often prone to wastewater-borne diseases caused by both biological pathogens (mainly originating from domestic wastewater) and/or chemical...
The Supreme Court ruled that deported from the slums and pavements this decision was about pavement established by law. The case that led to according to a just and fair procedure to life of Article 21 also includes the dignity in a healthy environment.

substances (mainly from industrial wastewater), are being deprived of their right to live (and work) with human dignity in a healthy environment.

According to the Supreme Court, the right to life of Article 21 also includes the right not to be deprived of one’s livelihood, except according to a just and fair procedure established by law. The case that led to this decision was about pavement dwellers in Mumbai who had been deported from the slums and pavements on which they depended for their livelihood. The Supreme Court ruled that depriving a person of his livelihood, deprives him of his life. Since the deportation of the pavement dwellers from their slums and pavement dwellings would deprive them of their livelihood, deportation would amount to depriving them of their life. Although this case did not have anything to do with water or environmental issues, the general wording in which the relevant observations were made suggests that the deprivation of livelihood as a consequence of environmental degradation may also be considered as a violation of the right to life of Article 21.

In the context of wastewater agriculture, this interpretation of the right to life leads to the following conclusion. If due to, for example, rapid urbanisation and/or industrialisation the water of the streams that have been used for generations by farming communities has become unsuitable for agriculture – either because of its impact on human health, its strong negative effects on crop yields and/or the health and yields of livestock – these farmers will find themselves deprived of their livelihood.

DIRECTIVE PRINCIPLES OF STATE POLICY

To protect and improve the environment

The Constitution of India also contains a set of so-called directive principles of state policy. According to Article 48A, the government “shall endeavour to protect and improve the environment”. This principle is fundamental in the governance of the country; it has to be applied in making laws and policies. Improvement of the environment includes the improvement of water quality, and one way to improve the quality of surface water, or at least to prevent deterioration, is to treat wastewater before discharging it into surface water. To this end, the government – local authorities in particular – need to have adequate treatment plants and make sure that no discharge of untreated wastewater takes place. Taken together, the Articles 21 and 48A entitle farmers to be protected from the negative impacts of wastewater use; at the same time they obligate the local authorities to safeguard the water quality.

Treatment or Nutrients

A fully-fledged treatment plant will, most likely, not only remove any elements that are harmful to human beings and the environment, but also the beneficial nutrients the wastewater contained before entering the plant. Thus, the outflow of such a treatment plant, although relatively clean and in accordance with the right to unpolluted water, would perhaps lead to a lower crop yield than if the water would still have contained the nutrients. To a certain extent, the farmers would be deprived of a part of their livelihood. It is unlikely, however, that such a partial deprivation would entitle the farmers to legal action, demanding for water that is free of harmful pollutants, but still containing useful nutrients. The wording of the pavement dwellers’ judgement suggests that only full deprivation of one’s livelihood amounts to a violation of the right to life. Yet, this does not mean that the farmers would have to accept a situation in which they do not benefit anymore from the nutritional value of wastewater.

The organisation of agriculture

Article 48 of the Constitution obliges the government “to endeavour to organise agriculture and animal husbandry on modern and scientific lines (…)”. Scientific research in various parts of the world, including India, has shed light on both the negative and positive aspects of the use of wastewater in agriculture. As a consequence of Article 48, it could be argued that the authorities involved in wastewater management are under obligation to consider the outcome of this research seriously, more so in light of the negative and positive aspects of the use of wastewater in agriculture. As a consequence of Article 48, it could be argued that the authorities involved in wastewater management are under obligation to consider the outcome of this research seriously, more so in light of the impact untreated wastewater has on a considerable part of agricultural production. It goes beyond the scope of this article to explore the technical (im)possibilities of treating wastewater in agriculture and animal husbandry on modern and scientific lines (…).
LEGAL ACTION
Wastewater farmers have, like all other citizens of India, a constitutional right to clean water. The government has the obligation to provide clean water. But, if pollution would render the water (almost) useless for agriculture, the wastewater farmers are being deprived of their livelihood. The violation of both the right to clean water and the right not to be deprived of their livelihood entitles the farmers to legal action. With regard to wastewater management, the government authorities have the obligation to take the position of the farmers into consideration. On the basis of scientific evidence that shows the benefits of wastewater use, they should ideally design wastewater management in such a way that the negative side-effects are reduced whilst the beneficial effects are preserved, to the extent technically possible.

Violation of a fundamental right entitles the victim to legal action. According to the Constitution, both the Supreme Court in Delhi and the High Court of the state in which the violation is taking place can be approached. In the first place, courts entertain cases filed by individuals. However, within the Indian legal system various kinds of group or class action have been developed. One of them is the so-called public interest litigation (PIL), which contemplates legal proceedings for the “enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law” by any member of the public who concerns himself with the situation of the victims. In cases regarding environmental issues PILs have been filed both by individuals and by NGOs.

The PILs have led to a rich library of decisions of both the Supreme Court and the High Courts, including on issues regarding water quality. However, the overall picture of the effectiveness of PILs is mixed. On one hand, they allow a court to step in where the government is failing, ordering almost immediate measures and/or thorough investigation of the alleged violation. Because the courts have the power to summon all stakeholders – such as the authorities and the polluting industries – involved in the case, they are in a position to come to a comprehensive, “holistic” solution; in some cases, quite successfully. On the other hand, such proceedings tend to take a lot of time. Moreover, in some cases, it has proven to be difficult for the victims to have a favourable decision properly implemented. And last, but not least, PIL cases require the assistance of an advocate who is willing to do a lot of work for only a small fee.

MORE AWARENESS FOR ALL STAKEHOLDERS
One of the findings of the research on legal and institutional issues with regard to industrial wastewater management in Hyderabad Urban Area has been that government officials are not always sufficiently knowledgeable about the prevailing legal framework. And also according to environmentalists and social activists, there is very little legal awareness among the people concerned – the wastewater farmers and their representatives such as grassroots-level NGOs.

Nevertheless, India is a democratic society in which the rule of law prevails, and where government policies have to be in accordance with the legal framework, including the provisions of the Constitution. This requires that the authorities are fully aware of the implications of the constitution on their policies. Furthermore, the rule of law requires that people have at least a basic awareness of their legal position. The fact that the Constitution of India, the fundamental law of the country, is supporting their position should strengthen people in their struggle to improve their situation.

This legal analysis does not only offer arguments for taking the position of wastewater farmers into consideration in the policy-making process, it also attempts to stimulate people to continue their struggle for the improvement of their situation, knowing that the law is on their side. Of course, there is a still long way to go before the relevant laws and regulations are fully implemented and enforced. In order to make the law work as it is supposed to, it will be necessary (a) to create basic legal awareness among

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