

A Rights Based Approach to Water User Associations in India

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A number of States have now passed laws creating Water Users Associations in the last few years. Given the bias in the legal system that recognizes statutory rights to the exclusion of almost any other form of rights, the passing of these laws presents an opportunity to these Associations to see what effective rights have come their way through these laws. The paper comments on the formal rights available to these Associations in different States today and more particularly in Andhra Pradesh and Chhatisgarh while focusing on both their internal and external rights. It shall also suggest whether and how far they are precipitating a group rights regime while tracing its inevitable linkage to the critical question of water entitlements and the state of the irrigation systems.

Introduction

Beginning in the 1980's, there have been a large scale programs to turn over irrigation management from Government Agencies to organized Water User Associations in a number of countries such as Philippines, Indonesia, Senegal, Madagascar, Columbia and Mexico². This trend has been seen as the convergence of a number of policy trends including decentralization, privatization, participation and democratization³. A result of this has been 'rolling back of the boundaries of the state' within the irrigation sector. Participatory irrigation management refers to the programs that seek to increase farmers direct involvement in system management, either as a compliment or as a substitute for the state role.

The acceptance of Participatory Irrigation Management (PIM) was powered by the dismal state of irrigation systems itself. Non-irrigated fields because of undependable water flows, indiscriminate use of water by head-enders depriving the same to the tail-enders, inequitable distribution and resulting conflicts created a situation where

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² Vermillion Douglas (ed.). 1996 *The Privatisation and Self Management of Irrigation*. Final Report. Colombo, Sri Lanka: International Irrigation Management Institute

³ for further comment on this aspect see Joshi, Hooja Rakesh (ed.) *Participatory Irrigation Management: New Paradigms for 21st Century*, Rawat Publications, 2000

farmers participation was beginning to be seen as an answer. The Water User Associations (WUAs) was seen as a lasting response to such systemic inadequacies. It was thought that where the state had failed the farmers will not, and that operation and management of irrigation system by the farmers themselves can change things around. The result was that state after state in India, much like other parts of the world, came up policies, resolution and then laws supporting PIM.

Regime without Farmers' Ownership of Rights

Almost ten years on since the first State law on 'Farmers Participation in Management of Irrigation Systems' came into being the euphoria and romance associated with WUAs have given way to hard realities. Ambitions have taken a beating and expectations from WUAs have been scaled down. A post mortem of ten years with PIM can explain why this happened – a post mortem that is due and is yet to be carried out. This paper is not in the nature of a post mortem- it only focuses on one aspect of WUAs that holds the key to their sustainability, their rights.

From an essentially legal standpoint two points from the legislative history of Participatory Irrigation Management in India stands out. One, the legal and management regimes for farmers were never owned by them. The laws were made for them not by or even through them and this despite the fact that they are at the centre of giving it operative effect. Secondly, and more relevant to the present paper, the legislations did not establish clear water rights.

While the focus of the paper is on rights and we shall return to it a few words on the first aspect can put the points to follow in better perspective. Why is that the legal regimes for Participatory Irrigation Management is not owned by them? The question becomes more troublesome when we know that India has had a long history of farmer managed irrigation systems with a number of examples from the *Kuhls* of Himachal to the tanks of South India.⁴ However, the traditional community managed systems has not been the motivation for shaping new policies involving local people for managing irrigation. In fact the laws creating Water Users Association are all part of a dominant trend of policy and law making as part of donor-driven technical assistance projects across the country.⁵ The adoption of this mode of law making has meant that that a true demand-oriented and participatory modes for establishment of the WUAs has simply not been possible. The fact that this can be done has been shown by other countries where intensive preparatory steps are taken before enactment of a legislation beginning with the identification of potential participants as well as the area of operation of the WUA. For example, the Romanian legislation calls for the establishment of an 'initiation committee', composed of several potential members of the WUA. The committee must call a preliminary meeting to which all potential members are invited. At that meeting, decisions are taken on the proposed delimitation of the territory of the WUA, on the individuals to be responsible for

⁴ For a detailed review on these aspects see *Dying Wisdom*, The Fourth Citizens Report, Centre for Science and Environment, 1997

⁵ The implications of this nature of law making is in itself a critical area of enquiry though it outside the purview of the present paper.

drafting the WUA governing document and for taking the necessary steps for the establishment of the WUO.⁶ In other places the decision to establish a Water Users Association is itself through petitions supported by farmers and landowners themselves.⁷

The fact that these processes were not thought about and never adopted in any of the State laws in India has also meant that the farmers know little about the law and rights created in their favour through these laws. This last point is especially important for the purposes of the present paper as it points to the limits of a rights based approach in developing WUAs across the country. Before closely examining the rights of the WUAs and the individual water users it makes sense to first understand the overall structure of Water Users Association as created by the various state laws.

The Basic Legal regime: Three tier Water User Bodies under Formal Laws

As pointed out above several states in the recent past have come up with major policy and legal initiatives that have transferred some responsibilities of Irrigation Management from government agencies to the Water Users Associations (WUAs).⁸ While some of these WUAs have been founded under government resolutions, most states today have done so through enabling laws. States like A.P, Rajasthan, Orissa, Madhya Pradesh, Tamilnadu Maharashtra and Chattisgarh the law enabling farmers participation in Irrigation management has come by the enactment of specific 'Farmers' Participation in Management of Irrigation Systems' laws.⁹ Surveys of these laws and rules made under them were taken for the present purpose. Specifically these laws included- The Andhra Pradesh Farmers' Management of Irrigation Systems Act, 1997, Madhya Pradesh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 1999; The Tamil Nadu Farmers' Management of Irrigation System Act, 2000; Kerala Irrigation and Water Conservation Act, 2003; Orissa Pani Panchayat Act, 2002 Maharashtra Management of Irrigation System by Farmers Act 2005 and The Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 2006.

Typically all these laws empower the Project Authority to delineate every command area under each of the irrigation systems 'on a hydraulic basis which may be administratively viable' and declare it as Water Users area. Every Water Users area is to be divided into territorial constituencies. It provides for establishing a Water User Association (WUA) for every Water Users area. Every WUA is to consist of all water users who are landowners in such Water User area as members.¹⁰ All the members

⁶ A similar procedure is foreseen by the Bulgarian legislation.

⁷ Take for example California where the process of establishing an Irrigation District is initiated by petition. Such a petition must be supported by a majority of land owners or at least 500 land owners who hold title to not less than 20 percent of the value of the land to be included within the proposed district.

⁸ The formation of these associations is now generally seen as the most effective strategy for ensuring farmer/users participation in management of water for irrigated agriculture.

⁹ Some States like Goa have provided for farmers' association by amending their Command Area Development Acts. Other states have adopted the principle of Participatory Irrigation Management through government resolutions and orders.

¹⁰ Though there are useful variations from these positions in some states and most notably by the *Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Adhinyam, 2006*.

constitute the general body of the WUA. There has to be a managing committee for every WUA and the project authority is responsible for election of President and members of the Managing Committee of the WUA by direct election from among its members by the method of secret ballots. Further the project authority may also delineate every command area comprising two or more water users area as a Distributory Area. All the presidents of was constitute the general body of the Distributory Committee. The general body of the distributory committee also elects the president and the members of the managing committee of the Distributory Committee. Likewise, the government may delineate any command area to be a project area while requiring it to form a project committee for every project area. All the presidents of the Distributory Committee constitute the general body of the Project Committee.

The WUAs at the primary level, the distributory committee at the secondary level and project committee at the project level is together referred to as *Farmers Organization* under the laws. In some cases there is also a liberty for the managing committee of a Farmers Organization to constitute subcommittees to carry out their functions. Finally, Water Users Association have typical functions like (a) to prepare and implement a warabandi schedule for each irrigation season, (b) to prepare a plan for the maintenance, extension, improvement, renovation and modernization of irrigation system, (c) to regulate the use of water among the various outlets under its area of operation, (d) to maintain a register of landowners as published by the revenue department, (e) to monitor flow of water for irrigation, (f) to resolve the disputes if any, between its members and water users in its area of operation.

Rights of WUAs and the Water User: The Position in India

The structure of the WUAs in various State laws has been discussed above. Amongst these there is no single legislation which specifically talks about the rights of the WUAs or of the individual water user. However, there are two Rules made under two different laws which explicitly mention about of rights and responsibilities of the WUAs. These two Rules are the - *The Andhra Pradesh Farmers' Management of Irrigation Systems Rules , 2003* and the recently notified *Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Niyam, 2006*. These Rules explicitly talk about the right and responsibilities of the WUAs and the right and responsibilities of each of the water users in these Association. This gives the impression that under these Rules there is an equal emphasis on both the individual and the group rights. This aspect will be closely seen in the following paragraphs. Besides, conceptually the rights with the WUAs can also be seen as internal and external rights of the WUAs. Apart from developing an understanding on the external water rights of the group, which it can use to its advantage against every one outside the group, there is a need for better appreciation for internal water rights laying down the right of the group member's vis-à-vis each other. An elaboration of the rights specifically vested by the two Rules in AP and Chhatisgarh within the above typologies is attempted below.

Rights with the Water Users Association: An Analytical Perspective

The Andhra Pradesh Farmers' Management of Irrigation Systems Rules , 2003 and the Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Niyam, 2006 both make clear that the Water Users Association has a -

- Right to obtain information in time about water availability, opening/ closing of main canal, periods of supply and quantity of supply, closure of canals etc.;
- Right to receive water in bulk from the irrigation department for distribution among the water users on agreed terms of equity and social justice; and also
- Right to receive water according to an approved time schedule.

Clearly these are well meaning rights and are critical for survival of the WUAs simply because if there is no water there is no point having a WUA. Both the Rules however do not make clear that if the right to receive water in bulk from the irrigation department is not honoured what remedies might lay with the WUA. In other words, whilst there is a generally worded right there is no accountability of the department that has been established through this provision. Besides, merely saying that these rights exist will not be enough if the irrigations systems are not properly rehabilitated to be in such a condition where minimum water flow could be maintained. Many of the Water Users Associations today are paper entities because this minimum condition necessary for their existence is just not there. The point is that without assessing the water resource and ascertaining its availability assigning water rights is the last thing that will improve irrigation management in the country.

The above mentioned rights are followed by another set of rights under the two Rules. These are mentioned as:

- Right to allocate water to non-members on agreed terms and conditions;
- Right to levy separate fees for maintenance of the system ;
- Right to levy any other fee or service charges, to meet management costs and any other expenses;
- Right to obtain the latest information about new crop varieties, and their pattern, package of practices, weed control etc., for agriculture extension service and purchase inputs such as seeds, fertilizers and pesticides; for use of its members;
- Right to have full freedom to grow any crop other than those expressly prohibited by a law and adjust crop areas within the total water allocated without causing injury to neighboring lands;

These set of rights relate to some ' second generation ' concerns and acquires meaning only if the basic requirement - that of availability of water is met. In light of the fact that in most of the WUA there is a scarcity of water and especially so with the tail - end members one can't visualize a scenario where the water is allocated by the WUA to non members. Likewise both the willingness and the ability to charge additional fees/water charges are questionable and this points to a larger problem. Even the existing water charges, which are not paid in many circumstances, are far less than the expenditure needed for proper operation and maintenance of the system. All across the country the irrigation fees are a small fraction of the operation and maintenance costs of the systems and an even smaller fraction of the actual costs of private lift irrigation with diesel pumps. The highly subsidised irrigation fee structure has helped

establish a low-level equilibrium. Farmers are unwilling to demand improved maintenance and service from the irrigation department lest it might result in higher irrigation fees. In turn, the department staff justifies lack of maintenance and poor operation and maintenance by citing low irrigation fees.¹¹ In such a scenario an active search by the WUA for information on crop varieties and agriculture extension service is some years away notwithstanding the right that the WUA in AP and Chhatisgarh has been granted today. These set of rights provokes one to admit that vesting of substantive right is one thing, and having a capacity to claim it is another.

The third sets of Rights with the WUA under the two Rules are worded as follows:

- Right to participate in planning, and designing of micro irrigation system;
- Right to suggest improvements/modifications in the layout of Field Channels/Field Drains to supply water to all the farmers in the command; and
- Right to plan and promote use of the ground water.
- Right to carry out other agro based activities for economic upliftment of its members ;
- Right to utilize the canal bunds - as long as such use is not obstructive, or destructive to hydraulic structures - by planting timber, fuel, or fruit trees or grass for augmenting the income of the farmers organisation;
- Right to engage into any activity of common interest of members in the command area related to irrigation and agriculture and supplementary businesses for self sufficiency and sustainability of the Organization;
- Right to receive funds and support from various development programmes of the central and State government and other development organizations.

All these rights are strictly speaking management and planning functions and are not rights in the strict sense of the term.

Rights of the individual Water User

Both the Andhra Pradesh Farmers' Management of Irrigation Systems Rules, 2003 and the Chhattisgarh Sinchai Prabandhan Me Krishkon Ki Bhagidari Niyam, 2006 not only talk about the rights of the WUA but also try and pin down the right of its members. The right vested with the individual water user includes:

- Right to suggest improvements/modifications in water deliveries;
- Right to get information relating to water availabilities, allocations, opening/closing of canals and outlets, period of supply, frequency, etc.;
- Right to receive water as per specified quota for use;
- Right to sell or transfer the water share to any other water user within the operational area of water users association with the permission of the

¹¹ See Upadhyay Videh; *Command Area Development: Restructured Guidelines*, Economic and Political Weekly, July 15, 2005. Perhaps the biggest reason that perpetuates this equilibrium is the fact that there has been “absence of a link between the payment of service charges and the prospect of improvement in services provided by the system in response to the user requirements” and this has “provided a fertile ground for the politicisation of the cost recovery processes”

concerned water users association and without affecting the rights of the other members of the Association.

- Right to participate in the General body meeting and receive annual reports; and
- Right to receive equitable benefits from the activities of the organization.

A close look at the first three rights mentioned above can suggest that these rights of the water users are directly dependent on the availability of water with the Water Users Association. Thus access to irrigation waters is at the base of the realization of all these rights both for the Association and also its members. The 'right to sell or transfer the water share..' opens up a useful space for tradable water rights but except in isolated pockets it is provision that is futuristic. This is especially true for the State of Chhatisgarh. When it comes to 'right to participate...' suffice it to say here one that right to participation does not ensure participation. The 'right to receive equitable benefits...' is a right with the members that is delightfully vague for the Water Users Association. It will not have much meaning unless the bye laws of the WUAs give meaningful content to it.

The Specific Internal and External Water Rights of the WUAs

Under the two State Rules mentioned above the rights of the WUA that it can exercise with its members specifically include : (a) Right to allocate water to non-members on agreed terms and conditions; (b) Right to levy separate fees for maintenance of the system; and (c) Right to levy any other fee or service charges, to meet management costs and any other expenses. as distinguished from this the specific 'external' rights of WUA which it can use to its advantage against every one outside the Association include the following:

- Right to obtain information in time about water availability, opening/ closing of main canal, periods of supply and quantity of supply, closure of canals etc.;
- Right to receive water in bulk from the irrigation department for distribution among the water users on agreed terms of equity and social justice;
- Right to receive water according to an approved time schedule
- Right to obtain the latest information about new crop varieties, and their pattern, package of practices, weed control etc., for agriculture extension service and purchase inputs such as seeds, fertilizers and pesticides; for use of its members
- Right to have full freedom to grow any crop other than those expressly prohibited by a law and adjust crop areas within the total water allocated without causing injury to neighboring lands.

The limits of these rights have been indicated in the preceding section. Keeping that in mind it is a moot question as to how much are the WUAs empowered through the mere vesting of these rights.

Locating Rights in Irrigation Systems: Water Entitlements as the Way Ahead

The above analysis puts in perspective the observation from an insightful commentator that a striking aspect of India's PIM programmes is the little attention that is given to water rights. It has meant that the governments' rights to water are unchallenged, while its obligations to deliver water to WUAs are rarely legally binding.¹² The points made above have also shown that the critical concerns on increasing the access to the water resource apart from larger questions relating to who controls the resource as well as ownership rights on them have all never been addressed.¹³ The point is more strongly put in a historical context. Notably, medieval inscriptions of South India have revealed various functions relating to irrigation, which were exercised by the Village assemblies. These included ownership of Water resources, powers to arrange for construction, repair and maintenance of tanks, powers regarding land transactions relating to Irrigation, levy and collection of cess, powers to engage and remunerate local functionaries, maintenance of records, disputes settlement and relations with Central Government.¹⁴ The range of power with the Village assemblies at that time is in sharp contrast with the restrictive functions largely including only water distribution, management and local monitoring, that has been vested with the Water User Associations under the new State laws. It may also be mentioned here that State officials may not necessarily disagree that the functions with WUA are restricted but they surely attribute the restrictive range to the lack of capacity with the farmers and the water users.

Quite apart from whether and how much is the lack of capacity with the farmers true, and notwithstanding the fact that such argument mocks at history, the present author feels that there are at least two minimum conditions that need to be specifically put down as essential first steps in the laws as the way ahead from here:

One is that with the existing WUAs the irrigation departments across the States need to carry out time bound joint inspection of the irrigation canals followed by identification and execution of priority works for rehabilitation of the existing canal systems. This needs to be put down as an essential non-negotiable right of the WUAs because without these talking about their water rights is putting the cart before the horse. All the rights are located in a system and for rights to be effective the system needs to work. Secondly, to ensure that a fully functioning turned - over system maintains the water flow in it the minimum water entitlement of the WUA needs to be built in the laws so that a total volume of water is guaranteed to be supplied to a Water Users Association at agreed points of supply. If this is put down as part of the law water from the canal system shall be supplied to the Water Users' Association at various levels, from tail to head on bulk basis measured volumetrically as per their

¹² Mosse David; *The Rule of Water; Statecraft, Ecology, and Collective Action in South India*; Oxford University Press; 2003. The author adds: The result (of this position on rights) has been that the government may have lost little control over irrigation resources, and arguably, in establishing registered WUAs has retained its rights and also acquired a new mechanism to extend its influence in rural society.

¹³ It may be dangerous to treat these as mere abstract enquiries. For example, it has been pointed out that in Mexico the large scale irrigation management transfer programme was accompanied by a revision in the water rights law , and water users' organization are even demanding rights to water at the headwork of irrigation systems. This suggested to Ruth Meinzen-Dick that "some kind of control rights over water to user groups can be an effective part of PIM programs." See Gulati Ashok et al; *Institutional Reforms in Indian Irrigation* Sage Publications, 2005

¹⁴ For more details on the relevant history in this regard see *Dying Wisdom*, Centre for Science and Environment, 1997.

water entitlements. In fact the State of Maharashtra has already taken a lead in this regard in the recently enacted *Maharashtra Management of Irrigation System by Farmers Act 2005* by building in such water entitlements in the Act. There is no good reason - although there can be many excuses - as to why the other States can't follow the example.