

Right to sanitation – a human right

Introduction

At least 2.5 billion people in the world do not have access to basic sanitation. The Millennium Development Goal (MDG) sanitation target, to at least halve the proportion of people living without access to sanitation by 2015, remains the least fulfilled of all enormously. The lack of sanitation impacts health, education and economic growth enormously. Every day, no less than 5,000 children under the age of five die due to diarrhoea which has a direct connection to poor sanitation. Inadequate facilities or lack of sanitation facilities is one of the major development challenges in India. More than 792 million people in India do not have access to improved sanitation.¹ It is estimated that every death out of ten in India can be attributed to poor sanitation and hygiene. The efforts to increase sanitation coverage in rural areas face the principal challenge of changing long-held open defecation behaviour. An estimated 55% of all Indians or close to 600 million people do not have access to any kind of toilet.² In rural India, scale of the problem is particularly daunting; around 74% of rural population still defecates in open.³ The women and girls face unique cultural and biological burdens in relation to sanitation. Lack of adequate sanitation in schools is a critical impediment to school education, particularly for girls. With such stark reality, systems often continue to compromise the health, safety, and productivity of girls and women. Within this context, gender-respective sanitation interventions in rural areas have the potential to improve adoption and long-term outcomes for women and their communities through targeted implementation wherein improved sanitation facilities⁴ should be a priority.

Sanitation: a human rights context

Legal basis for right to sanitation can be mainly found in the Constitution of India. The fundamental rights enshrined in Chapter III contain Article 21,⁵ Right to life, which encompasses within it, the right to live with dignity. Lack of effective sanitation measures is one of the biggest hurdles in realisation of the fundamental rights of right to life as also other fundamental rights. Inadequate sanitation is a pervasive problem which invades our true freedom and liberty and in turn, denies the fullest enjoyment of our rights.

Right to sanitation as a fundamental right

Right to sanitation and hygiene is a part of fundamental right to life. Right to sanitation, like various other rights, is a derivative of right to life enshrined under Article 21. Although, it is not specifically

¹World Health Organisation and UNICEF Joint Monitoring Programme for Water Supply and Sanitation, Progress on Drinking Water and Sanitation, 2014 update. Geneva, Switzerland: WHO-UNICEF: 2014.

²Bonu, Sekhar and Hun Kim, May 2009, Sanitation in India: Progress, Differentials, Correlates, and Challenges. ADB Based on author's analysis of the 2005 National Family Health Survey, Asian Development Bank, Manila.

³India's Sanitation for all: How to make it happen, 2009, Asian Development Bank, Manila.

⁴Improved sanitation facilities" are defined under the MDGs as those that ensure hygienic separation of excreta from human contact. This includes connection to a public sewer, connection to a septic system, pour-flush latrine, simple pit latrine, and ventilated improved pit latrine. Sanitation solutions not considered "improved" include: public or shared latrine, open pit latrine, and bucket latrines.

⁵Article 21: Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

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and expressly included in Article 21, it came into being by judicial interpretation of the Article. The Supreme Court and High Courts have consistently held that right to sanitation is a part and parcel of Article 21 and the Article encompasses within it the right to sanitation as right to life can never be achieved in kits true meaning and spirit without sanitation and hygiene. The Apex Court in a case holding that the Government had no power to sanction lease of the land vested in the Municipality for being used as open space for public use, observed, after referring to the Stockholm Declaration 1972 and Principle 1 laid down in that Conference and after referring to Article 48 A, Article 47 and Article 51 A (g), and Article 21, as follows:

*"The word environment is of broad spectrum which brings within its ambit, hygienic atmosphere and ecological balance. It is, therefore, not only the duty of the State but also the duty to every citizen to maintain hygienic environment. The State, in particular has duty in that behalf and to shed its extravagant unbridled sovereign power to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental rights. Enjoyment of life and its attainment including their right to life 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 healthy life and it would be impossible to live with human dignity without a humane and healthy environment."*⁶ The concept of right to sanitation includes

personal hygiene, home sanitation, clean water, waste disposal, waste management system and so on. Sanitation in terms of human rights would mean a system for the collection, transport, treatment, disposal, or reuse of human excreta and associated hygiene. The human right to sanitation entitles everyone to sanitation services that are safe, socially and culturally acceptable, secure, hygienic, physically accessible and affordable, and that provides privacy and ensures dignity.⁷ State to ensure that benefits of these measures reaches to everyone without any discrimination on the basis of caste, creed, race and gender.

Right to sanitation being a constitutional right casts a duty upon government to make policies and schemes to provide facilities to everyone.

⁶*Virender Gaur v. State of Haryana*. 2 SCC 577. 1955.

⁷Realising the human rights to water and sanitation: A handbook, Catarina de Albuquerque, the UN Special Rapporteur on the human right to safe drinking water and sanitation.

Relation to other fundamental rights

Provision of adequate sanitation is vital to realisation of many fundamental rights. Rights like right to health,⁸ water⁹, air,¹⁰ clean and healthy environment¹¹ is a part of Constitution. The Supreme Court through its various judgments has reiterated time and again that right to clean and healthy environment is a part of Article 21 of the Constitution. Provision for sanitation is also linked to Right to Education. The right to Education is enshrined in Article 21A of the Constitution. Without having proper hygienic environment, the learning place/school becomes a breeding ground for diseases and causes multiple problems in school going children. The lack of sanitation in school is one of the major discouraging factors for female students and parents, generally, refrain from sending their daughters to schools. Also, Right to dignity¹² is an important and integral facet of right to life. In fact, the entire edifice of Human Rights is built and dependent upon it. Without the right to dignity, all other fundamental rights become meaningless.

Legal and policy arrangements

The essential regulation of the right to sanitation happens at local level. The Constitution 73rd Amendment Act, envisages the responsibility be given to Panchayats. As sanitation is a State subject, it is mostly handled by States and local bodies and Panchayats are the last mile agencies. The Law puts the responsibility, at rural level, in Panchayats to maintain clean and healthy environment and to ensure proper sanitation facilities. The Government of India Launched Swachh Bharat Abhiyan in the year 2014. The main aim as the name suggests, is to create a clean India. One of the important goals, inter alia, is to build toilets in all rural areas, schools, etc. The Scheme also envisages keeping cleanliness and creating a robust system for disposal of waste including solid and other domestic waste.

Gender responsive approach to sanitation

In order to actually realise the right to sanitation to all, special emphasis is to be laid on gender based requirement. It is our duty to ensure that toilet design and implementation efforts use a gender-responsive approach to better address the socio-cultural and biological needs to women. We also need to deepen our understanding of the role of gender norms and identities on sanitation technology adoption through further research and innovation. The true realisation of right to sanitation is achieved only when gender-responsive sanitation solutions are made to ensure health, safety, productivity, and gender equity.

Conclusion

Sanitation in terms of Human Rights means an entire system

⁸*Consumer Education and Research Centre v. Union of India*. 3 SCC 42. 1995.

⁹*Narmada Bachao Andolan v. Union of India*. 9 SCC 571. 2000.

¹⁰*Subhash Kumar v. State of Bihar*. 1 SCR 5. 1991.

¹¹*Ibid*.

¹²*Municipal Corporation, Ratlam v. Shri Varhichand*. 1 SCR 97. 1981.

to create, protect and maintain a clean environment. India needs to make concerted and concrete efforts to actually achieve MDG. India is losing billions of dollars each year because of poor sanitation. Illnesses are costly to families, and to the economy as a whole. The economic impact as can be gauged from losses in fisheries, tourism, and welfare impact as can be gauged from losses in fisheries, tourism, and welfare impacts and also from such time uselessness, lack of privacy and security for women and as reduced school attendance. The sanitation becomes a prime concern as regards education. Sanitation facilities in schools will include proper toilets, separate for both boys and girls. Boy's toilets need to be designed keeping view the height of students of different age group. For girls, proper, safe, hygienic and accessible toilets are necessary effectively cater to the needs of female students. Right to education is affected by right to sanitation. It does not bode well to right to dignity when girls have to stop going to school because of lack of adequate sanitation facilities. Unless proper sanitation measures are taken and facilities are provided to all, the true realisation of human rights remains elusive.

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None

Conflicts of interest

The author declares that there is no conflicts of interest.