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## THE HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION IN INDIA

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### Abstract

*The study identifies the safe drinking water and sanitation problems in India and the need of law. Water and sanitation are not recognized as human rights in India, which has yet to pass a national legislation. India's Swachh Bharat Mission is a nation-wide effort to eradicate open defecation. The existing level of access to water services by Indians falls significantly short of the parameters. Water should be available when required, free of contaminants, and readily available on the site. Public lavatories are frequently inaccessible to people with disabilities, are unsuitable for transgender people, and lack basic facilities for washing hands. Homeless people, street sellers, rickshaw pullers, and temporary migrant laborers are especially reliant on sanitary facilities situated in outer walls. The core concept of human right urges the governments to "leave no one behind," particularly in terms of access to water and sanitation. Governments will not be able to fully implement the human rights to water until stigma is addressed as a core cause of discrimination and other human rights abuses. India has yet to pass a national law recognizing water and sanitation as human rights. The Government must identify vulnerable and marginalized people, as well as discriminating practices and their underlying reasons. It is necessary to develop a national legislative structure that respects human rights to water and sanitation.*

### Introduction

The current topic illustrates the violation of human rights has deep impact on safe drinking water and sanitation in India. As we know, human rights<sup>1</sup> are a collection of ideals that involve justice and equity. Likewise, they acknowledge the autonomy about life to realize the full potential as human beings. Thereafter, water and sanitation are not recognized as human rights in India, which has yet to pass a national legislation. Although the Indian Constitution does not include the human rights to water and sanitation, article 21 on the right to life, has been gradually construed by courts to encompass the rights to water and sanitation. As a consequence,

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<sup>1</sup> Human rights is known as "inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being"



Indian judiciary legally recognized the right to water as a right derived from the right to life in 1990. Evidently, the legal basis for this fundamental right was found in case law made by the Indian courts concerning environmental degradation and, more recently, inadequate, or non-existent water supplies. Therefore, Supreme Court of India addressed sanitation difficulties in the context of the Constitution's broad interpretation of the right to life in Article 21<sup>2</sup> (Upadhyay , 2020).

Having established the need of human rights in India, it is possible to consider that the judiciary has developed new procedures and rights, especially in the case of the disadvantaged people, who denied of basic Human Rights and for whom independence have no value. Notion of human rights and social justice, which are equivalents of legitimate human rights, spurred the Indian judiciary<sup>3</sup>. While there has been strong legal backing for human rights to water and sanitation, but substantial support is needed in the form of binding law or regulation, as well as legal enforcement mechanisms, to supplement the current legislation on groundwater in some states of India. Notwithstanding, a state law, prototype bills and legal framework are required to guide states in adopting and enacting their own legislation. As a result, lack of unified law had resulted in a mixture of water and sanitation acts that varied by state, with few nations adopting model bills as law. The draft of national water framework bill (2016) should recognize human rights to water and sanitation in accordance with the authoritative interpretation. Rather, it would protect the constitutional validity of human rights to water and sanitation by allowing people and communities who are victims of infringement of those rights to submit a complaint before a legal authority, obtaining legitimate remedies, and have those remedies implemented (Anna & Langford, 2017).

As stated previously, the Indian judiciary introduced public legitimacy as a new device in the sphere of actionable individual rights, which had previously been unlawful. Apparently, in a series of judgements, the Indian judiciary stepped in to help forced laborers, ghetto residents, shopkeepers and street inhabitants, sufferers of toxic waste, chemical spills, and other calamities. What is more, the local authorities including Panchayati Raj and municipal corporations, are obligated by international human rights legislation. As a result, basic requirements based on human rights principles are established at the nationwide level to ensure legislative coherence, consistency, and conformity with human rights. On the other hand, national and regional

<sup>2</sup> “Gaur and Others v. State of Haryana and Others,” 24<sup>th</sup> Nov 1994

<sup>3</sup> In case of “SP Gupta vs. Union of India,” the Indian judiciary addressed the backdrop and the necessity for equality on human rights as “The task of national reconstruction has brought about enormous increase in development activities and law is being utilized for the purpose of development, social and economic. It is creating increasingly a new category of rights in favour of a large section of people and imposing a new category of duties on the state with a view to reaching social justice to the average person? This is not to say that individual rights have ceased to have a vital place in our society, but it is recognized that these rights are meaningless in today's setting unless accompanied by the social rights necessary to make them effective and really accessible to all.”



authorities are expected to control both official and unofficial provision of services to hold providers accountable for violations of the human rights to water and sanitation (Inga, 2014).

### **The provision of safe drinking water and sanitation as Swachh Bharat Mission**

Subsequently, the Indian Constitution allows the court to defend human rights in the form of fundamental rights. Simultaneously, in the event of any infringement of citizens' basic rights, the court of India has been authorized to preserve and reinstate the same. In particular, Swachh Bharat Mission<sup>4</sup> is an initiative by the country to address its sanitation difficulties in a brief period of time, and a significant step toward the gradual fulfilment of the Indian population's human right to cleanliness<sup>5</sup>. Thus, it has been a nation-wide effort to eradicate open defecation, to expedite efforts to achieve global access to water and sanitation. In addition, the existing level of access to water services by Indians falls significantly short of the parameters. To be more precise, water should be available when required, free of contaminants, and readily available on the site. In order to meet the accessibility criterion, water would need to be given on a regular basis in both urban and rural locations, meeting the needs of children and adults, including the elderly. Accordingly, people should utilize better sanitary facilities that are not shared with other homes. Another issue regarding sanitation is household level facilities should be provided to people who currently rely on shared public toilets. This feature includes providing sanitary facilities in public places, schools, health centres, and correctional centres (UNICEF, 2009).

Also of importance is the issue of supply of water to each individual must be adequate and uninterrupted for consuming, personal hygiene, laundering, preparing food, and house hygiene. The strength of such an approach is usage should be regularly and completely checked to guarantee that the whole Indian population gets water in accordance with human rights norms. To further understand the role of access to water law shall improve public access to safe drinking water and sanitation in accordance with its responsibilities to achieve the human rights to water and cleanliness. Moreover, various articles shows that public venues, such as schools, transportation facilities, and police stations, lacked sufficient and suitable water and toilet facilities. Concentrating on sanitation and water, the petrol stations have their own restrooms available to the public, however these facilities are frequently locked or inoperable. In contrast, the quantity of communal toilets accessible is insufficient in comparison to the number of families that utilize those facilities. Additionally, this has an unavoidable impact on the enormous population that is "on the move" on a daily basis, including homeless people, street

<sup>4</sup> The major objective of the campaign is to eliminate open defecation by October 2019 by installing millions of toilets around the country, which will be supported by a sizable funding.

<sup>5</sup> In a survey of Clean India Mission, in the past three years and one month, fifty-three million toilets had been constructed. In metropolitan cities, additional 4.9 million home toilets and 300,000 public toilets have been built as of May 2018.



sellers, rickshaw pullers, and temporary migrant laborers. Besides, street vendors are especially reliant on sanitary facilities situated in outer walls, and they are sometimes obliged to pay the building's guards in exchange for use to those facilities. Also, the public lavatories are frequently inaccessible to people with disabilities, are unsuitable for transgender people, and lack basic facilities for washing hands and feminine hygiene management (UNECE, 2016).

Then again, women and children waste valuable time bringing water from surface water, deep wells, bore wells, and, in certain situations, public water stand and water trucks. According to National Rural Drinking Water Programme “provides for drinking water within the household premises or at a distance of not more than 100 metres from their household<sup>6</sup>”. Still, the cost of gathering water<sup>7</sup> is high and it frequently impacts children during their time to attend school, and women do not get right to work. Hence, women are subjected to physical abuse; in the mountainous regions, there have been cases of women being imperilled to sexual abuse when getting water<sup>8</sup>. Notably, inadequate sanitation must consider not just physical accessibility, but also the number of individuals who are using the lavatory, the condition of the utilities, the correct management of untreated sludge and sewerage, and the safe transportation and disposal of untreated wastewater. In terms of human rights, sanitation involves the treatment of waste, discharge, or recycle of excrements and sewage water<sup>9</sup>. Therefore, Indian judiciary acknowledged that destitution jeopardized human rights, independence, justice, and fairness (OHCHR, 2021).

### **Legalising the rights of people**

As discussed earlier, sanitation affects not only one's personal right to use a lavatory or toilet, but also the human rights of others, who might suffer if wastes are not properly processed or discarded. This is mirrored in the idea of "safely managed services," which underlines the need for better management of liquid waste spills into open sewers in India. To satisfy this criterion, India would also need to build an effective sewage solution management to improve wastewater treatment for the population residing in cities. The significance of proper treatment of excrements, domestic wastewater, and sewage treatment<sup>10</sup> and recycling, as they pose a significant health risk, particularly in highly populated metropolitan cities. In short, the explicit

<sup>6</sup> Press Release, Govt. of India, 10<sup>th</sup> Nov 2017

<sup>7</sup> Around, 77% of the rural areas and 92% of the urban areas have access to water, yet there are also some who do not.

<sup>8</sup> India supported General Assembly Resolution on the human right to water and sanitation in 2010. It also supported the passage of Assembly Resolution in 2015 and Human Rights Council Resolution in 2015, which treated water and sanitation as separate human rights for the first time.

<sup>9</sup> Annual Report, Govt of India, Ministry of Drinking water and sanitation, 2016-17.

<sup>10</sup> Bain, Robert, “Faecal pollution of drinking water in low- and middle-income countries: a systematic review and meta-analysis.” PLOS Med., Vol.11, No.5. A comprehensive evaluation of sixty research on faecal contamination in India found just six trials in which all samples were free from chemicals.



and implicit expenses of those basic necessities must not limit people's ability to pay for other services, which might impede the implementation of other rights. Relatively, in India, access to water facilities supplied by official lines, including pipeline structures in metropolitan cities, is comparatively inexpensive<sup>11</sup>. Specifically, the judicial system work independently or jointly to protect the human rights of the people (WHO, 1993)

Similarly, individual customers were compelled to depend on informal suppliers who sold water at an inflated prices than regular suppliers. Because of this, the subsidiary court in India is immediately available to the general public, it is expected to come to the relief and safeguard the individual rights first. Simultaneously, in unorganized colonies, extremely dangerous group unlawfully draw water from the municipal water supply<sup>12</sup> controlled by the “water mafias” that charges homes ten times more than consumers residing in the “legal city”. While, the human rights paradigm mandates that water should be safe, that is free of bacteria, chemical pollutants, and radioactive risks that endanger people's wellbeing. Subsequently, heavy pollution is affecting both land and groundwater, comprising industrial wastes, wastewater, and excrement, as well as contamination from trash disposal, garbage dumps, subsurface fuel tanks, and the use of agrochemicals. Along with inorganic contaminants such as lead, fluoride, nitrates, iron, arsenic<sup>13</sup> and other toxic metals are frequently found in groundwater (Obani , 2018).

Despite the fact that the governments have taken various efforts to prevent this chemical pollution, such actions have not been effective, and the problem remains, producing major health repercussions. Gradually, the core concept of human right urges the governments to “leave no one behind,” particularly in terms of access to water and sanitation. Furthermore, in order to meet the human rights duties, the government must create techniques that take into consideration the normative substance of the human rights<sup>14</sup> to water and sanitation, as well as monitor disparities and non-discrimination to access such services so that no one is left behind. It is widely held that the Indian courts are vested with the authority to protect and enforce the rights provided by the constitution. The Constitution not only protects various rights, but it also specifically states the procedures and methods for achieving such rights. Overall, Governments will not be able to fully implement the human rights to water and sanitation until stigma is addressed as a core cause of discrimination and other human rights abuses. As a result, devoid of

<sup>11</sup> In 2017, according to an international survey data pipeline water services is accessible to 31% of the population in India which is around 270 million population out of the nation's 1.3 billion. Meanwhile it is 67.5% of rural population and 69% of urban population.

<sup>12</sup> The Special Rapporteur visited in Delhi, 2010, in Savda Ghevra, a proposed resettlement site developed on 257 acres of land. While the inhabitants have had access to safe drinking water from Delhi Jal Board water trucks, they lacked toilet facilities and had to depend on public toilets located distant from their homes.

<sup>13</sup> Shrivastava, Anamika, “Arsenic contamination in shallow groundwater and agricultural soil of Chakdaha block, West Bengal, India.” *Frontiers in Env Sci*. Vol.2, Nov 2014.

<sup>14</sup> Available at: “<http://wghr.org/wpcontent/uploads/2017/03/Fact-Sheet-05-Right-to-Water-and-Sanitation.pdf>.” “Right to water and sanitation,” factsheet for India's third-cycle universal periodic assessment by the Working Group on Human Rights in India and the United Nations.



an appropriate and efficient law, the rights are useless and serve no purpose. In addition, without a robust, independent, unbiased, and active judicial system, human rights in India would become political pawns and vulnerable to misuse by the influential people in the society (UNICEF, 2009)

### **Access to sanitation and clean drinking water**

With respect to clean drinking water and sanitation, fundamental cause is lack of availability to water and sanitation facilities, when people in specific groups are systematically ignored in comparison to the rest of society. At the same time, the government is responsible to resolve cases in which individuals are denied water and sanitary facilities<sup>15</sup> because they are unable to use toilet and intimidated with violence. So far, the requirement includes the prevention of cruel and unjust treatment as well as the safeguarding of the privacy rights. In summary, to improve access to water and sanitation the law must identify in reducing inequities. As a preliminary step, the Government must identify vulnerable and marginalized people, as well as discriminating practices and their underlying reasons. It can be seen that in the slums in India, access to drinking water and sanitation is a major challenge. This suggests that international laws that India has accepted do not necessarily become part of the national judicial process until they are integrated into legislation by the government. As indicated earlier, India has yet to pass a national law recognizing water and sanitation as human rights (United Nations Educational, Scientific and Cultural Organization, 2020).

As discussed previously, India requires relevant government entities, at all points require suitable systems to observe and assess quality of drinking water, as well as effectively eliminate chemical and bacteriological pollution<sup>16</sup>. In the same way, Dalits<sup>17</sup> in India are the most vulnerable caste to discrimination, have often been restricted to access facilities, such as water and sanitation, and are adversely impacted by deprivation<sup>18</sup>. That aside, Dalit young women have been attacked and abused while defecating in public. This caused several Dalit young women have been kidnapped and killed while coming after open defecation. Thus, it is necessary to develop a national legislative structure that respects human rights to water and sanitation, particularly, ensuring the uniformity of such legal structure throughout Indian states (Joy & Bhagat, 2016).

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<sup>15</sup> According to the “WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation,” over 524 million Indians (40% of the population) were forced to defecate in the open in 2015. In 2015, India accounted for more than 90% of individuals in Central and South Asia and 59% of the world's 892 million people who practiced open defecation.

<sup>16</sup> The government has released information about the “National Rural Drinking Water Programme.”

<sup>17</sup> As per report of Special Rapporteur, over 20% of Dalits in India do not yet have access to clean drinking water, and around 50% of Dalit communities do not even have access to safe water sources.

<sup>18</sup> Available at: <http://wghr.org/wpcontent/uploads/2017/03/Fact-Sheet-05-Right-to-Water-and-Sanitation.pdf>. "Right to water and sanitation," factsheet for India's third-cycle universal periodic assessment by the Working Group on Human Rights in India and the United Nations.



## **Conclusion**

It could be concluded that government should set up an independent governing system with sufficient monetary and human resources to oversee the enforcement of the human rights to water and sanitation with all its mentioned parameters. Correspondingly, regular monitoring of the execution of national water and sanitation policies from a human rights viewpoint in order to enhance the overall inclusion of the human rights approach. Alternatively, the lack of prioritizing in distributing water for residential and personal usage have a detrimental impact on persons living in disadvantaged conditions in India. Therefore, it is important to monitor and comply with the human rights to clean drinking water and sanitation at all levels of government, as well as by official and informal suppliers. With this in mind, attempts have to be made to obtain “free open defecation” status with duties to preserve the dignity of all people and not infringe other basic rights. To sum up, data should be fragmented by income level, migrant status, racial background, SC/STs, and other causes of discrimination to detect social inequalities, since this data influence the development of laws<sup>19</sup>.

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<sup>19</sup> The Bombay High Court ruled in 2014 that slums who lived in unauthorised homes could not be denied their basic right to water.



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