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BACKGROUND NOTE ON INDIAN LEGAL FRAMEWORK FOR ENVIRONMENT AND HEALTH DIMENSIONS OF WASTEWATER DISPOSAL

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1. Background

The vast majority of domestic wastewater is generated in urban areas, in line with the fact that open defecation is more prevalent in rural areas. On the whole, there is a mismatch between wastewater generation, treatment and disposal. In an alarmingly large number of cases, untreated or partly treated wastewater is disposed of/dumped into surface water and groundwater sources resulting in water and/or land pollution. As surface water and groundwater are the primary sources of drinking water supply in most parts of urban India, there is an obvious public health risk. The adverse impact of improper sewage disposal on the environment is another major area of concern, although it has not received the requisite legal and/or policy attention (except, usually, in conjunction with the public health dimension).

2. Laws framed by the Central Government

A comprehensive legal framework to regulate wastewater disposal is absent in India. At the Union level, the Water (Prevention and Control of Pollution) Act, 1974ⁱ and the Environment (Protection) Act, 1986ⁱⁱ include provisions concerning wastewater disposal. State Pollution Control Boards are responsible for their implementation. These laws also prescribe remedies for non-compliance. However, monitoring and implementation have been extremely poor. An overwhelming focus on industrial wastewater has also resulted in the unabated disposal of municipal wastewater without municipal authorities being held liable.

3. Laws framed by the State Government

At the State and local levels, municipal laws impose certain obligations, such as concerning wholesomeness of water supplied for domestic use and provision of proper places for wastewater disposal, which would require prevention of disposal of untreated/partly treated wastewater into sources of drinking water supply. The failure to fulfil these obligations has formed the subject matter of a number of judicial proceedings before the concerned High Courts. Similarly, owners/occupants of buildings are under an obligation to ensure that a prescribed minimum distance is maintained between sources of drinking water supply and drains. However, monitoring has been poor and as a result such provisions are routinely violated.

4. Laws relating to nuisance

Public nuisance is a criminal offence in the criminal laws of India, such as the Indian Penal Code and the Code of Criminal Procedure, 1973. Private nuisance is a civil offence under the

Code of Civil Procedure, 1908. Under a number of municipal laws, the local authorities are responsible for abatement of nuisance; in some laws, additional provisions penalising nuisance are also relevant. But these provisions have not been invoked in cases involving improper wastewater disposal for a number of reasons including cumbersome legal proceedings, litigation costs, etc. Although available to affected parties, remedies under tort law, such as for nuisance and negligence, have also not been pursued in the courts of India.

5. Judicial proceedings

The public health risk associated with water pollution resulting from disposal of untreated/partly treated wastewater has led to a number of judicial proceedings where courts have issued directions/orders to municipal authorities, State Pollution Control Boards and/or builders of residential colonies. An important case is *M.C. Mehta v. Union of India and Others*,ⁱⁱⁱ where the Supreme Court held the municipal authority for the city of Kanpur in the State of Uttar Pradesh to be primarily responsible for pollution of the river Ganga on account of discharge of untreated wastewater into the river. While the proactive approach of the courts has encouraged citizens to bring cases of inaction before the judiciary, implementation of judicial decisions has not been promising. The non-availability of funds, or the low importance attached to sanitation facilities, are two of the main reasons.

ⁱ Available at <http://www.ielrc.org/content/e7402.pdf>.

ⁱⁱ Available at http://envfor.nic.in/downloads/rules-and-regulations/eprotect_act_1986.pdf.

ⁱⁱⁱ AIR 1987 SC 1086. The text of the judgment is available at <http://www.ielrc.org/content/e8804.pdf>.