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RIGHT TO SANITATION IN INDIA

NATURE AND SCOPE

Sujith Koonan

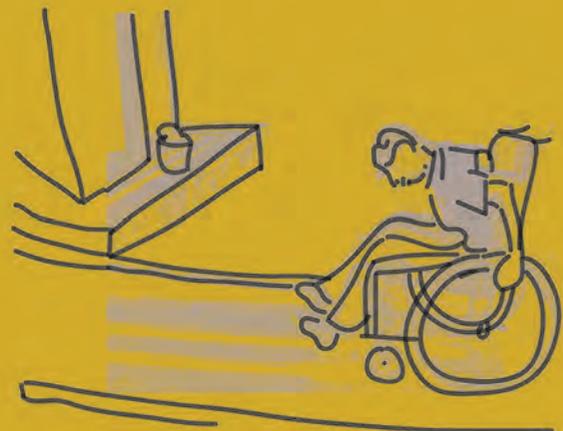
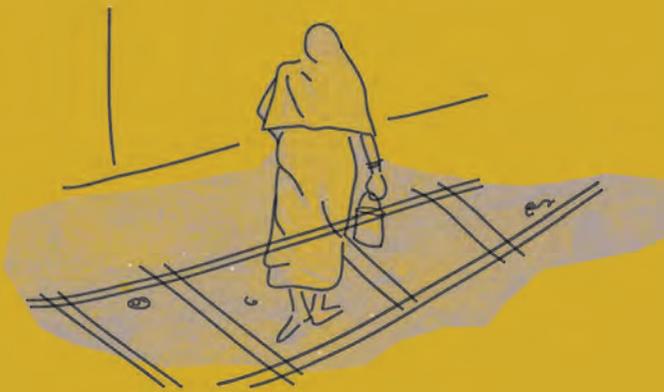
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RIGHT TO SANITATION IN INDIA

Nature, Scope and Voices from the Margins

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Forum for Policy Dialogue on Water Conflicts in India

Right To Sanitation In India: Nature And Scope

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Sujith Koonan

Introduction

In 2014, the Government of India launched the Swachh Bharat Mission (SBM), its flagship programme on sanitation. This has triggered a significant momentum in the sanitation sector in India. Although the SBM is more or less a continuation of the erstwhile policy framework on sanitation in India (the Nirmal Bharat Abhiyan in the rural sanitation context), it did manage to bring sanitation to the forefront in the agenda of implementation agencies. The state machinery including the machinery at the local level has started focussing more on implementation of sanitation policies and programmes. Achievement of open defecation free status has all of a sudden become a target for the state governments and local bodies.

The central government and state governments have been implementing a number of laws and policies to address sanitation issues. Despite this focus and increasing budget allocations, the abysmal sanitation scenario in the country persists. Some of the key sanitation issues and concerns are:

- a) Around 57% (626 million) of the 1.1 billion people in the world who practice open defecation are found in India. According to the 2011 census, the national sanitation coverage is 46.9%, whereas rural sanitation coverage is just 30.7%. For the marginalised such as the rural Dalits (23%) and tribals (16%), the figures are much lower. There are various reasons for the high rate of open defecation in India (Box 1.1).
- b) In addition to the lack of toilets, the rates of toilet usage is miserably low, with rural areas in some states like Madhya Pradesh, Bihar, Jharkhand, Odisha, and Chhattisgarh with a usage percentage of 13.6% to 22% only.
- c) The 2011 census report notes that 22.39% (or over Rs. 3.75 crores) of toilets supposedly built through various government schemes at individual household levels do not exist in reality. (Hindustan Times, 2015).
- d) According to the 2011 census data, there are 794,390 dry latrines in India from which the human excreta are removed by human beings, mostly by Dalit women.
- e) Women face several health, safety and dignity issues including physical and sexual violence due to a lack of sanitation facilities (Koonan and Bhullar, 2014).
- f) India has over one million sewerage workers. An overwhelming majority of them work without adequate protective gears. As a result, they increasingly suffer from occupational diseases. Also, accidental deaths of sanitation workers are not uncommon.

Box 1.1:**Some reasons why people prefer open defecation**

- (a) Open defecation provides an opportunity, particularly for rural women, to socialise.
- (b) Toilets are perceived to be “impure” places, which is why people construct toilets outside the house at a distance because they believe this is necessary for hygiene and cleanliness.
- (c) Some cultures (for example, Adivasis) think of toilets, particularly toilets within the house, as unhygienic and do not consider open defecation to be unhygienic.
- (d) Shortage of water is a significant problem in several places, which deters the construction and use of toilets.
- (e) The availability of open spaces is conducive to open defecation.

The articulation of a right to sanitation is considered to be one of the ways to address sanitation issues. It is hoped that articulating sanitation in human rights terms is an effective approach to address sanitation issues in a way that respects equity, human rights and environmental sustainability. This makes sense in the Indian context because equity, human rights and environmental sustainability are at stake due to the abysmal sanitation scenario in the country. In this context, the first part of this paper examines the nature of the right to sanitation as recognised at the international level and in India. The second part advances a broad articulation of the right to sanitation in the Indian context that includes important aspects and dimensions of this issue.

The Right to Sanitation: Developments at the International Level

Evolution of Water and Sanitation as Co-rights

The right to water and sanitation is a fundamental human right, one that is absolutely necessary to fulfil the goal of ensuring the human dignity of each individual on this planet by ensuring an adequate standard of living for all. The right to sanitation has been recognised and affirmed in various international treaties and political commitments.

A number of international instruments, directly or indirectly, recognise the right to sanitation. The right to sanitation is explicitly recognised in some human rights treaties addressing specific groups, for example, women and children (Box 1.2).

General Comment 15 (2002) on the Right to Water adopted by the Committee on Economic, Social and Cultural Rights recognises personal sanitation as an essential component of the right. General Comment 15 also recognises ensuring of access to basic sanitation as a core obligation emanating from the Right to Water (Box 1.3).

Box 1.2

The Convention on Elimination of Discrimination against Women, 1979, Article 14(2)(h):

State parties shall ensure to women: ...the right to enjoy adequate living conditions, particularly in relation to ... sanitation...

Convention on the Rights of the Child, 1989, Article 24

- 1) States parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- 2) States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, and the prevention of accidents.

Box: 1.3

General Comment 15 – The Right to Water, 2002

The legal bases of the right to water

2. The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

In addition to the legally binding treaties and the authoritative interpretation of legally binding treaties (e.g. General Comment 15) as mentioned above, there are soft law instruments (legally not binding) that recognise the right to sanitation. Most importantly, the UN General Assembly has contributed significantly to the normative endorsement of the right to sanitation at the international level. The UN General Assembly Resolution, 2010 is a landmark in this regard, which recognises the right to sanitation and acknowledges “the importance of equitable, safe and clean drinking water and sanitation as an integral component of the realisation of all human rights”. (UN, 2010)

Emergence of a Distinct Human Right to Sanitation

Until recently, international human rights laws were framed such that sanitation and water were considered together. As a result, more attention was paid to the right to water, and the right to sanitation was neglected. This is, for example, the case of legal instruments at the international level that refer to water and sanitation as ‘a human right’, and not ‘human rights’. This includes resolutions adopted by the UN General Assembly and the UN Human Rights Council.

The attempt to recognise a distinct right to sanitation began with the initiative by the UN Special Rapporteur on the human right to safe drinking water and sanitation. The Special Rapporteur argued that sanitation is a distinct right on account of its specific dignity dimensions and therefore should be treated as a distinct human right (Box 1.4).

The emergence of the right to sanitation as a distinct right can be justified on various grounds.

- (a) Explicit legal recognition of the right to sanitation will make it a legal entitlement, rather than a charity or only a moral priority.
- (b) A legal entitlement provides opportunities for the right holders to make duty bearers accountable.
- (c) Concerns and interests of vulnerable and marginalised groups will get priority attention.

The International Covenant on Economic Social and Cultural Rights (ICESCR), 1966 is perhaps the most important legal instrument in the context of the right to sanitation, but it is silent on the right to sanitation. However, it has been interpreted that Article 11 of the ICESCR was intended to broadly include many rights including the right to sanitation. In this context, in 2010, the UN Committee on Economic Social and Cultural Rights adopted the Statement on the Right to Sanitation (Box 1.5). This is probably the first step towards an explicit recognition of a distinct right to sanitation at the international level.

Box 1.4:

Why a separate human right to sanitation?

[i] mportance of sanitation is downgraded due to the political preference given to water. Naming both water and sanitation as separate human rights provides an opportunity for governments, civil society and other stakeholders to pay particular attention to defining specific standards for the right to sanitation and subsequently for the realisation of this right. Further, separating the right to sanitation from the right to water recognises that not all sanitation options rely on water-borne systems.

Source: Albuquerque and Roaf, 2012

Box: 1.5

UN Committee on Economic, Social and Cultural Rights, Statement on the Right to Sanitation, 2010

7. The Committee reaffirms that since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights. The right to sanitation is also integrally related, among other Covenant rights, to the right to health, as laid down in Article 12 paragraphs 1 and 2 (a), (b) and (c), the right to housing, in Article 11, as well as the right to water, which the Committee recognised in its General Comment No. 15. It is significant however, that sanitation has distinct features, which warrant its separate treatment from water in some respects. Although much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged.
8. In line with the definition of sanitation as proposed by the Independent Expert on Water and Sanitation as ‘a system for the collection, transport, treatment and disposal or re-use of human excreta and associated hygiene’, States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, ‘in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity’. The Committee is of the view that the right to sanitation requires full recognition by State parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability.

In 2015, the UN General Assembly adopted another resolution that specifically recognises the human rights to drinking water and sanitation (Box 1.6). This resolution is significantly different from the previous resolutions in the sense that it recognises the right to water and right to sanitation as separate rights instead of recognising the right to water and the right to sanitation together as a single integrated right.

Box: 1.6

United Nations General Assembly Resolution – The Human Rights to Safe Drinking Water and Sanitation, 2015

Acknowledging the importance of equal access to safe drinking water and sanitation as an integral component of the realisation of all human rights,

1. Affirms that the human rights to safe drinking water and sanitation as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights;
2. Recognises that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living.

The Government of India has not only signed ICESCR in the 1960s, which implicitly included the right to sanitation, but in the year 2010 has further confirmed its commitment by voting in favour of a specific UN resolution that recognised the right to sanitation explicitly. At the regional level, India has been a supporter of the articulation of the right to sanitation, for example through the South Asian Conference on Sanitation (SACOSAN) declarations.

Summary

In light of the above, it is important to examine the current situation in India with regard to the establishment of a right to sanitation:

- (a) The Government has been a supporter of the idea of the right to sanitation at the international level.
- (b) The Government of India has consistently expressed its commitment towards a right to sanitation in SACOSAN conferences including the latest SACOSAN VI held in Dhaka in 2016.
- (c) The Government of India has been translating its commitments by annually increasing the budget for sanitation through various programmes and schemes.

Right to Sanitation in India

Sanitation: Regulation and Governance

As per the Constitution of India, regulation and governance of sanitation in India is in the domain of state governments and local government. State governments have the power to adopt laws relating to sanitation. While the legislative

competence lies with the state government, the Constitution envisages major sanitation related responsibilities to be vested with the local governments (panchayats, municipalities and corporations).

Human right to sanitation

The Constitution of India does not recognise the right to sanitation explicitly. However, the Constitution recognises the right to sanitation indirectly in different forms. The higher judiciary in India (the Supreme Court and High Courts) has interpreted the fundamental right to life under Article 21 of the Constitution to include the right to sanitation (Box 1.7). The right to sanitation is, therefore, a part of the fundamental right to life and is a justiciable right.

Sanitation is also a part of the 'Directive Principles of State Policy' (DPSP) in Part IV of the Constitution. More specifically, it can be read as part of Article 47, which provides that it is a duty of the government to raise the standard of living. Sanitation is undoubtedly a factor that contributes to a decent standard of living. Sanitation is also a part of Article 48A that makes it a duty of the state to 'protect and improve the environment'. Directive Principles are not enforceable and therefore no individual can approach a court against the government for its failure to give effect to the above-mentioned provisions. However, it is important in the sanitation context because they are fundamental norms for the government to implement.

Box: 1.7

Cases on Right to Sanitation

Virender Gaur v. State of Haryana, Supreme Court of India (1995)2 SCC 577

Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit...sanitation without which life cannot be enjoyed.

LK Koolwal v. State of Haryana, High Court of Rajasthan, AIR 1988 Raj. 2

Maintenance of health, preservation of sanitation and the environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.

Right to Sanitation in other laws

The explicit recognition of the right to sanitation as a right deriving from the fundamental right to life is a huge step ahead. However, more clarity on the contents of the right needs to be developed ideally through a statutory framework so that both the right holders and the duty bearers are aware of the nature and scope of the right as well as remedies in case of violations. A comprehensive law addressing sanitation in general and the right to sanitation in particular is absent in India. At the same time, a number of statutes addressing different dimensions of sanitation exist. Some of the important statutes in this context are:

Duties of local bodies

In the rural context, sanitation is a responsibility of gram panchayats under the Panchayati Raj Institution (PRI) laws. The duties of the panchayats in this regard

include the duty to take all necessary actions for the improvement of sanitation, implementation of rural sanitation schemes, and carrying out sanitation related activities such as cleaning of public roads, drains, tanks, wells and other public places; construction and maintenance of public latrines; and maintenance and regulation of burial grounds. While the gram panchayat is supposed to take the lead role insofar as sanitation is concerned, panchayats at the block and district level also play crucial roles. Similarly, in the urban context, sanitation is a duty of urban local bodies under laws governing urban local bodies. Duties in this regard include disposal of solid and liquid waste. In some metropolitan cities, para-statal agencies are responsible for water supply, sewerage and sanitation (for example, the Delhi Jal Board).

Judicial forums in India have underlined the duty of local bodies to provide and maintain sanitation facilities. For example, the Supreme Court in the *Ratlam Municipality* case held that the urban local bodies cannot rely on lack of money as an excuse for not undertaking its sanitation related duties mentioned in the statute (Box 1.8).

Box: 1.8

Municipal Council, Ratlam v. Vardhichand, Supreme Court, AIR 1980 SC 1622

A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems- not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if the municipality is to justify its existence.

Laws Regulating Specific Places or Premises

There are other statutes that recognise the rights and duties relating to sanitation in some specific places or premises such as work places and schools. These statutes recognise the right to sanitation by prescribing sanitation duties.

- (a) Right of Children to Free and Compulsory Education Act, 2009 specifies norms for schools to provide toilet facilities for children and separate provision of toilets for girls.
- (b) Labour laws address the sanitation needs of workers in workplaces. For example, it is mandatory for factories to have separate latrines and urinals for men and women under the Factories Act, 1948.
- (c) According to the Contract Labour (Regulation and Abolition) Act, 1970, it is the duty of every contractor employing contract labour to provide 'a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment' (section 18).
- (d) According to the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, it is the duty of the employer to provide sufficient latrine and urinal facilities at work place which can be accessible to the building workers at all times (section 33).

- (e) According to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the government is responsible for ensuring 'barrier-free environment in public places, work places, public utilities, schools and other institutions' which inevitably includes sufficient facilities at toilets according to the requirements of persons with disabilities (section 8).

Manual Scavenging and Sanitation Workers

The cleaning of sewerage systems and handling of human waste in general is still carried out primarily by Dalits, mostly Dalit women (Srivastava, 1997: 15). This improper and unscientific human excreta disposal practice is extremely dangerous to the health of the individuals involved in it, not to mention the mental and social trauma attached to it. Further, it is also harmful to the environment. Thus the continuance of the practice of manual scavenging is a violation of the right to sanitation as well as many other basic human rights including dignity and health. Use of dry latrines as well as its manual cleaning by people belonging to a few lower caste communities is incompatible and contradictory to the right to sanitation.

Thus, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act was enacted in 1993 to prohibit the construction of dry latrines and the employment of manual scavengers. However, most of the state governments, if not all, failed to implement the Act. This led to two important changes, a public interest litigation (PIL) filed in the Supreme Court in 2003¹ and the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

The 2013 Act is relevant in the right to sanitation context as it imposes a legal obligation on the owner of a property where a dry latrine exists to demolish it or convert it into a sanitary latrine. It also imposes sanitation related obligations upon the government (local bodies and other agencies), which includes construction of community latrines to replace dry latrines and the maintenance of such community latrines.

1. This PIL was finally disposed in 2014 with a direction to implement the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. See *Safai Karmachari Andolan v. Union of India*, Writ Petition (Civil) NO. 538 of 2003, Decided on 27 March 2014, <http://www.ielrc.org/content/e1402.pdf>.

Box: 1.9

Rights of Sanitation Workers

Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others, (2011) 8 SCC 568 (Supreme Court of India).

- Medical examination and medical treatment will be given free of charge to sewer workers and the treatment will continue for all such workers found to be suffering from an occupational disease, ailment or accident until the workman is cured or until death.
- The services of the sewer workers are not to be terminated, either by the respondents or the contractors engaged by them, during the period of illness and they shall be treated as if on duty and will be paid their wages.
- The respondents shall pay on the death of any worker, including any contract worker, an immediate ex- gratia solatium of Rs. one lakh with liberty to recover the same from contractors, if permissible in law.
- The respondents shall pay / ensure payment of all statutory dues such as Provident Fund, Gratuity and Bonus to all the sewer workers, including contract workers, as applicable in law.
- The respondents shall provide as soon as possible modern protective equipment to all the sewer workers in consultation with the petitioner organisation.
- The respondents shall provide soap and oil to all the workmen according to the present quota, but on monthly basis and not at the end of the year.

The 2013 Act is also relevant in the right to sanitation context as it brings the rights and safety of sanitation workers within its ambit as well, which was absent in the 1993 Act. While the 2013 Act does not elaborate the legal requirements to ensure safety and dignity of sanitation workers, the higher judiciary has filled this gap through directives (Boxes 1.9 and 1.10).

Box:1.10

Compensation for sewer deaths

Safai Karmachari Andolan v. Union of India, Supreme Court, 2014(4) SCALE 165

14 (ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:

- (a) Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.

14 (iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs. 10 lakhs for each such death to the family members depending on them.

Summary

A combined reading of sanitation related case laws and statutes clarifies that the legal system in India recognises the right to sanitation. While statutes do not use the term ‘right to sanitation’, they spell out the right to sanitation through a language of legal duties of both government and individuals/institutions. The existing legal framework provides some hints to the operative contents of the rights.

- (a) The language of duties instead of rights is used in statutes.
- (b) It is a mandatory duty to provide basic sanitation facilities, that is a right to have separate toilets for women/girls and men/boys at public places, schools and workplaces.
- (c) The law prohibiting manual scavenging adds the important caste and dignity dimensions of sanitation to the framework of the right to sanitation. It also brings in the rights of sanitation workers within the framework of the right to sanitation.

Nature and Scope of the Right to Sanitation

Contents of the Right

Sanitation has been defined by the United Nations as a system for the collection, transport, treatment, disposal or reuse of human excreta and associated hygiene. Accordingly, the human right to sanitation entitles everyone to sanitation services that are physically accessible and affordable, safe, hygienic, secure, socially and culturally acceptable, and which provide every individual the degree of privacy that s/he desires, and thus ensures dignity. (de Albuquerque, 2014: 4)

Box: 1.11**Contents (Winkler, 2016)**

Availability: Availability of sufficient number of sanitation facilities

Quality: Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleansing and hand washing at critical times is essential.

Acceptability: Sanitation facilities, in particular, have to be culturally acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

Accessibility: Water and sanitation services must be accessible to everyone within, or in the immediate vicinity of, household, health and educational institutions, public institutions and workplaces. Physical security must not be threatened when accessing facilities.

Affordability: The price of sanitation and water services must be affordable for all without compromising the ability to pay for other essential necessities guaranteed by human rights such as food, housing and health care.

The human right to sanitation as evolved at the international level is limited in scope because it focuses on the issue of disposal of human excreta and associated hygiene. This is significantly different from the concept of sanitation (and thus the right to sanitation) as understood in India. For example, the concept of sanitation in India is much more than basic sanitation facilities and includes overall environmental quality and eradication of insanitary practices such as manual scavenging. It also includes the rights of sanitation workers. These aspects are not articulated in the context of the right to sanitation at the international level. Therefore, the right to sanitation in India needs to be more comprehensive to include India-specific sanitation issues such as manual scavenging and the rights of sanitation workers.

The articulation of a right to sanitation in India must necessarily include the following elements:

- (a) Ensuring that sanitation needs and concerns of vulnerable and marginalised sections of the society such as tribals, the differently abled, homeless and migrant workers are addressed on a priority basis. A framework on sanitation based on the idea of a right to sanitation demands that priority attention must be paid to the needs of the marginalised and the vulnerable. At the same time, the process to address their issues should be carried out with their active participation and by taking into account their perspectives and needs; (See annexure)
- (b) Ensuring that the facilities and infrastructure created are in accordance with geographical and environmental conditions, even as they are sensitive to the specific needs of different sections of Indian society and their life cycles, which would specifically include ensuring of designs that are inclusive for women and men, the old and young, and those with varying forms of disability, even as it ensures the availability of water for personal hygiene and menstrual hygiene management;
- (c) Ensuring that no human being is manually involved in cleaning human excreta, which would specifically include the strict enforcement of the law prohibiting manual scavenging;

- (d) Ensuring health and environmental safety;
- (e) Ensuring safety and dignity of sanitation workers;
- (f) Ensuring the availability of sanitation facilities in public places;
- (g) Ensuring appropriate infrastructure and resources so that all human beings at all times have access to sanitation facilities, which would include making available interim facilities for people living within the geographical boundaries of the country, including those in relief camps, migratory workers, communities in conflict situations and other such unsettled groups, irrespective of their citizenship.

Implementation of the Right to Sanitation

The state is the primary duty bearer in the context of the right to sanitation. There are two categories of obligations of the state deriving from the human right to sanitation - negative and positive duties. A negative obligation is the obligation not to interfere with the enjoyment of human rights, while a positive obligation is the obligation to take affirmative action for the realisation of human rights (Committee on Economic, Social and Cultural Rights, 2002).

It is the duty of the state to take steps to ensure 'progressive realisation' of the right to sanitation. Progressive realisation is not meant to be an excuse not to act. It only indicates the possibility of gradual and incremental improvement in the realisation of the right. Thus, the state is duty bound to explain and justify the measures taken to realise the right. The immediate obligation implied in this duty demands avoidance of all retrogressive steps and a duty to guarantee that relevant rights are exercised without discrimination. Thus, existing sanitation provisions must be extended to excluded or vulnerable groups. Further, it is also a duty of the state to ensure the utilisation of the 'maximum available resource'. Although these norms do not specify the precise steps to be taken by the state, it clearly demands positive initiatives from the state including a progressive increase in the fund allocation.

In addition, the right to sanitation also demands that a framework must be in place for the right holders to approach the state to remedy the violation of their right. Thus, the establishment of competent institutions through which individuals can claim their right is a must. A mechanism to ensure accountability of the duty bearers is important. Therefore, the institutional framework must also include mechanisms to ensure the accountability of implementing agencies.

In India, despite the presence of laws and constitutional norms and a vision, the law has always taken a back seat in the sanitation sector. Programmes and schemes have been regulating and governing the sector. Therefore, in the current scenario, sanitation programmes and schemes are extremely important from the implementation point of view.

Various programmes and schemes have been implemented by the government, most importantly the central government, over the last few decades. The SBM is the latest in this series. Over the years, the approach of the government towards

the sanitation sector has changed significantly. Initially the government perceived sanitation facilities as its responsibility. Thus, the key policy strategy was to provide subsidies to people to build household toilets. For example, the first flagship programme on rural sanitation, the Central Rural Sanitation Programme, followed a supply-oriented approach. Over the years, the approach has undergone drastic changes. At present, the strategy is to follow a demand-oriented approach. Thus, subsidies have been replaced by incentives. Another major change is the importance given to behaviour change and communication (BCC).

An effort to increase the awareness of the people is an important step from a right to sanitation perspective. BCC initiatives have been overwhelmingly focusing on the dignity of women as a factor to induce good sanitation behaviour, most importantly the construction of household toilets. For example, the rural sanitation guideline in Madhya Pradesh was named '*Maryada Abhiyan* Guideline – essentialising women's development' and it uses the dignity of women as a rationale to encourage men to construct toilet at home (Box 1.12). Further, the implementation of BCC has been criticised for using humiliation (mostly targeting women) as a method to induce people to stop open defecation (Poornima, 2013).

The focus on women in BCC initiatives is misplaced from the point of view of women's rights. On one hand it adopts an approach, giving an impression that household toilets are meant only for women and their dignity. On the other hand, pictures and narratives used for BCC promote social practices like *purdah* system that women's rights movements have been fighting against. Hence, the way in which implementation of the BCC needs to be revisited. It should be ensured that BCC activities are respect women and should not use social practices that negatively targets women and thereby affect the goal of realisation of women's rights and empowerment.

Box: 1.12

Government of Madhya Pradesh, *Maryada Abhiyan* Guideline – Essentialising Women's Development

PLEDGE

'I hereby pledge to withstand the dignity of my sister, daughter, wife and mother, as long as I am alive, by constructing a toilet in my house, with all members of my family using it and stopping the practice of open defecation...'

Enforcement through Courts

The legal duties envisaged under the Constitution and various statutes are indeed legally enforceable. There are instances wherein the existing laws have been used by individuals and organisations to enforce their right to sanitation (Box 1.13).

Some of the important existing legal forums are:

- (a) The Supreme Court and High Courts (writ petitions, for example, against local bodies for not fulfilling their statutory duties)

- (b) Office of Lokayukta and Up-Lokayukta (complaint of maladministration and corruption against government officers including the office bearers of local bodies)
- (c) Grievance redressal system established under the right to services law (for example, the Kerala State Right to Services Act, 2012)
- (d) Ombudsman appointed under the PRI laws (provides a forum for citizens to approach with their grievance against panchayats)
- (e) Statute specific bodies (for example, inspectors appointed under the Factories Act, 1948; The Chief Commissioner and the Commissioner appointed at the central and state level under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995)

In principle, the forums mentioned above are available for people to enforce their right to sanitation. Given the fact that most of the right holders whose rights are denied belong to the marginalised and vulnerable sections of society, it is not sure that they will be able to assert their rights. This points the need for a vigilant government mechanism to ensure accountability of the duty bearers.

Box: 1.13

A. Ahammed Kabeer v. Pudunagaram Grama Panchayath, High Court of Kerala, WP(C) No. 26997 of 2006(L), 17 January, 2007

In this case, sanitation related rights and duties were discussed before the Kerala High Court. The litigation began when the health inspector issued a notice to the petitioner to construct a soak pit covered by a slab in his property to discharge the sullage water from his house. The panchayat machinery acted upon complaints from other residents in the locality citing the reason of public nuisance. Having no space for a soak pit in his premise, the petitioner wanted to discharge the sullage into the nearby sewerage. The petitioner accordingly wanted the permission to lay a pipe which was denied by the panchayat. This action of the panchayat was challenged through a writ petition. The case was dismissed by the Court on procedural grounds – the petitioner was asked to approach appropriate authorities under the Kerala Panchayat Raj Act. However, it is to be noted that the panchayat admitted its legal responsibility to provide sanitation facilities under law and explained to the court the initiatives taken to fulfil this responsibility. This demonstrates that people can get the responsible government agency to explain actions taken for the realisation of the right to sanitation.

Citizen and Inhabitants of Municipal Ward No. 17 Municipal Corporation Gwalior, High Court of Madhya Pradesh, 1992(1) MPJR 93.

This case was filed against the Municipal Corporation for not providing a number of civil amenities including sanitation such as cleaning of public streets, places and sewers; disposing of night soil and rubbish, and construction of latrines and urinals. The High Court directed the Municipal Corporation to ‘construct...sewer lines...construct public latrines and urinals at suitable sites so as not to cause any nuisance to the citizens’.

Conclusion

The Right to Sanitation campaign takes heart in the fact that the Indian state has internationally committed itself to the realisation of such a right, and is increasingly allocating funds to establishing sanitation facilities in the country. However, there is a need to ensure that these efforts are not limited to an open-defecation-free focus, and that a holistic understanding of the right to sanitation that encompasses various dimensions of sanitation such as caste, gender, class and environment undergirds these efforts. (Koonan, 2012)

The right to sanitation has been recognised in India at different levels. From the perspective of the Constitution of India, sanitation is a fundamental right. The Supreme Court and different high courts have interpreted the fundamental right to life to include the right to sanitation. However, the contents of the right, related duties and a mechanism to ensure remedies and accountability are yet to be elaborated through a statute. The absence of details in laws has led to the regulation and governance of the sanitation sector in India through policies, programmes and schemes that do not speak the language of rights and do not guarantee any accountability mechanism.

Therefore, it is high time that the option of a specific statutory framework on sanitation that is based on the idea of right to sanitation is explored. Such a statutory framework should lay down principles and norms to guide the implementation of sanitation programmes and schemes (Koonan, 2012). Given the fact that sanitation is in the legislative domain of the state governments, the central government could frame a model bill to inspire or guide the state governments.

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