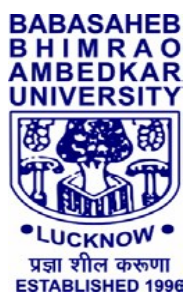


Right to Sanitation In India: A Socio-Legal Study with Special Reference to Lucknow City, Uttar Pradesh

Abstract of THESIS

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ABSTRACT

The right to sanitation has been progressively integrated into the international human rights legal framework. Ten years ago, on July 2010, the United Nations General Assembly passed a resolution and expressly recognized water and sanitation as human rights. This resolution has also acknowledged that Water and sanitation are essential to realize all other human rights. The General Assembly also called upon States to provide financial and technical resources to scale up efforts to provide safe, clean, accessible, and affordable drinking water and sanitation for all.¹ In addition, the resolution also clarified the legal basis of the right. This means that the right to safe drinking water and sanitation is contained in legally binding human rights treaties and is therefore legally binding.² This recognition, which took several decades of sustained efforts to achieve, undeniably proved a great milestone. However, till today, about half the world's population of 3.6 billion people still lacks safe sanitation.

Sanitation is an integral aspect of human life. It is generally related to our day-to-day tasks such as maintaining hygiene, bathing, washing hands, proper defecation, and maintaining scientific distance from pollutants. Lack of adequate sanitation facilities causes several health issues and environmental degradation. Sanitation systems aim to protect human health by providing a clean environment to prevent disease transmission. According to UNICEF, more than 700 children under the age of 5 die of diarrhea every day due to unsafe water, sanitation, and poor hygiene. Unfortunately, very few people understand the importance of safe, accessible, and acceptable sanitation. For this reason, there has been silence for a long time regarding the subject of sanitation. Sanitation is such a topic that people do not consider it necessary to talk about because they find it a matter of privacy.

Sanitation is a much more complex field, and it faces many challenges. The first challenge is related to defining the concept of sanitation itself. Even though there are numerous definitions of sanitation, they often do not capture all the relevant human rights dimensions and principles. Thus, any definition of sanitation is myopic and narrow unless it addresses all the dimensions of social life imbibed in the understanding

¹ UN DOC A/RES/64/292

² UN DOC A/HRC/RES/15/9

of sanitation. For example, the word sanitation has been defined by the World Health Organization (WHO) that sanitation refers to the provision of facilities and services for the safe disposal of human urine and faeces. The WHO also adds that sanitation refers to maintaining hygienic conditions through garbage collection and wastewater collection services. This definition looks at sanitation from a health point of view only and keeps sanitation narrowly confined to the safe disposal of human urine, faeces, and garbage. It is a narrow approach that does not define what is meant by ‘safe disposal’ and the possible ‘adverse effect on others’ while enjoying the sanitation facilities by many. However, the WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation defined improved sanitation as managing human faeces at the household level.

The Millennium Development Goal (MDG), Target 7c, includes a water goal, but not sanitation. However, during the MDG period, WHO/UNICEF provided regular estimates of global access to water supply and sanitation through their Joint Monitoring Program for Water Supply and Sanitation (JMP). For sanitation, WHO/UNICEF reported access to an ‘improved’ sanitation facility at the household level, which is not shared.³ The sanitation goal has been included, for the first time, under Section 8 of the Plan of Implementation of the World Summit on Sustainable Development held in 2002. The Summit adopted some Sustainable Development Goals (SDGs), including human dignity, access to clean water, sanitation, improved environmental problems, improved human health, etc. SDG-6 is related to sanitation, targeted to achieve ‘universal and equitable access to safe and affordable drinking water and access to adequate and equitable sanitation and hygiene for all by 2030.’ In this SDG period, the JMP has proposed a change in the nomenclature. In place of the word ‘improvement,’ as defined in MDG, the term ‘basic’ has been used to refer to sanitation. It also introduced the concept of ‘safely managed’ sanitation facilities, which means basic sanitation facilities from which excreta are safely disposed of *in situ* or, as faecal sludge and wastewater, are transported and treated off-site.

As far as a standard definition of the right to sanitation is concerned, the ‘International Year of Sanitation’ 2008 provided much-needed impetus in defining sanitation. It declared that “everyone, i.e., all the people of the world, have a right to a

³ The Sanitation and hygiene targets of the sustainable development goals: Scope and Challenges, vol. 8 (1) *Journal of Water, Sanitation and Hygiene for Development* (2018), pp. 1–16.

healthy life and a life with dignity. In other words, everyone has the right to sanitation.” In 2009, the then United Nations Independent Expert Catarina de Albuquerque on human rights obligations related to access to safe drinking water and sanitation proposed a definition of sanitation. She defined sanitation as ‘a system for the collection, transport, treatment, and disposal or reuse of human excreta and associated hygiene. Moreover, the states must ensure without discrimination that everyone has physical and economic access to sanitation in all sphere of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy, and ensure dignity.’⁴ The proposed definition of sanitation was drawn from elements related to sanitation as addressed in International human rights law. Later on, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) endorsed this definition of an independent expert in a statement on the Human Right to Sanitation, issued in November 2010.

Sanitation is a challenging issue in India also. But, in India, sanitation has been seen as a comprehensive concept, which includes liquid and solid waste disposal, food hygiene, personal, domestic as well as environmental hygiene.⁵ Another concept of sanitation includes personal hygiene, home sanitation, safe water, garbage disposal, excreta disposal, and wastewater disposal.⁶ These concepts were helpful in linking hygiene and sanitation, environment and sanitation, the individual and public dimensions of sanitation, and link between the liquid and solid waste management. At the same time, they failed to specifically include manual scavenging, dignity, and gender issue in the ambit of sanitation.⁷ This limited definition remains a limited relevance as there is no definition of sanitation in any statute also. Lack of definition is problematic from two different perspectives. First, the scope and understanding of sanitation differ in rural and urban areas. Second, the sanitation interventions focus only on ensuring the construction of toilets in each household.⁸

⁴ P. Cullet, S. Koonan, et al. (eds.), *The Right to Sanitation in India: Critical Perspective*, p.15 (Oxford University Press, New Delhi, 2019)

⁵ Government of India, “Guidelines for Central Rural Sanitation Program- Total Sanitation Campaign” (Ministry of Rural development, department of Drinking Water Supply, 2001).

⁶ Government of India, “Guideline for Nirmal Bharat Abhiyan” (ministry of Drinking Water and Sanitation, 2012).

⁷ P. Cullet, S. Koonan, et al. (eds.), *The Right to Sanitation in India: Critical Perspective*, p.76 (Oxford University Press, New Delhi, 2019)

⁸ *Ibid.*

The right to sanitation must be understood and implemented in terms of its broader connotation. Another challenge that needs to be considered is the connection of sanitation with the right to health. The health challenges linked to sanitation are acknowledged but not always clearly integrated into the debate around the right to sanitation. The impact of insanitary conditions on the environment is direct and severe yet there is a significant disconnection between sanitation and the right to clean and hygiene environment, both at the regulatory level and on the ground. The link between sanitation and the environment is enshrined in environmental law. The law provides indirect concern for sanitation but does not provide the basis for comprehensive regulation of the environmental aspect of sanitation. There are immense environmental challenges related to sanitation that need to be addressed, for instance, solid and liquid waste management, etc.

There is also a lack of human dignity aspect of sanitation, which needs to be given a much more central place in the realization of the right to sanitation. Sanitation intervention must focus on vulnerable groups and people, including women, children, disabled persons, manual scavengers, sanitation workers, etc. The Supreme Court of India has confirmed that the Indian Constitution ‘has its own internal morality based on dignity and equality of all human beings.’ Thus, in the context of sanitation, the human dignity dimension of vulnerable persons is yet to be realized and requires greater emphasis on legislation and social practices.

Furthermore, sanitation is still largely understood by the policymaker as access to toilets, ignoring many other dimensions of sanitation that need to be considered to make a real difference in people's lives.

Sanitation under International Human Rights Framework

Sanitation is a human right that has been recognized directly or indirectly under various international legal frameworks. Lack of sanitation suffers the standard of adequate living of human beings, yet sanitation remains a neglected subject at all levels. The Universal Declaration of Human Rights (UDHR), 1948, which deals with fundamental human rights provides the standard of adequate living as a basic human right. The preamble and Article 25 of the Universal Declaration of Human Rights (UDHR) recognizes the right to sanitation impliedly under the ‘adequate standard of

living.’⁹ The various United Nations conventions such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, the Convention on the Elimination of All Forms of Discrimination Against Women 1979,¹⁰ the Convention on the Rights of Child 1989,¹¹ and the Convention on the Rights of Persons with Disabilities, 2006,¹² provides for the right to sanitation under the provisions of the ‘adequate standard of living.’ Under many international human rights laws, the right to sanitation has always been seen to be associated with the right to water, and both are included within the right to an ‘adequate standard of living’ that is to be provided by the states. Moreover, in order to respond to the practical problems that states face while realizing the human rights to water and sanitation, the international legal norms can be incorporated by the states into their national laws, regulations, and policies, national and sub-national budgets, and into the planning processes for service delivery.

All human rights impose three types of obligations on the states, that is, they must respect, protect and observe human rights. The obligation in respect of the human rights to water and sanitation means that the state cannot prevent people from enjoying the human rights of water and sanitation. These obligations have been clarified in General Comment No. 15 of the United Nations Committee for Economic, Social and Cultural Rights (CESCR), 2002, on the Human Right to Water. General Comment No. 15 found that the human right to water is implicitly included in the human right to an ‘adequate standard of living’¹³ and the ‘right to health’¹⁴ (articles 11 and 12 of the ICESCR). While article 11 does not explicitly mention water or sanitation, the use of the term “including” in the Covenant requires the incorporation of all aspects that are indispensable for reaching an adequate standard of living. These obligations of the states have also been clarified in the Report of the Special Rapporteur, Catarina de Albuquerque, on the Right to Sanitation in 2009.¹⁵

In 2010, the United Nations CESCR adopted the statement on the Right to Sanitation and that “The Committee is of the view that the right to sanitation requires

⁹ The Universal Declaration of Human Rights (UDHR), 1948. Art.25

¹⁰ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Art. 14 (2)(h)

¹¹ The Convention on the Rights of the Child (CRC). Art. 24 (2)

¹² The Convention on the Rights of Persons with Disabilities (CRPD). Art. 28 (2)(a)

¹³ The International Covenant on Economic, Social and Cultural Rights. Art.11

¹⁴ *ibid.* Art.12

¹⁵ Catarina De Albuquerque, Realising The Human Rights to Water and Sanitation, UN Special Rapporteur on the human right to safe drinking water and sanitation. (2014).

full recognition by States parties in compliance with the human rights principles.” It was probably the first step towards explicit recognition of an individual right to sanitation at the international level. Moreover, the Special Rapporteur also argued that water and sanitation should be treated as two distinct human rights with equal status. As a result, in 2010, the United Nations General Assembly, through its resolution, explicitly recognized water and sanitation as human rights.¹⁶ In 2015, the United Nations General Assembly adopted another resolution that recognized the ‘right to water’ and the ‘right to sanitation’ as separate and individual rights.¹⁷ The resolution recognized that ‘the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, i.e., safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity.’¹⁸

The Right to Sanitation in India

Compared to other countries, sanitation is a challenging issue where several sanitation-related socio-economic problems prevail in India. One of the main challenges is that sanitation has always been seen with water under the various national legal frameworks, due to which much attention was given to water only, and sanitation has been ignored.

Indian society has often given high priority to sanitation in ancient times. At that time, sanitary engineering was at a developed stage. Indus Valley Civilization and Harappa reveal simple and easy solutions to facilitate wastewater drainage through underground drainage systems. Such improved sanitary practices continued across the reign of various dynasties, like the Mauryas, Guptas, or the southern kingdom of Vijayanagar, that ruled the subcontinent. Various social reformers of India also propagated the importance of sanitation. From Patanjali’s philosophy to Vivekananda’s writings and later, in modern India where the Gandhian concept of sanitation evolved, the emphasis on sanitation has remained an integral part of India’s cultural foundation.

¹⁶ UN General Assembly (UNGA), Resolution: The human right to water and sanitation, 2010. (A/RES/64/292).

¹⁷ A/RES/70/169,

¹⁸ Robert Bos, *Manual of the Human Rights to Safe Drinking Water and Sanitation for Practitioners*, p.4 (IWA Publishing, London, 2016)

In India, the basic privilege of access to sanitation facilities takes its current legal status from the ‘fundamental rights’ provided in the ‘Constitution of India.’ Although, the right to sanitation is not explicitly recognized as a Fundamental Right, but it is directly linked to other fundamental rights, mainly the right to water,¹⁹ the right to health,²⁰ the right to education, and the right to a clean environment.²¹ Furthermore, it is the higher judiciary that progressively considered issues related to sanitation and recognised its existence as a derivative right. In its landmark judgment of *L. K. Koolwal vs. State of Rajasthan*,²² the Hon’ble High Court of Rajasthan declared that the maintenance of health, preservation of the sanitation, and environment falls within the purview of Article 21 of the Constitution of India. Later, the Supreme Court addressed the issue of sanitation directly in the case of *Municipal Council Ratlam vs. Vardhichand*. In this case, Justice Krishna Iyer lashed out at the municipality for not providing basic facilities and trying to wriggle out its statutory obligations. Later, in the case of *Virendra Gaur vs. the State of Haryana*,²³ the Supreme Court of India has derived sanitation as a fundamental right from the ‘right to life’ under Article 21 of the Constitution of India and stated that ‘Art. 21 encompasses water and sanitation within its ambit, without which one cannot enjoy life.’

Article 21, along with the expansion of its scope, also casts a duty on the State to secure to every person the opportunity to enjoy life with dignity, including the right to practice safe sanitation.²⁴ The Directive Principles of State Policy directs the state to take measures to improve the environment and health conditions while making laws. Article 47 of the Directive Principles places an obligation on the states to address issues relating to public health as their foremost duty. Article 48-A states that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Also, Article 51-A (g) casts a fundamental duty on every citizen of India to protect and improve the natural environment. Therefore, it is the obligation of the State as well as the individuals to strive to achieve a hygienic environment.

Importantly, sanitation is a state subject under the Constitution of India and the states have the primary duty to maintain sanitation. **Entry-6** of List II (State List) under

¹⁹ *Hamid Khan vs. State Of Madhya Pradesh*

²⁰ *Consumer Education And Research Centre vs. Union Of India*

²¹ *Subhash Kumar vs. the State Of Bihar*

²² AIR 1988 Raj 2.

²³ 1995 2 SCC 577

²⁴ *P. Bharathi vs. Union Territory of Pondicherry and Ors.*, 2007 CriLJ 1413.

the **Seventh Schedule** of the Constitution provides for public health and sanitation, hospitals and dispensaries.’ Apart from the State’s responsibility to legislate in the domain of sanitation, the Constitution of India further decentralized decision-making power through the 73rd and 74th Constitution Amendments in 1992. Through these Amendments, provisions were added to the Constitution, which introduced local self-governing institutions of municipalities and panchayats for supply of water and sanitation facilities in urban and rural areas. In the case of *Municipal Council, Ratlam vs. Vardhichand*, the Supreme Court had also made it clear that municipalities could under no circumstance refuse to fulfil their statutory duties. The Constitution of India further casts a fundamental duty on every citizen of India to protect and improve the natural environment under Article 51-A (g).

The Government of India has launched multiple sanitation policies across India for rural and urban areas. In 2014, the Prime Minister of India launched the Swachh Bharat Mission (SBM) or Swachh Bharat Abhiyan (SBA) to eradicate open defecation by 2019. In 2019, the government of India had approved the second phase of the Swachh Bharat Mission (Gramin) [SBM (G)], i.e., SBM 2.0, from 2020-21 to 2024-25. It will focus on open defecation free (ODF plus), including ODF sustainability and solid and liquid waste management (SLWM). The program will also work towards ensuring that no one stays behind and everyone uses the toilet.

Statement of the Problem

Sanitation and water are intrinsically linked. This link is indeed a necessary one, but it is not correct to combine these two rights in one subject. Each right has its own set of specific meanings and characteristics. It is seen that the right to water has been emphasised more in comparison to the right to sanitation. Consequently, sanitation has not been exclusively recognised as a right till date. Even though the realization of the right to sanitation is a precondition for the realization of other rights, such as the right to life, the right to water, the right to health, the right to environment, etc., thus, the right to sanitation must read as a separate right but, at the same time, intrinsically linked to other fundamental rights.

The quality of human life, directly or indirectly, depends upon accessibility to adequate sanitation facilities. Lack of sanitation infrastructures such as toilets, drainage,

and sewer facilities in rural and urban areas promotes insanitary practices like open defecation. The construction of private and public toilets is an important step to achieve sanitation goals but, it represents a limited entry point for the realization of the right to sanitation. Instead of implementing the Right to Sanitation in a broader sense, the focus is only on the construction of toilets, which ignores many other dimensions of sanitation. For example, if toilets are not used, then the problem of open defecation cannot be solved by the construction of toilets alone.

Poor and vulnerable populations have low access to improved sanitation services. These vulnerable populations include women, children, the elderly, disabled persons, landless people, migrant workers, and scheduled castes and scheduled tribes. The improved sanitation standards give assurance of lives with dignity and equal treatment for both men and women to those vulnerable people also. Women, children, and other vulnerable groups face the wrath of being forced to defecate and urinate in open areas due to the lack of sanitation facilities in rural areas. For example, women often have to go to remote places outside the village for defecation at night or early in the morning, putting women at risk of sexual assault. In addition, due to a lack of safe sanitation, vulnerable people have to compromise with their dignity. For the realization of the right to sanitation, toilet construction might be a necessary step towards ending open defecation, but other dimensions such as human dignity and gender equality are also worth considering for making national policies.

Apart from toilets, inadequate disposal of sewage has failed to improve with the rapid expansion of the urban population. The infrastructural development has not progressed with the ever-expanding cities where recycling of wastewater is still a far achievable dream, almost whole of this water is discharged into drains that ultimately let out this chemicals laden untreated sewage in our lakes and rivers.

Across India, existing systems for the collection, transportation, and disposal of solid waste are one of the most massive development challenges. The problem is more acute in the urban areas, where rapidly growing populations generate increasingly larger quantities of solid waste that urban local bodies (ULBs) are unable to manage effectively. Improper management of solid waste poses risks to the environment. Still, there is a significant disconnection between sanitation and the environment in terms of solid waste. Furthermore, laws are also largely silent on the wider environmental consequences of various sanitation dimensions.

From a legal perspective, the right to sanitation is well-contained in the case laws by the higher judiciary (the Supreme Court and the High Courts) of India as there is no legal instrument that addresses sanitation directly or explicitly at the national as well as state level. Therefore, separate law for sanitation, which covers all the dimensions of sanitation, has not been considered so far. Further, to realize the right to sanitation, the directions/guidelines given by the Supreme Court and High Courts are not being properly implemented.

Another major issue related to the sanitation problem is the recruitment policy of safai karamcharis in the Municipalities and Panchayats. A community of a particular caste is engaged in sweeping work, while others still feel it as a most disgraceful work, though they are employed only on paper for the same work. Thus, firstly such persons are indirectly practicing untouchability, and secondly, affecting the sanitation work for which they are employed. Sanitation workers also include manual scavengers.

The government has also formulated several policies related to sanitation, but due to a lack of proper implementation, the problem of sanitation has remained the same. Although the governments are responsible for solving the problems of sanitation through various means, the government's irresponsible attitude hinders it.

The government policies lack behaviour change and awareness programs. Unfortunately, due to the lack of these programs, people are not aware of the poor health consequences of adopting poor sanitation facilities. In the absence of information and knowledge, people do not refrain from adopting poor sanitation facilities, due to which the state of insanitation conditions remains the same.

To maintain sanitation, apart from government policies, active participation of people is also necessary. There is a lack of overall participation and role of the community in the sanitation sector.

Review of Literature

The book, **The Politics of Sanitation in India**, by **Susan Chaplin (2011)**,²⁵ examines how the environmental problems confronting Indian cities have arisen and subsequently forced millions of people to live in illegal settlements that lack adequate

²⁵ Susan E. Chaplin, *The Politics of Sanitation in India: Cities, Services, and the State* (Orient Blackswan Private Limited, vol.2, 2011)

sanitation and other basic urban services. This has occurred because of two factors. The first is the legacy of the colonial city characterised by inequitable access to sanitation services. The second is the nature of the post-colonial state, which, instead of being an instrument for socio-economic change, has been dominated by coalitions of interests accommodated by the use of public funds to provide private goods. The consequence is that public health and environmental policies have frequently become exercises in crisis intervention instead of being preventive measures which benefit the health and well-being of the whole urban population. These issues are explored by studying the history of colonial and post-independence urban development and management, and analysing why these cities have failed to provide equitable access to sanitation services for all residents.

Water Supply & Sanitary Engineering, by **G S Birdie and J S Birdie (2014)**,²⁶ contains extract of the water supply schemes. The most important thing under the water supply schemes is selecting sources of water, which should be reliable and have minimum impurities. After selecting a source of water, the next step is to construct intake works to collect it and carry it up to treatment plants. The government of India has passed independent legislation on water pollution and air pollution. It has become mandatory for the industry to take clearance from their area of Pollution Control Boards before setting new industries. Industrialists must treat all types of effluents (gases, solid and semi-solid). The state has implemented various enactments to prevent pollution, with the central government attempting to add most of these acts to water supply and sanitation engineering.

Rural Sanitation in India: Compendium of case studies, by **Alok Kumar and A. P. Singh (2014)**.²⁷ This book tried to captured case studies from different states of the country, covering various aspects of a sanitation program, so that the district and state officials can draw lessons and improve the program implementation in their districts. They have tried to discuss the key issues and strategies to overcome challenges citing the actual case of the district/ state. The book also offers them the opportunity to

²⁶ G S birdie and J S birdie, *Water Supply & Sanitary Engineering* (Dhanpat Rai Publishing Company, 9th edn., 2014)

²⁷ Alok Kumar and A.P. Singh, *Rural Sanitation in India: Compendium of Case Studies* (Concept Publishing Company Pvt. Ltd., 2014)

learn from the existing experiences in the field and make necessary programmatic improvements.

Sociology of Sanitation: Environmental Sanitation, Public Health and Social Deprivation, by **Dr. Bindeshwar Pathak (2015)**,²⁸ is based on the National Conference on "Sociology of Sanitation": Environmental Sanitation, Public Health, and Social Deprivation Sulabh International Social Service Organisation held in January 2013, in New Delhi. The objective of this National Conference was to have a comprehensive dialogue with academia, administrators, technocrats, and civil society to conceptualize the complex social and environmental issues and to undertake an incisive perspective on futuristic goals and paradigms. This conference was held to set up the road map for future strategy and interventions and add to the corpus of knowledge and research on "Sociology of Sanitation."

Sanitation in India: A Historico-Sociological Survey, by **Hetukar Jha (2015)**,²⁹ The book deals with why sanitation is appropriate, somewhat necessary for this issue to be duly considered a field of historical and sociological studies in Indian academia. Further, it discusses sanitation habits and practices, which prevailed in different periods of our history. Besides, an attempt has been made to examine the socio-political and cultural conditions that forged and promoted some communities' association with the tasks of sewage disposal, cleaning streets, etc.

Another book, **Environmental Sanitation** by **D.K. Thakur (2015)**³⁰ discuss about the Water and Sanitation, Household Sanitation, Rural and Urban Sanitation, Solid Waste Management, School Sanitation, Concept of Environmental Sanitation and Flood.

Sanitation Law and Policy in India: An Introduction to Basic Instruments, Edited by **Philippe Cullet and Lovleen Bhullar (2015)**,³¹ this book contains the most comprehensive work on India's sanitation law. It provides an overview of the existing legal and policy instruments related to sanitation in India and fills the existing gap, both in knowledge and policy instruments, defining sanitation in India. This book also

²⁸ Bindeshwar Pathak, *Sociology of Sanitation* (Kalpaz Publications, 1st edn., 2015)

²⁹ Hetukar Jha, *Sanitation in India: A Historico-Sociological Survey* (Kalpaz Publications, 1st edn., 2015)

³⁰ D.K. Thakur, *Environmental Sanitation* (Discovery publishing house, 2015)

³¹ Philippe Cullet and Lovleen Bhullar, *Sanitation Law and Policy in India: An Introduction to Basic Instruments* (Oxford University Press; 1st Edn., 2015)

highlights the importance, complexity, and fragmented nature of the legal and policy frameworks that inform the sanitation sector and lays special emphasis on the legal dimensions of sanitation in India.

The book, **Sanitation in India with Focus on Toilets and Disposal of Human Excreta** by **Leela Visaria (2016)**³² deals with only one factor in some depth, i.e., the availability of toilets and the disposal of human excreta by building toilets. It discusses the availability of toilet facilities in households in India and examines the differences between households having toilet facilities and other areas with available information. Further, it examined the sociological, cultural and economic factors hindering the use of toilets and the consequences of open defecation especially on women. The book discusses the role of caste and efforts to restore human dignity among and rights of the scavenging community and it also gives a brief discussion on the design of individual toilets and community complexes such that the need to handle excreta by humans is eliminated. The book raises some questions for further reflection and research

Clean up Your Act: the State of Sanitation in India, by **Sushmita Sengupta (2016) (E-Book)**,³³ this book contains and comments on the well-designed community-centric programs, its communication, and awareness campaigns connecting with toilets and sanitation to health and women's dignity. The Ensuring basic sanitation for all types of people is a major task for the Government of India. The book highlighted the data from the National Sample Survey Office, which shows the pathetic state of sanitation in the country, especially in rural India where two-thirds of the country lives. Also, huge discrepancies in toilet statistics across various government departments mean that it is difficult to assess the impact of sanitation programs.

The Right to Sanitation in India: Critical Perspective, by **Philippe Cullet, Sujith Koonan, and Lovleen Bhullar (2019)**,³⁴ this book represents the conceptual background of the right to sanitation and its multiple dimensions in India, as well as its broader comparative setting. It critically analyses the contributions of the law and policy framework to the realization of the right in India. The book also represents the

³² Leela Visaria, *Sanitation in India with Focus on Toilets and Disposal of Human Excreta* (Gyan Publishing House 1st edn., 2016)

³³ Sushmita Sengupta, *Clean up Your Act: The State of Sanitation in India* (Centre for Science and Environment)

³⁴ Philippe Cullet, Sujith Koonan, et al. (edt.), *The Right to Sanitation in India: Critical Perspective* (Oxford University Press, 1st edn., 2019)

first effort to conceptually engaged with the right to sanitation and its multiple dimensions in India. It critically analyses the contributions of the law and policy framework to the realization of the right in India, including various policies related to sanitation and the role of Swachh Bharat Mission.

A book by **Ankur Bisen**, entitled, **Wasted: The Messy Story of Sanitation in India, A Manifesto for Change (2019)** discusses the need for immediate attention to sanitation and cleanliness. This book takes an honest look into India's perpetual struggle with these issues and suggests measures to overcome them. Legislative and governance loopholes and the increasing height of open landfills, the informality of waste management methods, and the poor health of Indian rivers, soil, and air, ruin the relationship between urban planning and dirty cities in India. The book seeks to address the current entrenched problems of urban planning, governance, law, and institutional and human capacity building. This book further explains how these solutions can lead us towards a brighter future and better social development with sanitation.

In the article, **The Human Right of Sanitation for All: A Study of India**,³⁵ **Rebecca M. Coleman**, discussed the importance of access to adequate sanitation facilities in India and how India has responded to the need for sanitation. The article further evaluate that why India's various programs and policies have failed to significantly improve the sanitation situation. At the end, the article concludes with a discussion of key recommendations to combat inadequate sanitation.

Policy As Law: Lessons From Sanitation Interventions in Rural India by **Philippe Cullet**.³⁶ This article discusses that the launch of the Swachh Bharat Mission is welcome in the context of addressing a serious and real issue, i.e., lack of access to sanitation and the right to sanitation. Laws and policy frameworks have been progressively developed to address various issues of sanitation in India. Yet, no law addresses sanitation comprehensively or seeks to give a holistic direction to the sector. The analysis of sanitation interventions in practice shows that a network of practices has developed around the administrative directions related to sanitation. It further explain that the policy framework is essentially a self-sustaining framework that is not

³⁵ Rebecca M. Coleman, 'The Human Right of Sanitation for All: A Study of India', 24, *Pac. McGeorge Global Bus. & Dev. L.J.*, p.294 (2011)

³⁶ Philippe Cullet, *Policy As Law: Lessons From Sanitation Interventions in Rural India*, vol.54, *Stanford Journal of International Law*, pp.241-258 (2018)

articulated around case law or law. This can easily be explained as an attempt by the executive to fill the gap and as an attempt by the central government where the states are ashamed to act despite having the constitutional prerogative to do so. Thus, this scenario needs to be considered.

An article, **The Human Right to Water and Sanitation: A New Perspective for Public Policies** by **Colin Brown**³⁷ presents a formal definition of the right to sanitation with a base in human rights regulation. It attempts to communicate with the various current perspectives regarding the impact of its international recognition as a human right. Because, while the human right to water and sanitation (HRtWS) was recognized by members of the United Nations State in 2010, its creation constituted a concept that was not approached and correctly interpreted in an agreed-upon manner by all relevant stakeholders. It then explains the progressive development of HRTWS in law and jurisprudence. Finally, it considers the urgency and challenge of monitoring HRTWS and discusses the important implications for public policies.

An article, **Swachh Bharat Abhiyan and the Indian Media**, by **Pitabas Pradhan**,³⁸ discuss about the ability of the media to create widespread awareness about cleanliness and its benefits and to provide the right environment for behaviour modification. Of course, interpersonal communication is more effective at changing the behaviour of the target population to prevent them from becoming vulnerable to infections caused by a lack of sanitation facilities. Mass media can make any topic popular, fashionable or noticeable. Further, the article analyses the role of the media as a key player in the Swachh Bharat campaign, in taking the message to the people, and impact of the campaign on the public attitude towards cleanliness. The campaign has been visualised as a mass movement to make India clean by 2019.

Objectives of the Study

The research study has the following objectives:

1. To understand the meaning and concept of the right to sanitation and its relation with human rights.

³⁷ C. Brown et, al., *The Human Right to Water and Sanitation: A New Perspective for Public Policies*, vol. 21(3), *iência & Saúde Coletiva*, pp.661-670 (2016)

³⁸ Pitabas Pradhan, *Swachh Bharat Abhiyan and the Indian Media*, vol. 5(3) *Journal of Content, Community & Communication*, pp.43-51 (2017)

2. To analyse the problem of sanitation in India.
3. To examine the right to sanitation in the various international legal framework.
4. To study the linkage of sanitation with fundamental rights under the Constitution of India.
5. To examine the role of the judiciary in the recognition and interpretation of the right to sanitation.
6. To study the national laws and policies related to sanitation initiated by the Government to realize the right to sanitation.
7. To examine the role of NGOs/Civil societies in the promotion of sanitation.

Hypothesis

- Poor sanitation, directly and indirectly, affects the environment, health, and human dignity of a person.
- There is an absence of specific legislation related to sanitation in India.
- Indian judiciary has played a significant role in the interpretation of the right to sanitation.
- Ineffective implementation of government policies and programs related to sanitation has impeded the realization of the right to sanitation.
- Lack of administrative responsibility of local bodies towards sanitation hinders the effective implementation of sanitation policies and programs.
- Civil Society initiatives towards sanitation are essential for raising awareness and transforming public behaviour about sanitation practices.

Research Methodology

The proposed research work is based upon doctrinal and non-doctrinal methods. Analytical, descriptive, and empirical research methodology has been adopted for the research work. The literature and other related materials have been collected from both sources, i.e., primary and secondary. Secondary data have been collected from the statutes, books, legal journals, reports, Supreme Court judgments, government policies, newspapers, magazines, websites, and published statistics. Primary data for the research

work has been collected through Questionnaires/Schedules and Interviews. For collecting the preliminary data, the researcher has prepared two questionnaires schedules; one for assessing the public sanitation awareness and sanitation behaviour of household beneficiaries. The other open and close-ended Questionnaires/Schedule are formulated for examining the Administrative responses of urban local government bodies responsible for sanitation-related functioning, i.e., Lucknow Nagar Nigam.

Universe of Study

For the empirical study, Lucknow city has been taken as a unit of study. The required information and data have been collected from the 500 households through a simple random sample survey method from the eight zones of Lucknow city. Analysis of data is done to test the hypothesis and the conclusion and suggestions have been drawn from the findings of the empirical study. The whole data has been analysed by applying the Statistical Package for Social Sciences (SPSS) software.

Scope of Study

The scope of the present study is focused on the all (Eight) zones of Lucknow city. This research study is limited to the urban areas of Lucknow for the purpose of collecting data, which is depending upon the availability of the respondent and the accessibility of researcher. The household units of the families has been randomly selected for data collection from different zones. Data collection for the research study was remained restricted due to Covid-19 lockdown.

Chapterization of Thesis

The entire study has divided into the following eight chapters:

- **Chapter I** – Introduction
- **Chapter II** – Historical Development and Evolution of the Right to Sanitation
- **Chapter III** – Right to Sanitation under the International Legal Framework
- **Chapter IV** – Laws and Policies Related to Sanitation and Role of Indian Judiciary
- **Chapter V** – Role of Civil Society and Public Responsibility in Sanitation

- **Chapter VI** – A Study of Administrative Responses and Public Awareness about sanitation in Lucknow City.
- **Chapter VII** – Conclusion and Suggestions

Plan of the Study

Chapter I comprises a general introduction of research work and an outline of the research problem. It further includes a review of literature, hypothesis, research methodology, and a brief description of every chapter.

Chapter II deals with the **Historical Development and Evolution of the Right to Sanitation in India**. This chapter aims to examine the historical development of sanitation conditions in the ancient, medieval, and modern eras. The chapter tells that the Indus Valley Civilization showed early evidence of public water supply and sanitation in ancient times. This civilization has developed and managed many advanced features of sanitation facilities. The cities of Harappa, Mohen-Jo-Daro, and Rakhigarhi show the earliest evidence of the world's first urban sanitation system. These cities were built according to highly sophisticated planning.

After the fall of Harappa, a drain-linked toilet was found in the *Kushana* period. Subsequently, the dark era of open defecation began in India and has acquired deep cultural and social roots over the centuries. Many historians believe that with the arrival of the Aryans, open defecation also entered into the Indian psyche because the Aryans were a nomadic wandering tribe who would never have settled, built a house, or felt the need to build toilets. After a few more centuries, open defecation became uncontrolled. It was only after the arrival of the caravans of Arab merchants and Mughals that the toilets were built once again. Arab traders and Mughal kings had built toilets in their premises due to concerns about their women being exposed while defecating. These were dry latrines that required someone else to do the dirty cleaning job. As a result, a class of manual scavengers was born in India to clean up the mess of the kings and their queens. After that, it became a formal profession, particularly for those who were made captives after their defeat.

During the colonial rule, sanitation ceased to be a national priority. There was no attempt to create social awareness in public against open defecation and its dangerous consequences. The first real attempt to deal with sanitation in India was the

result of the report of the Army Sanitation Commission of 1859–63. After that, in 1859, the Royal Commission on the State of Sanitation of the Army in India was appointed. The Commission, in 1863, reported that the health and sickness of British soldiers are linked with poor sanitation. On the recommendations of the Royal Commission of 1859, sanitary commissions for public health were formed in Bombay and Madras Presidencies in 1864, but they were only able to "consult and advise" as they lacked executive powers.

In the late 1860s, Public Health and Sanitation became effective with the passage of the Sanitary Act, 1866. The Act made it mandatory for local authorities to improve sanitation conditions and remove nuisances for public health. The colonial interest in public sanitation, sadly, remained restricted to the needs of the military and the elite rather than the whole population. In 1885, the Local Self-Government Act was passed and local bodies came into existence which had responsibility for providing sanitation facilities at the local level.

After independence, the government of India continued to follow colonial urban planning practices on a large scale, ignoring the need for basic amenities related to housing for local people. Keeping in mind the importance of cleanliness on a nationwide basis, the **Bhore Committee** was established, which was later given importance in national development plans. Later, the Central Government appointed the Environment Sanitation Committee in 1948-49 to undertake a holistic assessment of the countrywide problems in the entire field of environmental sanitation. The committee recommended a comprehensive plan to provide water supply and sanitation facilities within 40 years. To implement the recommendations of the Bhore Committee and the Environmental Hygiene Committee, the Government of India, Ministry of Health had inaugurated the National Water Supply and Sanitation Programme in 1954 under its First Five Year Plan (1951-56). This Programme was aimed to provide water supply and sanitation facilities to all urban and rural communities.

A thrust for water supply and sanitation came with the Sixth Five Year Plan (1980-85) which coincided with the beginning of the UN-declared International Drinking Water Supply and sanitation decade to which India had pledged to provide 100 % sewerage and sewer facilities. Since then the government has launched many sanitation programs and policies in rural and urban areas of India to address this issue which required our immediate attention. Finally, in 2014, the central government

identified open defecation as a priority issue across India, not just in villages, and launched a Swachh Bharat Mission (SBM) or Swachh Bharat Abhiyan (SBA) to eradicate it by 2019. For the first time in independent India's history, sanitation became a national priority and subject of conversation across society.

Chapter III deals with the **Right to Sanitation under the International Legal Framework**. The chapter provides brief provisions of various international legal frameworks that deal with the right to sanitation. Before 2010, sanitation was considered along with water under various international human rights laws. Consequently, more attention was given to the right to water than the right to sanitation. It was during the 1980s that the importance of sanitation was realised and the United Nation had declared the decade of 1981-1990 as the International Drinking Water Supply and Sanitation Decade to bring attention and support for clean water and sanitation worldwide. An effort to recognize a separate sanitation right began with the initiative of the United Nation's Special Rapporteur, Catarina De Albuquerque (the very first incumbent, appointed in 2008) on Human Rights to Drinking Water and Sanitation. The Special Rapporteur argued that sanitation should be treated as a human right separate from water because of its distinct dignity dimensions.

The **Universal Declaration of Human Rights, 1948 (UDHR)** is the first major international instrument and considered as an inspirational source to all subsequent human rights treaties. The UDHR does not explicitly recognize sanitation, but its preamble and **Article 25** recognize the right to sanitation impliedly. Many international human rights treaties have recognized the importance of water and sanitation (separately or together) in the realization of human rights, however, they did not explicitly include the right to sanitation. They provide the right to sanitation under the provision of 'adequate standard of living.' These conventions are:

- **Article 11 and 12** of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966,
- **Article 14 (2) (h)** of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979,
- **Article 24** of the Convention on the Rights of the Child (CRC), 1989, and
- **Article 28** of the Convention on the Rights of Persons with Disabilities (CRPD).

In 2002, the UN Committee for Economic, Social and Cultural Rights (CESCR), adopted General Comment No. 15 on the human right to water. General Comment 15 also recognizes ensuring access to basic sanitation as a core obligation emanating from the Right to Water. General Comment No. 15 guided States on how to interpret the right to safe drinking water and sanitation under two articles of the ICESCR, i.e., Article 11 (the right to an adequate standard of living) and Article 12 (the right to health). In July 2010, the United Nations General Assembly, for the first time, formally recognized the right to water and sanitation as a human right and declared that safe and clean drinking water and sanitation is essential for full enjoyment of life and all other human rights. The Resolution called upon the States and international organizations to help capacity-building and technology transfer to the countries, particularly to the developing countries, to provide **Sufficient, Safe, Acceptable, Physically Accessible, and Affordable** drinking water and sanitation for all.

During the Millennium Summit in New York in 2000, the United Nations developed the Millennium Development Goals (MDGs) for poverty alleviation and sustainable development. The specific sanitation target has been included under Goal 7 (i.e. Ensure Environmental Sustainability) of MDGs. Target 7C recognised within this goal is to reduce by half the proportion of population who did not have sustainable access to safe drinking water and basic sanitation by 2015. However, India made progress in providing clean drinking water but access to sanitation facilities remained inadequate. The sanitation goal has been included, for the first time, under Section 8 of the Plan of Implementation of the World Summit on Sustainable Development held in 2002. The Summit had adopted some Sustainable Development Goals (SDGs), that included human dignity, access to clean water, sanitation, improved environmental problems, improved human health, etc. In 2016, the Sustainable Development Goals replaced the Millennium Development Goals. Sanitation has been included in Sustainable Development Goal 6 (i.e. Clean Water and Sanitation) as a global development priority. The SDG-6 targets to achieve ‘universal and equitable access to safe and affordable drinking water and access to adequate and equitable sanitation and hygiene for all by 2030.’ Furthermore, the United Nations General Assembly declared 19th November as World Toilet Day to raise awareness to tackle the global sanitation crisis and achieve Sustainable Development Goal-6, which promises ‘sanitation for all by 2030.’

India has not only signed and ratified UN human rights treaties but also enacted several laws because of its international commitments. Such as, the Rights of Persons with Disabilities Act 2016 was enacted to comply with the United Nations Convention on the Rights of Persons with Disabilities. The Human Rights Protection Act 1993 refers to human rights as set forth in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In 2010, India also confirmed its commitment, by voting, in favour of a specific resolution of the United Nations, which explicitly recognized the right to sanitation. India has always been a supporter of the articulation of the right to sanitation. Therefore, for fulfilling its commitment, the Government of India had admitted the need to have a national sanitation policy during various South Asian Conferences on Sanitation (SACOSAN) held at different time. The Government of India has attended seven SACOSAN so far. The SACOSAN-VII was held on 9-12 April 2018, in Islamabad, Pakistan. The conference showed that India has ensured universal access to sanitation, with coverage only at 46% in 2015 under Swachh Bharat Mission, launched in 2014. Moreover, about 933 million people still lacked access to basic sanitation, of whom 558 million practiced open defecation.

The year 2020 marks the tenth anniversary of the landmark resolution adopted by the UN General Assembly in July 2010, which “recognized the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.” Nearly half of the world’s developing countries have amended their constitutions to include water and sanitation as human rights. Over the last 10 years, millions of people have gained access to clean water and decent toilets. But there is still a long way to go as millions of people are still being forced to live without access to these basic sanitation facilities due to a lack of resources and technologies. In year 2020, the COVID-19 pandemic has made evident the critical importance of availability, accessibility, and affordability of water, sanitation, and hygiene services in the efforts for protection people’s health worldwide.

Chapter IV, i.e., Laws and Policies Related to Sanitation and Role of Indian Judiciary, deals with the law and policy framework of the government that have provisions related to sanitation under the Constitution of India, statutes and schemes, programs, other administrative direction, etc. The first part of the chapter provides the description of constitutional provisions regarding sanitation as the legal basis for the

right to sanitation can be found in the Constitution of India. Since its adoption, the Constitution of India has included a fundamental right that though does not mention the word sanitation explicitly in it, but is an integral part of the social practice of untouchability, that has been abolished under the **Article 17** (Abolition of Untouchability), which is associated with the practice of manual scavenging. In **Virendra Gaur vs. the State of Haryana and L.K. Koolwal vs. State of Rajasthan**, the Supreme Court has firmly recognised sanitation as a part of the fundamental right to life. Thus, the Constitution of India does not recognize the ‘right to sanitation’ explicitly but indirectly.

Sanitation is a state subject under the Constitution of India. It means that States have the primary duty to maintain sanitation. **Entry-6** of List II (State List) under Seventh Schedule provides ‘public health and sanitation, hospitals and dispensaries.’ Apart from devolving responsibility to legislate in the domain sanitation to the State Governments, the Constitution further decentralises the administration of sanitation facilities subsequent to the 73rd and 74th Constitutional Amendments. Through these amendments Eleventh and Twelfth Schedule were added to the constitution, which introduced local self-governing institutions of municipalities and panchayats to supply water and sanitation facilities to urban and rural areas. **Entry 23 of the Eleventh Schedule** also provides for health and sanitation. Thus, in effect, the panchayats can be authorised by the States to ensure provision of drinking water, health and sanitation services at the village, intermediate and district levels. Similarly, **Entry 6 of the Twelfth Schedule** provides for ‘public health, sanitation conservancy, and solid waste management.’ The duty provided under Article 243W to the Municipality has been emphasized in the case of **Environment Protection Committee vs. Union of India**,³⁹ in which the court held that the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty. The Supreme Court had also made it clear that municipalities could under no circumstance refuse to fulfil their statutory duties. If the Government fails to perform its duties to provide adequate sanitation facilities, that will amount to a violation of Article 21 and a person can enforce their rights by a writ petition under Article 32.⁴⁰

³⁹ (2017) 5 SCC 326

⁴⁰ Municipal Council, Ratlam vs. Vardhichand, (1980) 4 SCC 162

While the constitutional mandate for legislation on the subjects of water and sanitation is clear, Part III of the Constitution also provides scope for recognition of drinking water and sanitation as fundamental rights of citizens. Although the right to sanitation is not explicitly recognized as a Fundamental Right, the Supreme Court of India has recognized sanitation as a fundamental right linked to the right to life under Article 21. Furthermore, it is directly linked to other fundamental rights, mainly the right to water (**Hamid Khan vs. State of Madhya Pradesh**), the right to health (**Consumer Education And Research Centre vs. Union of India**), the right to education and the right to a clean environment (**Subhash Kumar vs. State of Bihar**), the right to privacy, the right to shelter (**Sudama Singh & Others vs. Government of Delhi & Another**), the right to education (**Environmental & Consumer Protection Foundation vs. Delhi Administration & Others**). Therefore, it is clear that poor sanitation, directly and indirectly, affects the environment, health, and human dignity of a person. Hence, it proves the First Hypothesis of the study.

Apart from the Fundamental Rights, the Constitution also impresses a duty upon the State to undertake policy measures in the domain of water, sanitation and hygiene. That is to say, the concept of the right to sanitation is also included in the Directive Principles of State Policy (Art. 39(e) and (f), 41, 42, 47, and 48(A)) and Fundamental Duties. The Government of India, after adopting the United Nations Conference on the Environment in Stockholm, 1972 (**Stockholm Declarations**), introduced Article 48A and 51A(g) under the Directive Principles of State Policy and the Fundamental Duties, respectively, through the Constitution 42nd Amendment Act, 1976. In the case of **Virender Gaur vs. State of Haryana**, after referring to the Stockholm Declaration 1972, Article 48 A, Article 47, Article 51 A (g), and Article 21 of the Constitution of India, the Supreme Court laid down 'Principle 1' that, this is not only the duty of the State but also the duty of every citizen to maintain a hygienic environment.

In the second part of the chapter, there is a multiplicity of legal instruments, addressing some parts of the sanitation sector with a narrow understanding of sanitation. These include the Water (Prevention and Control of Pollution) Act, 1974, the Environment Protection Act, 1986, the Solid Waste Management Rules, 2016, which gives powers to the state pollution control boards to take appropriate action regarding sewage treatment and its disposal. The legal instruments such as the Mines Act, 1952, the Factories Act, 1948, the Building and Other Construction Workers (Regulation of

Employment and Conditions of Service) Act, 1996, The Contract Labour (Regulation and Abolition) Act, 1970, the Right of Children to Free and Compulsory Education Act, 2009, the Rights of Persons with Disabilities Act, 2016, etc., make mandatory provisions to provide sufficient, conveniently situated, and accessible latrines. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act in 2013 are related to the realization of the rights for sanitation workers.

There is also the constitutional obligation of local authorities and public to take care of public health, sanitation, and the environment. Otherwise, they will be liable for the offense of public nuisance affecting the health and comfort of the inhabitants, for which action can be taken under section 133 of the Criminal Procedure Code 1973, violation of which is punishable under section 188 of the Indian Penal Code 1861. The Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973, impose criminal liability upon a person who creates a public nuisance, which includes sanitation impliedly. The analysis of this segment of the chapter IV shows that there is no any specific legislation for the realization of the right to sanitation, which include all the dimension of sanitation comprehensively. Hence, it proves the Second Hypothesis of the study.

The third part of the chapter deals with the judicial pronouncement of the higher judiciary (the Supreme Court and the High Courts) related to sanitation facilities. Indian Courts have made a significant contribution to the development of the right to sanitation by facilitating the implementation of existing legislation that includes sanitation provisions, expressly or impliedly. The higher judiciary has been repeatedly petitioned under Article 32 or Article 226 of the Constitution of India to order the governments and their agencies to perform obligatory duties in relation to sanitation, arising from municipal statutes and pollution control statutes, to fulfill the promise of fundamental rights.

In this reference, in **Dholka Town Municipality vs. Patel Desai****Kalidas**,⁴¹ the court held that local bodies are bound to maintain drainage work in a proper state of repairs so that it did not cause a nuisance to the neighboring owners. In

⁴¹ (1914) I.L.R. 38 Bom. 116.

the case of **Municipal Council, Ratlam vs. Shri Vardhichand & Others**,⁴² Justice Krishna Iyer gave a new direction to the municipal bodies' responsibility to perform their statutory duty. The Supreme Court held that the municipalities and/or local bodies concerned, cannot be permitted to shy away from discharging his onerous duties provided under Article 243W.⁴³ The case of **L. K. Koolwal vs. State of Rajasthan and Others**⁴⁴ is another example of judicial activism in sanitation, public health, and environment protection. The High Court of Rajasthan asserted that 'maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21 of the Constitution of India. Similarly, In **M. C. Mehta vs. Union of India**,⁴⁵ the Ganga pollution case, the municipalities were directed to perform their statutory duty of ensuring that sewage from the towns would not be emptied into the Ganga without treating it. The problem of solid waste management was also understood to be a municipal responsibility, which involves a significant degree of environmental regulation and management. In the case of **Virendra Gaur and Others vs. State of Haryana**,⁴⁶ the Supreme Court has observed that a hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live with human dignity without a humane and healthy environment. The **Almitra Patel vs. Union of India**⁴⁷ case is related to the legal aspects of waste management in India. The higher judiciary not only established the relation of sanitation with other fundamental rights but also gave sanitation the status of a fundamental right under Art 21. Hence, this study proves Third Hypotheses of the research work.

The fourth part provides the administration directions and policies related to sanitation. There is no direct legislation related to the right to sanitation in India, (Centre and State) to cover all dimensions of sanitation. This gap in the legal framework related to sanitation has been filled by government policies. The Government of India launched the Integrated Low-Cost Sanitation Scheme in 1980-81, the Central Rural Sanitation Programme (CRSP) in 1986, the Total Sanitation Campaign (TSC) in 1999, the Nirmal Gram Puraskar in 2003, and the Nirmal Bharat Abhiyan in 2012, for rural sanitation.

⁴² (1980) 4 SCC 162

⁴³ Delhi Jal Board vs The State of Haryana, Writ Petition(s) (Civil) No(s). 8/2021 (Supreme Court of India, Order dated 13 January, 2021)

⁴⁴ AIR 1988 Raj 2

⁴⁵ A.I.R. 1988 S.C. 1115.

⁴⁶ (1994) 2 SCC 577

⁴⁷ Writ Petition No. 888 of 1996 (Supreme Court of India, Order dated 11 January 2000)

The nodal agency for rural sanitation is the Ministry of Drinking Water and Sanitation. For urban sanitation, the Government of India launched the Jawaharlal Nehru National Urban Renewal Mission in 2005, The National Urban Sanitation Policy in 2008, the Smart City Mission in 2014 and the Atal Mission for Rejuvenation and Urban Transformation 2014. Urban sanitation is the responsibility of the Ministry of Urban Development. In 2014, to accelerate the efforts for achieving universal sanitation coverage and obtain the Sustainable Development Goal 6 (SDG 6) by 2030, the Swachh Bharat Mission was launched by the Government of India. The mission has two thrusts, Swachh Bharat Abhiyan (Rural) and Swachh Bharat Abhiyan (Urban). In 2021, the Government of India launched second phase of Swachh Bharat Mission (SBM 2.0) and AMRUT 2.0. The SBM envision to make all cities ‘garbage Free’ and ensure grey and black water management. AMRUT 2.0 aims to provide 100% coverage of sewerage and septage in 500 AMRUT cities. The analysis of this policy segment and the data of the National Family Health Survey (NFHS-5) shows that India is far from achieving the goal of sanitation due to the ineffective and poor implementation of sanitation policies.⁴⁸ Hence, it proves the Fourth Hypothesis of the study.

Chapter V, i.e., the Role of Civil Society and Public Responsibility in Sanitation, indicates that sanitation is a subject that needs to be focused on by everyone, including the private sector, the civil society organizations (CSOs), communities, and individuals, along with the government. For which they need improved capacities and appropriate technologies. India has witnessed many social reformers who have started the sanitation movement. Among those, Mahatma Gandhi, Dr. Babasaheb Ambedkar, Sant Gadge Baba, Suryakant Parikh, Dr. Bindeshwar Pathak, and Bezwada Wilson are some important personalities. These social reformers have waged a campaign of manual scavenging, public awakening for sanitation and health improvement, drainage of toilets, cleaning toilets and bathrooms, etc.

Non-Governmental Organizations play a vital role in making people aware of their civic rights and duties under the sanitation sector. At the global level, the World Bank helps countries to address the sanitation-related challenges, such as eliminating open defecation, improving service delivery and access to sanitation facilities, such as

⁴⁸ India Fact Sheet, The National Family Health Survey 2019-21 (NFHS-5) (Ministry of Health and Family welfare, International Institute for Population Sciences). Available at: http://rchiips.org/nfhs/NFHS-5_FCTS/India.pdf (visited at: September 15, 2021)

waste management, and sustainable sludge management with some core development partners, including the Bill & Melinda Gates Foundation, WaterAid India, India WASH Forum, Plan International, etc. In India, Sulabh International Social Service Organization, Khushii, Sikashana Foundation, Dasra, etc., are some major NGOs in the Water Sanitation and Hygiene (WASH) sector. Further, the private sector has also been given responsibilities related to sanitation under the Companies Act, called Corporate Social Responsibility (CSR). The Ministry of Corporate Affairs had formulated **Section 135** and **Schedule VII** of The Companies Act, 2013, and the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014, which prescribes mandatory provisions for Companies to fulfil their CSR. Example of some corporate sectors, working under the mandate of CSR is Mahindra & Mahindra Group, Bharti Enterprises, Toyota Kirloskar Motor, ITC Limited, Tata Chemicals Ltd., Nestle, Tata Consultancy Group, etc.

The media (television, radio, print media, internet, and email) can play a proactive role in spreading information and raising awareness on sanitation. Since 2014, the BBC Media Action has been supporting the Swachh Bharat Mission through various innovative projects to help change attitudes and behaviours among the general public towards sanitation practices across India. For this purpose, improvements have been made to the website of the Ministry of Drinking Water and Sanitation and in its online monitoring system for capturing achievement data. The social media accounts like '@swachhbharat' on Twitter, '<https://www.facebook.com/SBMGramin/>' on Facebook, and WhatsApp/HIKE, are being extensively used for sharing real-life Swachhata Stories from the ground, and also as a platform for cross-learning by sharing innovative ideas. Apart from this, several audio-visual campaigns featuring messages of toilet use have resorted to the popular imagination. Many feature films (such as Toilet Ek Prem Katha, Padman, Halka, and Gutar-Gu) have also been produced in recent times that promotes the importance of sanitation in everyone's life.

Various non-sanitation Ministries/Departments have developed several special projects with measurable outcomes to help the Union Ministries to build swachhata into their schemes and policies. Ministry of Petroleum and Natural Gas has developed a Swachhata@PetrolPump app to monitor and improve sanitation levels at the petrol pump and service stations. The Department of School Education and Literacy has achieved 100% gender-segregated toilets in all schools. Ministry of Civil Aviation,

Power, and Rural Development has implemented Water Conservation, Bio-fuel, Waste Recycling, and Waste to Energy initiatives. Ministry of Railways has introduced a Bio-Vacuum Toilet to provide clean and efficient toilets and reduce the water consumption in toilets. The Ministry of Health and Family Welfare has also played an essential role in ensuring good health and hygiene by providing awareness to women and children about a clean and safe environment. These are some examples of the efforts taken by the various ministry, to take forward the mandate of sanitation and waste management.

The Government of India has also launched some monitoring programs related to sanitation. Swachh Sarvekshan, Swachhata Pakhwada, Garbage-Free City Stars, and Swachhata Action Plan are some initiatives to develop an assessment framework to measure sanitation outcomes in India. It can be concluded that Civil Society initiatives towards sanitation are essential for raising awareness and transforming public behaviour about sanitation practices. Hence, the **Sixth Hypothesis** is proved.

Chapter VI, i.e., A Study of Administrative Responses and Public Awareness about sanitation in Lucknow City, contains the information about the study area, data analysis, data interpretation, and findings. The purpose of this chapter is to know the actual status of sanitation facilities, provided in the city. The chapter has been divided into two parts. The first part is related to the sanitation situation in Uttar Pradesh and the second part is related to the sanitation facilities and infrastructure being provided in Lucknow city. For the empirical study, Lucknow city has been taken as a unit of study. The information has been collected from the households through a simple random survey method from the eight zones of Lucknow city to understand the nature of problems related to sanitation facilities. The required information and data have been collected from the 500 households. The aim of the survey is to examine the behaviour and awareness of the people towards sanitation and cleanliness. The whole data has been analysed by applying the Statistical Package for Social Sciences (SPSS) software and interpretation and conclusion have been drawn from the findings of the empirical study.

Administrative Responses about Sanitation in Lucknow City

For the administrative responses regarding the sanitation situation in the city the researcher also approached to the officials of LMC. It is found that officials were reluctant to provide adequate information to the researcher. They often refer to LMC

websites for the responses to the queries asked by the researcher. Very little information could be collected by the researcher through RTI. Some responses and information gathered from the interview and RTI respectively, are as follows:

- The Municipal Health Officer informed that around 3438 posts of Safai Karamcharis have been created in the Municipal Corporation of Lucknow, out of which about 1345 posts are vacant. As of 2020, there are 2093 regular Safai Karamcharis and 959 contractual Safai Karamcharis, which are working in different municipal wards.
- The Municipal Health Officer told that while cleaning, the safety and health of the employees are taken care of by providing masks, gloves, and other cleaning equipment.
- The Sanatory and Food Inspector told that about 50 to 60 sweepers are engaged in sanitation work in their areas/wards.
- Swachh Bharat Mission officer of Zone 1 told about the construction of toilets in the households that any individual can apply for the construction of toilets in their houses through writing an application under the Swachh Bharat Abhiyan.
- For cleaning the sewer line in Lucknow Municipal Corporation area, the Public Information Officer (PIO), Secretary of the Water Department informed that Jal Nigam looks after the work about laying of sewer lines in the colonies of Lucknow district, and the cleaning of the sewer line is being done by UP Jal Nigam through the private agency i.e. M/s. SWEZ India Private Limited.
- The Municipal Health Officer of the Health Department informed the researcher that cleaning roads and streets in the entire municipal area has been done according to the boundary limits.
- Whatever garbage is collected during cleaning is transferred to the halting-place by hand cart or other vehicles, from where that collected garbage is transported to the dumping station.
- The Environment Engineer informed that Waste is collected by M/s Eco-Green Energy Private Limited from all 110 wards (partial in some wards and complete collection of waste from some wards) of district Lucknow.
- The collected waste is disposed of at the Solid Waste Management Plant located at Shivri, Mohan Road, Lucknow. The dry and wet waste is separated by trommel and ballistic separator at Solid Waste Management Plant, Shivri.

Findings of the Survey

This empirical study has been conducted to understand the nature of problems related to sanitation facilities in different parts of Lucknow city. The survey aims to examine the behaviour and awareness of the people towards sanitation and cleanliness. For this purpose, the researcher has collected information through a survey with the help of a schedule and questionnaire. The findings and inferences of the study are summarised below:

- The majority of respondents are well educated and, it can be inferred that they have answered all the questions asked in the questionnaire after realizing the importance of sanitation. Therefore, about 80 % of respondents are either very much aware or have sufficient information about sanitation.
- Among various means of media (print media and broadcast media), it is found that most of the respondents are agreed that social media platforms are a more influential way for social interaction and for access to sanitation-related news, information, and other decisions makings.
- Most of the respondents reside in government-approved colonies, where the municipal corporation provides sanitation facilities. Whereas in some areas, the sanitation-related works are done by private agencies or individuals like Bangladeshi migrated persons.
- Most of the respondents have toilet facilities in their households. It means that they are living in organized colonies. However, data also shows that some of the respondents live in unauthorized colonies because, according to data, 1.4% of people defecate in open areas.
- The majority of respondents, who use the public toilet, said that the cleanliness of the public toilets is either bad or extremely bad. Only 5.8% of respondents said public toilets are cleaned. Whereas, rest of the respondents rated them average. It concludes by the data and researcher also observed that most of the public toilets in the city are not properly cleaned and are unhygienic to use. Therefore, 33.6% of respondents said that they do not use public toilets.
- Many respondents informed that the drainage systems are cleaned up regularly with some interval in their locality. However, while visiting their locality, the

researcher observed that the open drains mainly were filled with garbage and dirty waterlogged in some areas.

- 73.2 % of the total respondents said that the sewerage system in their locality is manually cleaned. However, 25.4% said that sewers are cleaned by machines.
- 88.2 % of respondents are aware of waste segregation (separation of wet and dry waste), and only 11.8 % have responded negatively. 48% of respondents separate wet and dry waste themselves at home, and 24% sometimes separate wet and dry garbage at their home. The rest of the respondents do not segregate waste at all.
- 42.2 % of respondents said that waste is collected daily from their area. 28.2 % said on alternative days, 11 % said weekly, and 4.4 % said that garbage collection from their area occurs once a month. However, 5.4 % of respondents said waste is never collected. Data indicates that garbage/waste is regularly collected from households either by LMC vehicles or private sanitation workers.
- 40.6 % of respondents dispose of their household waste in garbage vehicles run by the government, taking the garbage from door to door. About 26.8 % give their garbage to the private garbage collector, who also takes their garbage from door to door. 26 % of respondents throw their household waste in the locality dustbin, and 6.6 % disposes of their garbage in another manner. It is observed that LMC has deployed garbage collector vehicles (Eco- Green vehicles) in their organised colonies. Still, many of the residents give the garbage to the private persons/ sanitation workers deployed by houses.
- The research revealed that more than half of the respondents commonly found household waste in their locality. However, 16.8 % found Animal/Human faeces, 15.6 % found pollutant drainage, and 4.4 % found other kinds of garbage in their locality.
- Half respondents (53.4%) said that the cleanliness of their area is average. Only 6% of respondents said that the cleanliness is good, and 1.6% said that cleanliness in their locality is very good. It means that most of the respondents are not satisfied with the cleanliness done by LMC in their locality.

- 50 % of the respondents are aware that poor sanitation leads to environmental degradation, water pollution, soil pollution, air pollution, and transmitted diseases. Of the remaining 50% respondents, 20.4 % said it causes environmental degradation, 12.8 % said water pollution, 11.2 % said it spreads diseases, 4.8 % said air pollution and only 0.8 % said it causes soil pollution. Therefore, it is observed that most people are aware of the impact of poor sanitation on human life and the environment surrounding their locality.
- Due to poor sanitation facilities, 26.8 % of respondents suffered from dysentery, 24.8 % from Typhoid, 22.8 % from Diarrhoea. However, 13.8 % from malaria and 2.4 % suffered from cholera. Therefore, it is found that poor sanitation causes health problems.
- Most of the respondents (65%) are not aware of any law related to sanitation, whereas 28.8 % have responded affirmatively.
- Most of the respondents (69%) have agreed that there must be a separate law relating to sanitation in India, and 26 % have responded negatively. It means they are either not aware of the need for laws pertaining to sanitation or are satisfied with the existing sanitation policies. It shows that people do not know much about the existing sanitation-related laws of the urban local bodies. However, they are aware of the sanitation-related policies of the government. Thus, there is a need to enact comprehensive laws on sanitation and make it popular among people to realize their right to sanitation.
- Around 74.9 % of the respondents agreed that they are aware of their duties towards maintaining cleanliness in the home and surroundings. However, it was revealed by data and observed by the researcher that in most of the residential areas, garbage is spread out. When the researcher asked the respondents about their responsibility to encourage others or neighbours for cleanliness, it is found that 77 % agreed that they do so.

Chapter VII, i.e., Conclusion and Suggestions. The chapter gave some conclusions by the researcher after analysing various international legal instruments, national legislative frameworks, policies, and various judgments given by Indian courts. Apart from this, the researcher also suggests some suggestions to make the sanitation system more effective.

The history of sanitation has run parallel to the history of cities life. From pre-historic hunter-gatherers to sophisticated urban humans, we have vastly improved life. Development has been a faithful companion of human civilization. The notion of human development incorporates all aspects of individuals' well-being, such as food security, clean and fresh air, safe drinking water, health and sanitation, etc. much of these components of development can be classified as physiological needs. But, sanitation is not just a biological requirement but it is a way of life.

From the Indus Valley Civilization to British India, India has seen the rise and fall of several royal dynasties, and with them, also seen their arrangements of sanitation practices. The Indus Valley Civilization developed and managed many advanced features of sanitation facilities that we observe as similar to the modern one. In this civilization, the cities were built according to a highly sophisticated plan. After the fall of Harappa and with the arrival of the Aryans, open defecation also entered into the Indian psyche. Although, some better sanitation facilities have been seen in the Maurya, Gupta, or Vijayanagara dynasties. But with the onset of colonial rule, sanitation ceased to be a national priority. During the British period Mahatma Gandhi with his co-freedom strugglers such as Vinoba Bhave, Thakkar Baba, J.C. Kumarappa, etc., joined the freedom struggle and took the 'Safai' and 'Swachhata' root to independence. Mahatma Gandhi after realised the indispensable place of sanitation in nation-building stated that 'Cleanliness is only next to godliness.'

Therefore, to fulfill Mahatma Gandhi's dream of a Clean and hygienic India, the government of India have launched Swachh Bharat Mission in 2014 and gave a clarion call for Swachh Bharat till 2nd October 2019, the 150th Birth Anniversary of Mahatma Gandhi. This vision for a new and clean India includes sanitation infrastructure like toilets and waste management facilities and running sustained awareness campaigns to motivate people to adopt cleanliness as a way of life.

Even though this Clean India Movement has now been converted into 'people's movement but the realization of sanitation as a right is still not clear in India. The Constitution of India includes no specific right to sanitation. But, it derived from the fundamental right to life because this was the most obvious link in the Constitution of India. In the past couple of decades the main issue that has been arisen that does not concerned with the nature of the right, rather its scope. The central issue is that sanitation is understood narrowly, and health, environmental, gender, or caste-related

issues are not considered as sanitation issues. Higher judiciary progressively considered issues related to sanitation and recognised its existence as a derivative right. The right to sanitation is well enshrined in the case law in India as there has been no direct recognition of the right in statutory provisions. The higher judiciary not only established the relation of sanitation with other fundamental rights but also gave sanitation the status of a fundamental right under Art 21 linked with other rights. Recognition of the right by the higher judiciary was conceptually ground-breaking, but it is only when the right is enshrined in legislation and delegated instruments that it can become a right in reality. Although the gap in the legal framework related to sanitation has been filled by government policies.

India has been a strong policy framework to tackle the sanitation challenge, but this does not translate into improved coverage in the entire country. Further, in the absence of a legal framework, the policy implementation in the sanitation sector goes unchecked and unchallenged. Rapid urbanization and growing population have put a major strain on the existing infrastructure in India. This has affected the government's ability to provide effective sanitation measures. India is doing better in terms of sanitation but there is more scope for improvement in safe sanitation facilities. Moreover, people should also start behavioral change towards sanitation practices. Instead of waiting for the government to provide and sustain sanitation facilities, every citizen of the country should take some responsibility to clean their surroundings. Also, the finding of the study reveals that the sanitation sector needs to mobilize people's participation at the micro as well as macro level.

Suggestions

We still have miles to go in the field of sanitation as this area needs regular attention. To improve the quality of sanitation, some decisive steps have to be taken to create a "human environment" and save it for the present as well as future generations. After analyzing the non-empirical and empirical study this researcher has also provided some suggestions for making sanitation facilities accessible to the people more effectively in the future. A few steps in this direction are suggested as follows:

- To ensure the provision of the Right to Sanitation as enshrined in Article 21 of the Constitution of India, there is an urgent need to make a comprehensive law for sanitation specifically at the Centre as well as State level. In this law, there

should be provisions to ensure the rights and duties of the authorities as well as to ensure the rights and duties of the public.

- Apart from drafting new laws related to sanitation, the existing laws must also be critically analysed and amended accordingly.
- Sanitation needs a holistic effort, requiring a multi-dimensional approach, such as economic growth, urbanisation, public health, and the environment, including climate change. Therefore, there must be a comprehensive definition of sanitation under the statute as well as policies, for better understanding.
- Strong political will and leadership can bring extraordinary achievements in the field of sanitation, even in a difficult situation. Therefore, sanitation commitments require additional efforts by the political leadership and concerted action to create universal and sustainable access to sanitation.
- Accountability and transparency are effective entry points to work with the sanitation administration. Institutional mechanisms such as policies, schemes, and institutions exist in the sanitation sector, yet performance remains poor due to a lack of accountability and transparency. Thus, there must be transparency and accountability in the sanitation work of the government for the people to claim the right to sanitation, as it helps the governments to become more sensitive towards the vulnerable and marginalized population.
- India has to meet the 2030 Sustainable Development Goals (SDGs), which include Goal 6, which talks about sustainable sanitation. Therefore, a sanitation system must be made sustainable by the government. It must not only economically viable, socially acceptable, and technically and institutionally appropriate, but it also preserves the environment and natural resources.
- Partnerships between individuals and organisations in the government, the non-profit sector, development experts, investors, and companies should jointly address these issues to ensure access to water and sanitation for all.
- There is a great need to get a change in human behaviour about sanitation. Behavioral change about sanitation will only come when people would have a proper understanding of why open defecation could lead to health hazards and how using toilets for sanitation purposes decreases the health risks. Thus, behaviour change towards good sanitation practices is the most important thing.

- There is an urgent need to spread awareness about the hygienic behaviour of sanitation. It is the responsibility of the government to spread hygiene awareness among the people by linking health with sanitation through assistance/participation of media and Non-Governmental Organizations (NGOs).
- All kinds of Media must take responsibility to spread awareness regarding sanitation because mass media can make a topic popular, fashionable, or worthy of attention. Media can also contribute effectively in making people aware of the importance of sanitation in public life.
- The government should also focus on those people who are forced to empty the toilets after filling the toilet pits. Thus, Legislation to prohibit manual scavenging is only the first step, but these laws need to be adequately implemented.
- Appropriate technology is much needed for the sanitation system. Much attention should be paid to innovative ways of managing human waste, which will help improve the health and lives of people around the world. With the help of technology, malpractices like manual scavenging can be eliminated.
- Former and existing manual scavengers should be rehabilitated by transitioning their occupations into other occupations irrespective of their caste identity. The apathy of the government departments has proved to be a hindrance in the efforts to rehabilitate manual scavengers.

Sanitation is a worldwide problem that invokes political, cultural, religious, social, and economic issues. The solution should be found through all these approaches, which examine all the dimensions of sanitation. For this purpose, there is a strong need to apply a sustainable framework and strengthen capacity building in technological, social, as well as delivery, and monitoring mechanisms of sanitation programs. Because the sustainability of sanitation is a key challenge as well as a scope to improve sanitation facilities and it is not only related to the physical part of the issue, it additionally covers the physiological aspects where the attitude, behaviour, and cultural beliefs of the society should be changed and people should accept the improved means of sanitation.

INTERVIEW WITH OFFICIALS OF LUCKNOW MUNICIPAL CORPORATION (LMC)



Nagar Swasth Adhikari



Zonal Officer (Zone 8)



Food and Sanitary Inspector (Zone 8)



Swachh Bharat Mission Office

PHOTOS OF FIELD SURVEY



WASTE MANAGEMENT BY LMC



Door-to Door Waste Collection



Waste taking for segregation



Waste segregation



Waste taking to the Dumping Yard



Private garbage collector

PUBLIC TOILET IN LUCKNOW CIT

