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RIGHT TO SANITATION IN INDIA THROUGH THE LENS OF JUDICIARY

Ms. Amlanika Bora *

Dr. Sanjay Kumar^{1**}

Introduction

Sanitation is one of the important facets of living a healthy life. Sustainable Development Goal-6² (SDG-6) strives to ensure availability and sustainable management of water and sanitation for all.³ Adequate access to sanitation is indispensable for eradicating developmental challenges around the globe and accomplishing global goals to eradicate poverty, safeguard the environment, and secure peace and prosperity for all. It is essential not only for the wellbeing of the masses, but also for the nation's development, keeping ecological balance. Improper sanitary conditions are a contributory factor to health hazards resulting in the deaths of millions of children every year, adversely impacting the social and economic progress of a nation. Inadequate sanitation contributes to the spread of diseases such as cholera, diarrhoea, dysentery, hepatitis A, typhoid, and polio, as well as stunting.⁴ Though significant progress has been made towards sanitation over the last couple of years, nearly 2 billion people around the globe still lack basic sanitation facilities, and of these,

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² The Sustainable Development Goals are a universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere. The 17 Goals were adopted by all UN Member States in 2015, as part of the 2030 Agenda for Sustainable Development which set out a 15-year plan to achieve the Goals.

³ United Nations Department of Economic and Social Affairs Sustainable Development, Goal 6 available at <https://sdgs.un.org/goals/goal6> (Last visited on February 5, 2022).

⁴ World Health Organisation, Sanitation available at <https://www.who.int/news-room/fact-sheets/detail/sanitation> (Last visited on February 5, 2022).

673 million people still defecate in the open.⁵ According to a report by Water Aid in 2017, India, with 732 million people lacking access to toilet facilities, topped in the list of ten countries with inadequate toilet facilities and 355 million women and girls lacking access to a toilet.⁶

The plight of sanitation in the contemporary world has led to the emergence of a rights-based approach to sanitation. It can also be argued that the right to sanitation also acts as a medium for the realization of other rights, including the right to health care, access to water, protection of the environment, and education. Hence, the authors make an attempt to examine the right to sanitation as a vital right through their research. For this purpose, the paper aims to provide an in-depth analysis of the meaning of the right to sanitation, its nature, and its scope in the context of international and domestic instruments, emphasising in particular the Indian judicial approach to identifying the right to sanitation as a standalone right.

Henceforth, this article is divided into four sections. It opens with a theoretical underpinning derived from international and national understanding, indicating the varied perspectives to the right to sanitation (Section Two). Third Section offers a genesis of recognition of the right to sanitation at the international level. Section Four concentrates on examining the right to sanitation in the Indian context, highlighting relevant constitutional provisions and judicial interpretations. The Concluding Section reviews the nexus between the right to sanitation and other fundamental rights, and it makes recommendations for effectively addressing challenges relating to inadequate sanitation in India.

⁵ Ibid.

⁶ WATER AID, *Out of Order: The State of the World's Toilets*, 9 (2017) available at https://www.wateraid.org/uk/sites/g/files/jkxooof211/files/Out%20of%20Order%20report%202017_0.pdf (Last visited on January 18, 2022).

1. Right To Sanitation: The Postulation

There is no single definition for the term ‘sanitation’. Different international and domestic actors interpreted this term in a variety of ways, focusing on its various dimensions viz. human rights, public health, and the environment. In general sense, sanitation refers to the provision of facilities and services for the safe disposal of human urine and faeces. It is also used in the context of maintaining hygienic conditions, through services such as garbage collection and wastewater disposal.”⁷A World Health Organization Expert Committee on Environmental Sanitation defines ‘environmental sanitation’ as the “control of all those factors in man’s physical environment that exercise or may exercise a deleterious effect on his physical development, health, and survival.”⁸According to the Water Supply and Sanitation Collaborative Council (WSSCC), ‘environmental sanitation’ means “interventions in reducing people’s exposure to diseases by providing a clean environment in which one could live with measures to break the cycle of diseases. This usually includes disposing and hygienic management of human and animal excreta, reuse of wastewater, control of disease vectors and provision of washing facilities for personal and domestic hygiene. Environmental Sanitation involves both behaviour and facilities, which work together to form a hygienic environment.”⁹

⁷World Health Organisation regional Office for Africa, Sanitation available at <https://www.afro.who.int/node/5691> (Last visited on February 5, 2022).

⁸ World Health Organisation, Expert Committee on the Public Health Aspects of Housing, First Report, 4 (June 1961) available at https://apps.who.int/iris/bitstream/handle/10665/40497/WHO_TRS_225.pdf?sequence=1&isAllowed=y (Last visited on February 5, 2022).

⁹ WSSCC Fifth Global Forum MAP Executive Summary Working Group on Environmental Sanitation, pg 1 available at <https://www.ircwash.org/sites/default/files/SANDEC-2000-MAP.pdf> (Last visited on February 5, 2022).

According to Robert Lenton et al., ‘basic sanitation’ refers to “the lowest cost option for securing sustainable access to safe hygiene and convenient facilities and services for excreta and sullage disposal that provide privacy and dignity while ensuring a clean and healthful living environment both at the home and in the neighbourhood of users.”¹⁰

In her report on sanitation, the Special Rapporteur proposed a definition of ‘sanitation’ in human rights terms as: [a] system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene.¹¹ The report emphasizes on the state’s assurance to provide everyone without discrimination, physical and economic access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.¹² This definition has, inter alia, been endorsed by both the Human Rights Council (hereinafter “The HRC”) and the Committee on Economic, Social and Cultural Rights (CESCR).¹³ According to this definition, “adequate sanitation is more than just access to and use of toilets or latrines. It entails the treatment and safe disposal or reuse of faeces, urine, and associated wastewater in a way that avoids direct contact to minimize health risks. Such a broad understanding of sanitation is warranted as sanitation not only concerns one's own right to use a latrine or toilet, but also the rights of other people, in particular their right to health, which can be negatively impacted if excreta and wastewater are not properly managed.”¹⁴

In the Indian context, a concrete definition of ‘sanitation’ or ‘right to sanitation’ is missing. It is possible to gain a conceptual grasp of sanitation

¹⁰ R Lenton et al, *Health, Dignity and Development: What will it Take?* (Earthscan 2005).

¹¹ U.N. Committee on Economic, Social and Cultural Rights (CESCR), *Statement on the Right to Sanitation*, ¶8, U.N. Doc. E/C.12/2010/1 (Nov. 19, 2010).

¹² *Ibid.*

¹³ Inga Winkler, *The Human Right to Sanitation*, 37 U. Pa. J. Int’l L. 1379 (2016).

¹⁴ *Ibid.*

by referring to several programmes, policies, and administrative decrees issued by the Government of India that are relevant to sanitation. For example, the National Urban Sanitation Policy 2008 (NUSP), which is a policy document that guides urban sanitation matters and defines sanitation as the “safe management of human excreta, including its safe confinement, treatment, disposal, and associated hygiene-related practices.”¹⁵ In contrast, the Total Sanitation Campaign (TSC) Guidelines 2011, a Government of India’s leading programme for rural areas, refers to sanitation as “a comprehensive concept which includes liquid and solid waste disposal, food hygiene, and personal, domestic as well as environmental hygiene.”¹⁶ Moreover, the Swachh Bharat Mission guidelines include sanitation components that encompass various critical features such as access to toilets, privacy and dignity of individuals, and waste management, among others.¹⁷

This means that the term “sanitation” can be used to refer to a wide range of things, ranging from the management of human excreta to a more comprehensive conception that encompasses fundamental aspects of life such as privacy and dignity to health and environmental dimensions as well as social dimensions.¹⁸

2. The Right To Sanitation: International Perspective

The Universal Declaration of Human Rights (UDHR)¹⁹ and the International Covenant on Economic, Social and Cultural Rights

¹⁵ Urban Sanitation Policy, 2008, Background, ¶1 available at https://mohua.gov.in/upload/uploadfiles/files/NUSP_0.pdf (Last visited on February 5, 2022).

¹⁶ Total Sanitation Campaign Guidelines, 2011, ¶ 1.2.

¹⁷ Sujith Koonan, *The right to sanitation in India: A Multi-Faceted Right in Search of A Comprehensive Framework*, 2018, 22.

¹⁸ *Id* at 23.

¹⁹ The Universal Declaration of Human Rights articulates fundamental rights and freedoms for all. The General Assembly of the United Nations adopted the Declaration on 10 December 1948.

(ICESCR)²⁰ do not expressly talk about the right to sanitation. However, ICESCR recognizes people's right to an adequate standard of living, including adequate food, clothing, and housing under Article 11(1)²¹ and the right to health, including the improvement of all aspects of environmental and industrial hygiene under Article 12²². It is established that for the realization of both these rights, sanitation is indispensable.²³

A number of international conventions have alluded unequivocally about the significance of water and sanitation in the realization of human rights, for instance, the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²⁴, the 1989 Convention on the Rights of the Child (CRC)²⁵, and the 2006 Convention on the Rights of Persons with Disabilities (CRPD)²⁶. Nevertheless, these treaties recognize the right to sanitation in specific settings, as opposed to a general one. For

²⁰ Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.

²¹ International Covenant on Economic, Social and Cultural Rights (Hereinafter 'ICESCR'), December 16, 1966, Article 11 (1).

Article 11 (1): The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

²² ICESCR, Id. at Art. 12.

“Art. 12(1). The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child

²³ CATARINA DE ALBUQUERQUE, *REALISING THE HUMAN RIGHTS TO WATER AND SANITATION: A HANDBOOK* 10 (2014), available at http://www.ohchr.org/Documents/Issues/Water/Handbook/Book1_intro_.pdf (Last visited on August 6, 2017).

²⁴ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, Art 14(2)(h) (December 18, 1979).

²⁵ Convention on the Rights of the Child, G.A. Res. 44/25 (November 20, 1989).

²⁶ Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (December 13, 2006).

example, the CEDAW calls on countries to protect women’s rights to “adequate living circumstances, notably in relation to sanitation.”²⁷ In a similar vein, the Third Geneva Convention recognizes the right of prisoners of war to sanitation.²⁸

The successive developments regarding recognising the right to sanitation are attributed to the various soft law instruments under the United Nations (hereinafter “The UN”).²⁹ Furthermore, on July 28, 2010, the UN General Assembly (hereinafter The UNGA) adopted resolution 64/292 that explicitly “recognizes the right to safe and clean drinking water and sanitation as a human right, essential for the full enjoyment of life and all human rights.”³⁰ This resolution is marked as the turning point in recognising sanitation as a distinct human right which has also been affirmed by the HRC in its 2010 and 2013 resolution and by the UNGA in its 2013 resolution.³¹ On December 17, 2015, the UNGA, while adopting the path-breaking resolution 70/169, recognized that the right to water and the right to sanitation are distinct rights. Though both these rights are derived from the right to an adequate standard of living and are related to

²⁷ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, Art 14(2)(h) (December 18, 1979).

²⁸ Geneva Convention Relative to the Treatment of Prisoners of War, Final Record of the Diplomatic Conference of Geneva of 1949, Vol I, 243 (12 August 1949) Art. 29.

²⁹ Committee on Economic, Social and Cultural Rights, General Comment No 15—the Right to

Water, UN Doc E/C.12/2002/11, Twenty-Ninth session, Geneva (11–29 November 2002), at ¶ 12 (a) – “Reference can be made to General Comment No. 15 on the right to water, adopted by the Committee on Economic, Social, and Cultural Rights (CESCR), which recognises personal sanitation as an integral component of the right to water. It also recognises the state’s responsibility to ensure that all citizens have access to basic sanitation as a fundamental obligation.”

³⁰ G.A. Res. 64/292, The Human Right to Safe Drinking Water and Sanitation, U.N. Doc. A/RES/64/292 (July 28, 2010).

³¹ U.N. Human Rights Council Res. 15/9, Human Rights and Access to Safe Drinking Water and Sanitation, U.N. Doc. A/HRC/RES/15/9 (Oct. 6, 2010); G.A. Res. 68/157, The human right to safe drinking water and sanitation, U.N. Doc A/RES/68/15, (December 18, 2013), and HRC Res 24/18, The human right to safe drinking water and sanitation, U.N. Doc. A/HRC/RES/24/18 (October 8, 2013).

each other, there is a clear distinction between these two. The resolution thus “recognizes that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living.”³²

The realization of the right to sanitation is incumbent upon the fulfilment of certain essential normative conditions namely availability, accessibility, affordability, quality and hygiene which are a prerequisite for the right to life (of which the right to sanitation forms an essential part). Individuals have a clearly defined human right to sanitation, and states have corresponding obligations for the realization of this human right.

Based on the discussion above, it appears that the recognition of sanitation as a distinct right has only recently occurred at the international level, and there is room to articulate this right in a more specific way, indicating its various dimensions.

3. Right to sanitation: Indian perspective

3.1. Constitutional framework

The Constitution of India (hereinafter The Constitution), the precursor of the new Indian renaissance, adopted in 1949, is the longest of the organic

³² G.A. Res. 70/169, The Human Right to Safe Drinking Water and Sanitation, U.N. DOC. A/RES/70/169, at 4 (Feb 22, 2016), http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/169 (Last visited on October 5, 2017).

laws now extant in the world.³³ According to the Supreme Court of India (hereinafter The Supreme Court), “the Constitution envisions establishing an egalitarian social order, rendering to every citizen social, economic, and political justice in the social and economic democracy of the Bharat Republic.”³⁴ The Constitution thus ensures socio-economic and political democracy and the preamble to the Constitution reflects the same. The Constitution concretised and glorified the preambular aspiration to secure for all its citizens justice, liberty, equality, and fraternity by guaranteeing justiciable Fundamental Rights (hereinafter The FRs) to everyone under Part III and spelling out the Directive Principles of State Policy (hereinafter The DPSP) under Part IV of the Constitution. Thus, under the Constitution, the basic civil and political rights are categorised as FRs, available to everyone regardless of religion, sex, or caste,³⁵ and rights of socio-economic nature are labelled as DPSP, which are fundamental in the governance of the country.³⁶ Both the FRs and DPSP are supplementary to each other and cannot be isolated from each other.

The Constitution does not have any explicit provisions regarding the right to sanitation. It is important to note here that the higher judiciary by adopting an expansive interpretation of Article 21³⁷ has included the right to sanitation within its ambit.³⁸ Furthermore, the correlation between the right to sanitation and prohibition of manual scavenging forms part of the

³³ MP JAIN, CONSTITUTION OF INDIA 11 (6th ed.,2011).

³⁴ *Samatha v. State of Andhra Pradesh*, AIR 1997 SC at 3326: (1997) 8 SCC 191.

³⁵ Rebecca M. Coleman, *The Human Right of Sanitation for All: A Study of India*, 24 *Pac. McGeorge Global Bus. & Dev. L.J.* 267 (2011).

³⁶ *Supra* note 32 at 1486.

³⁷ Constitution of India, 1950, Art 21.

“Art. 21: No person shall be deprived of his life or personal liberty except according to a procedure established by law.”

³⁸ The rights to water and sanitation at the national level « Rights to Water and Sanitation, Rights to Water and Sanitation RSS, <http://www.righttowater.info/why-the-right-to-water-and-sanitation/the-rights-to-water-and-sanitation-at-the-national-level/> (last visited Oct 5, 2017).

larger framework of the practice of untouchability which has been abolished by virtue of Article 17 of the Constitution, consequently, the right to sanitation becomes an integral part of Article 17.³⁹ Provision for sanitation is also linked to the 'right to education' enshrined in Article 21A of the Constitution as inadequate sanitation and improper hygienic environment make the learning place/school a breeding ground for diseases and causes multiple problems in school-going children, leading to their dropping out of school. Moreover, sanitation is a part of the DPSP, being an element of socio-economic justice. More specifically, Articles 39(e)⁴⁰, 39(f)⁴¹, 42⁴², 47⁴³ and 48A⁴⁴, when read in conjunction with

³⁹ Constitution of India, 1950, Art. 17.

“Art. 17: Abolition of Untouchability: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.”

⁴⁰ Constitution of India, 1950, Art. 39 (e).

“Art. 39: The State shall, in particular, direct its policy towards securing: (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

⁴¹ Constitution of India, 1950, Art. 39 (f).

“Art. 39. The State shall, in particular, direct its policy towards securing: (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

⁴² Constitution of India, 1950, Art. 42.

“Art. 42: The State shall make provision for securing just and humane conditions of work and for maternity relief.”

⁴³ Constitution of India, 1950, Art. 47.

“Art. 47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

⁴⁴ Constitution of India, 1950, Art. 48.

“Art. 48A. The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Articles 14⁴⁵ and 21⁴⁶ of the Constitution, are directly or indirectly linked with various components of broadly conceived right to sanitation.

Another significant feature of the Constitution relating to sanitation is that it is the responsibility of the state and the local governments to regulate and administer sanitation in India.⁴⁷ The Constitution empowers the state governments to legislate on subjects of public health, sanitation⁴⁸, and water supplies, as well as irrigation, canals, drainage, and embankments, water storage, and power.⁴⁹

Thus, while the legislative competence in the matters of sanitation falls within the purview of the state government, following the 73rd⁵⁰ and 74th⁵¹ amendments to the Constitution, the local self-governments (panchayats, municipalities, and corporations) are vested with the duties of undertaking matters related to sanitation. Hence, for providing services related to water and sanitation, provisions of municipalities and panchayats were added to the Constitution. For example, under Article 243G of the Constitution,

⁴⁵ Constitution of India, 1950, Art. 14.

“Art 14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

⁴⁶ Constitution of India, 1950, Art. 21.

“Art. 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.”

⁴⁷ Constitution of India, 1950, Seventh Schedule: List II—State List, Entry 6, 7.

“Seventh Schedule: List II—State List

.....

6. Public health and sanitation; hospitals and dispensaries

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and waterpower subject to the provisions of entry 56 of List I.”

⁴⁸ Constitution of India, 1950, Seventh Schedule: List II—State List, Entry 6.

“Seventh Schedule: List II—State List

6. Public health and sanitation; hospitals and dispensaries.”

⁴⁹ Constitution of India, 1950, Seventh Schedule: List II—State List, Entry 17.

“Seventh Schedule: List II—State List

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and waterpower subject to the provisions of entry 56 of List I.”

⁵⁰ Added by the Constitution (Seventy-third Amendment) Act, 1992, s. 4 (w.e.f. 24-4-1993)

⁵¹ Added by the Constitution (Seventy-fourth Amendment) Act, 1992, s. 4 (w.e.f. 1-6-1993)

states have the authority to adopt laws and delegate authority and obligations to panchayats in relation to the matters listed in the Eleventh Schedule.⁵² One of the matters covered in the Eleventh Schedule is health and sanitation.⁵³ As a result, states can authorise panchayats to provide health care and sanitation facilities in accordance with the Constitution. Likewise, as per Article 243W, the state may authorise municipalities powers and obligations in the areas of public health, sanitation, and solid waste management.⁵⁴

The above-mentioned constitutional provisions provide the broad outline of our discussion on the judicial interpretation of recognising sanitation as a basic human right with an understanding of the state's responsibility in making the sanitation facilities available to everyone in the next section.

3.2. Judicial Approach

The Supreme Court being the protector and interpreter of the FRs act as the “sentinel on the qui vive” in relation to the FRs.⁵⁵ The judicial creativity in expanding the scope of fundamental rights has been found in plenty of judicial pronouncements, especially during the last three decades. In the landmark *Maneka Gandhi*⁵⁶ case, in which the metamorphosis of judicial interpretation pertaining to Article 21 was initiated, the Court has observed:

⁵² *Ibid.*

⁵³ Constitution of India, 1950, Eleventh Schedule, Entry 23.
“Eleventh Schedule

...

23. Health and sanitation, including hospitals, primary health centres and dispensaries.”

⁵⁴ Constitution of India, 1950, Eleventh Schedule, Entry 6.
“Eleventh Schedule

...

6. Public health, sanitation conservancy and solid waste management”.

⁵⁵ *Supra* note 32 at 904.

⁵⁶ *Maneka Gandhi vs Union of India*, 1978 AIR 597.

The attempt of the Court should be to expand the reach and ambit of the Fundamental Rights rather than to attenuate their meaning and content by a process of judicial construction.

Likewise, in *Ajay Hasia*⁵⁷, Bhagwati, J., has observed:

It must be remembered that the Fundamental Rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation.⁵⁸

The Supreme Court has even enunciated the doctrine of implied FRs in *Unni Krishnan, J.P. v. State of Andhra Pradesh*.⁵⁹ The Constitutional Bench⁶⁰ thus made an observation regarding the interpretation of the rights enshrined in Part III of the Constitution in the following words:

“This Court has, however, not followed the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. Freedom of Press is not expressly mentioned in Part III, yet it has been read into and inferred from the freedom of speech and expression. *Express Newspapers v. Union of India*, [1959] S.C.R. 12. More particularly, Article 21 has sprung up a whole lot of human rights jurisprudence viz., right to legal aid and speedy trial *Hussainara Khatoon* [1979] 3 S.C.R. 532 to *A.R. Antulay*, [1992] 1 S.C.R. 225, the right to means of livelihood *Olga Tellis*, [1985] Supp. 2 S.C.R. 51, right to dignity and privacy, *Karak. Singh*

⁵⁷ *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487.

⁵⁸ *Id.* at 493.

⁵⁹ *Unni Krishnan, J.P. v. State of Andhra Pradesh*, AIR 1993 SC 2178

⁶⁰ Bench: Sharma, L.M. (CJ), Pandian, S.R. (J), Jeevan Reddy, B.P. (J), Mohan, S. (J), Bharucha S.P. (J)

[1964] 1 S.C.R. 332, right to health Vincent, v. Union of India [1987] 2 S.C.R. 468), right to pollution-free environment M.C. Mehta v. Union of India [1988] 1 S.C.R. 279 and so on.”⁶¹

The court, thus, emphasized that socio-political and economic transformations of society necessitate the recognition of new rights, and the law, in its eternal youth, grows to meet social demands.⁶²

Keeping in mind the above judicial observations, our subsequent discussion examines how the right to sanitation forms part of the FRs as interpreted by the Indian judiciary.

3.3. Right to Sanitation as flowing from Right to life under Article 21 of the Constitution of India

While emphasising the ambit of the right to life covered under Article 21, Subba Rao, J., in Kharak Singh v. State of Uttar Pradesh⁶³ quoted the observation made by Field, J. in Munn v. Illinois⁶⁴ that life means more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.⁶⁵

In Sunil Batra v. Delhi Administration⁶⁶, the Supreme Court reiterated the same view and held that the ‘right to life’ included the right to lead a healthy life so as to enjoy all the faculties of the human body in their prime conditions. It would even include all those facets of life which make human life meaningful, complete, and worth living in a civilized society. Therefore, it inherently includes the right to food, water, a decent environment, education, medical care, and shelter.

⁶¹ Supra note 58 at ¶ 31.

⁶² Supra note 32 at 903.

⁶³ 1963 AIR 1295.

⁶⁴ (1877) 94 U.S. 113.

⁶⁵ 1980 AIR 1579.

⁶⁶ 1978 AIR 1675.

Broadening the scope of Article 21, the Supreme Court, while passing another landmark pronouncement in *Francis Coralie Mullin*⁶⁷ held that “the right to live enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as adequate nutrition, clothing, and shelter, etc. Every act which offends against or impairs human dignity would constitute a deprivation pro tanto of this right to live, and it would have to be in accordance with reasonable, fair, and just procedure established by law which stands the test of other fundamental rights.”⁶⁸

Likewise, in *Bandhua Mukti Morcha* case⁶⁹ giving an expanded interpretation of Article 21, Bhagwati, J., observed:

“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.”⁷⁰

⁶⁷ *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, and Others*, 1981 AIR 746.

⁶⁸ *Id.* at 3.

⁶⁹ *Bandhua Mukti Morcha v. Union of India*, 1984 AIR 802.

⁷⁰ *Id.* at 4.

The above mentioned cases, though, do not reflect upon the right to sanitation, provide enough room to include any rights essential to live with dignity. As sanitation is indispensable for people's lives, well recognized under the international human rights framework, it can be understood that Article 21 of the Constitution is wide enough to include access to sanitation within its ambit.

Significantly, in *Virendra Gaur and Ors vs State of Haryana and Ors*⁷¹, the highest court of India interpreted the word 'environment' in the context of Article 48-A, Article 47, and Article 51-A(g) of the Constitution and stated that the word 'environment' is of a broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance." Shedding light on Article 21 of the Constitution, the court held that "the enjoyment of life and its attainment, including their right to life with human dignity, encompasses within its ambit the protection and preservation of the environment, ecological balance free from pollution of air, water and sanitation without which life cannot be enjoyed... Thus, 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... It is, therefore, not only the duty of the State but also the duty of every citizen to maintain a hygienic environment."⁷²

Likewise, in *LK Koolwal v. State of Haryana*⁷³, High Court of Rajasthan opined that access to basic health and sanitation facilities and protection of environment is essential for the realization of Article 21 of the Constitution.

⁷¹ (1994) SCC 577.

⁷² Id. at 3.

⁷³ *Municipal Council, Ratlam v Shri Vardhichand*, AIR 1988 Raj. 2.

Thus, from the above discussion, it is evident that, in India, the right to sanitation is a justiciable right, being an integral part of the right to life. A life with dignity cannot be realized without having access to adequate sanitation. Hence, although Article 21 doesn't expressly talk about sanitation as a right, it is quite an implied fundamental right, drawing its legitimacy from Article 21 of the Constitution.

Another key component of the right to sanitation is the state's duty to provide sanitation-related facilities to the individual without any negligence. Hence, the next part of the paper focuses on the obligation of the state machinery in providing access to sanitation in India in the light of judicial pronouncements.

3.3.1. Right to Sanitation vis a vis Obligation of State/ Municipal/Local Authorities

In Ratlam Municipality case,⁷⁴ the apex court has emphasized the state's responsibility to adopt appropriate measures concerning the improvement of public health, including sanitation, as amongst its primary duties under Article 47 of the Constitution. While observing the state's obligation to provide sufficient loans or grants to the Ratlam Municipality for the fulfilment of its responsibilities pertaining to sanitation facilities and public health measures, the court issued directions to the Municipal Council to construct the drains and fill up cesspools and other pits of filth and use its sanitary staff to keep the place free from accumulations of filth. Furthermore, the court also directed the municipal authority to build enough public toilets, one for each gender, with regular water supply and scavenging services, as well as to raise awareness among the general public about the importance of using and maintaining these toilets in a clean condition.

⁷⁴ 1980 AIR 1622.

In *Vincent v. Union of India*⁷⁵ It was held by a Division Bench of the Supreme Court that the maintenance and improvement of public health should be of prime importance in a welfare state because of its vital significance for human subsistence.

In *L.K. Koolwal v State of Rajasthan*,⁷⁶ the Rajasthan High Court held that state authorities need to monitor the fulfilment of basic duties by the local authorities and neither the paucity of funds nor staff can be a lawful excuse not to perform their statutory obligations.

In *Dr. K.C. Malhotra v State of M.P.*,⁷⁷ Madhya Pradesh High Court addressed the issue of the negligence of the Municipal Corporation, Gwalior, and Public Health and Public Health Engineering Departments, in the locality of Pardi Mohalla, in the State of Madhya Pradesh in maintaining a hygienic condition to live in. Emphasizing the concept of a welfare state as adopted in India and the principle of socio-economic justice provided under the Constitution, the court stated that every person is entitled to a quality of life consistent with their human personality. As the right to live with human dignity is the FR of every Indian citizen, it is the paramount duty of the state to provide at least the minimum conditions to ensure human dignity and the improvement of public health falls into this category.

In *Ilaben v State*⁷⁸, the Gujarat High Court dealt with the issue of negligence of Ahmedabad Municipal Corporation in maintaining public health, hygiene and sanitation in the locality and echoed that the right to life under Article 21 of the Constitution also takes within its ambit other

⁷⁵ (1987) 2 S.C.R. 468.

⁷⁶ AIR 1988 Raj 2.

⁷⁷ AIR 1994 MP 48.

⁷⁸ WPPIL/122/2011.

rights such as the right to food, clothing, and shelter, and the right to a decent environment.

Hence, the Indian judiciary has repeatedly emphasized the obligation of state and local governments to provide basic sanitation to individuals in the light of DPS. The court even pointed out that the failure of the state machinery to provide such facilities goes against the constitutional mandate and destroys the very fabric of Article 21 of the Constitution.

Another interesting factor of the right to sanitation is the prohibition of manual scavenging and improving the working conditions of sanitation workers in India (also referred to as sewage workers), both of which are violative of the fundamental rights to life, dignity, and equality guaranteed in the constitution.⁷⁹ In this reference, the next section examines judicial observations in India relating to manual scavenging that highlight the social dimensions of the right to sanitation.

3.3.2. **Right to Sanitation vis a vis Manual Scavenging**

The expression ‘scavenge’ in the English language traditionally meant to cleanse, and ‘scavangery’ involved street cleaning.⁸⁰ ‘Manual scavenging’, as distinguished from the dictionary meaning, involves collecting, cleaning, carrying, disposing or handling of human excrement from toilets, latrines, sewers, and other places.⁸¹ Manual Scavenging is “a certain caste-based sub-occupation wherein certain sub-castes of Dalits are condemned to manually clean, carry, dispose of, or handle human excreta

⁷⁹ Philippe Cullet & Lovleen Bhullar, Prohibition of Manual Scavenging and Protection of Sanitation Workers in Sanitation Law and Policy in India 112-114, (Phillip Cullet & Lovleen Bhullar, 1st ed., 2015).

⁸⁰ GV Narasimha Rao, Employment of Manual Scavengers: A Curse on Human Dignity, 2015 *Lawasia J.* 77, 81(2015).

⁸¹ *Ibid.*

from dry latrines and sewers.”⁸² In India, manual scavenging is an age-old customary practice, handed down for centuries to succeeding generations of families engaged in scavenging.⁸³ Despite it being prohibited under the law, the practice still persists in the country.⁸⁴

As observed by Sujith Koonan, “Manual scavenging is a violation of the right to sanitation of the concerned manual scavengers because the right to sanitation envisages a scenario where human beings are not in direct contact with human excreta and other wastes; and wastes are to be disposed of with no or minimum harm to public health and the environment. It also demonstrates a situation that certain human excreta disposal practices lead to violation of several basic tenets of the Constitution of India, for instance the abolition of untouchability and the principles of dignity and equality.”⁸⁵

In view of the plight of the sewage workers who are left with no choice but continue to work under the most unfavourable conditions mostly due to their poor economic conditions and thereby face threat to their life, the Supreme Court in *Delhi Jal Board v National Campaign Etc. & Ors*⁸⁶ framed certain directives that provide for the following: “free medical examination and medical treatment of sewer workers; no-termination of the sewer workers and the payment of wages by the employee during their period of illness; payment of compensation on the death of any worker; payment of all statutory dues such as Provident Fund, Gratuity and Bonus to all the sewer workers; providing modern protective equipment to all the sewer workers; and providing proper restrooms and canteens, including

⁸²Deepika Tandon & Moushumi Basu, Manual Scavenging Must End, 4-5, *ECONOMIC AND POLITICAL WEEKLY*, 51 (APRIL 23, 2016).

⁸³ *Ibid.*

⁸⁴ *Supra* note 81.

⁸⁵ *Supra* note 16 at 94.

⁸⁶ Civil Appeal No 532 of 2011, Judgment of 12 July 2011, ¶ 5.9.

therein first-aid facilities; safe drinking water; washing facilities; latrines and urinals; shelters and crèches to all the workmen.”⁸⁷

Quoting Dr. B.R. Ambedkar⁸⁸, the Supreme Court in *Safai Karamchari Andolan v Union of India*⁸⁹, observed that “the deplorable practice of untouchability including manual scavenging continues to persist in India” owing to the interlinkage between the caste-system and untouchability deep-rooted in our society. Hence, the court emphasized the state’s responsibility to take adequate steps to prevent and eliminate such practices.

Likewise, in *Change India v Government of Tamil Nadu*⁹⁰, the Madras High Court reiterated the state’s duty to prohibit manual scavenging and, on account of the failure to stop the practice of manual scavenging, the state’s liability to compensate manual scavengers who lose their lives in the course of manual scavenging.

Thus, the judiciary in India has time and again made observations on manual scavenging in relation to untouchability and stressed upon the state’s obligation to eradicate the same. The complete eradication of manual scavenging forms part of the discourse on the right to sanitation in India considering how both (manual scavenging and access to toilets) deal with principles of dignity, proper working conditions and right to health. Note that, the right to sanitation is also contingent on infrastructure development. Hence, our succeeding discussion focuses on judicial pronouncements pertaining to development planning in India, where the court has also reflected upon the importance of sanitation.

⁸⁷ Ibid.

⁸⁸ Chairman of the Drafting Committee of the Constitution of India.

⁸⁹ (2014) 11 SCC 224.

⁹⁰ W.P.No.25726 of 2017.

3.3.3. Right to Sanitation vis a vis Development Planning

In various pronouncements, the higher judiciary clarified that development planning should be in accordance with sanitation facilities. For instance: the Apex court in *Banwasi Seva Ashram v. State of U.P.*⁹¹ “allowed the construction of an NPP (Nuclear Power Plant) in a displaced forest area but ordered inter alia that every family of forest dwellers be provided with a housing plot of specified dimensions elsewhere and that health, education, sanitation services and the like be provided there, as part of CSR.”⁹²

Similarly, the court in *Sundarrajan v. Union of India (UOI) and Ors.*,⁹³ observed that “Sustainable Development and Corporate Social Responsibility (CSR) are inseparable twins, integrated into the principles of Inter and Intra-Generational Equity, not merely human-centric, but ecocentric... The CSR strategy has to be put into practice in line with the millennium development goals as lodged by the UN and adopted by the Government of India in the 11th Five Year Plan, i.e., 2007-2012, which could cover the areas of education, health, drinking water, sanitation and environment, etc.”⁹⁴

Furthermore, as access to toilets is an essential component of the right to sanitation, the judiciary has also emphasized the need for proper toilet facilities in public places as well as schools in the light of the fundamental right to life and education. The judiciary has also categorically examined the need for menstrual hygiene as a part of the right to sanitation. The next

⁹¹ 1987 AIR 374.

⁹² Ibid.

⁹³ (2013) 6 SCC 620.

⁹⁴ Id. at ¶ 104.

discussion of the paper therefore is directed towards these two interweaving facets.

3.3.4. Right to Sanitation vis a vis Construction of Toilet

In *Bhagwati Foundation and Ors. v Commissioner of Mcd and Ors.*,⁹⁵ Delhi High court quashed the orders of the Municipal Corporation of Delhi making allotments of all the Community Toilet Complexes (hereinafter “the CTCs”) to Sulabh International Social Service Organization as arbitrary, unreasonable, illegal, void and without jurisdiction. The court directed that further action for the allotment of the CTCs in accordance with the law shall be taken and effectuated. Reiterating sanitation as a basic right to be ensured to every citizen, the court pointed out that services pertaining to sanitation need to be imperatively maintained at the community level to ensure community participation in planning, construction, and maintenance of such services.⁹⁶

In *Environment & Consumer Protection Foundation v Delhi Administration & Ors.*,⁹⁷ the Apex Court, emphasized the proper implementation of the Right of Children to Free and Compulsory Education Act, 2009 and highlighted the state’s responsibilities to take necessary steps in this regard. The court thus held that all schools must provide basic toilet facilities. The non-availability of toilet facilities leads to children dropping out of schools which is violative of Article 21A of the Constitution. Accordingly, the court issued directions to all the States and the Union Territories to provide separate toilet facilities for boys and girls and construction thereof in all the schools.

⁹⁵ Writ Petition (C) Nos. 146 (2006).

⁹⁶ *Bhagwati Foundation v. Commissioner MCD*, Writ Petition (C) Nos. 146, at ¶ 2.

⁹⁷ (2012) 10 SCC 211.

Another critical issue of the need for public toilets for women walking on the streets has been extensively dealt with by the court in *Milun Suryajani*, through its *Editor v Pune Municipal Commissioner*.⁹⁸ Identifying the issue as a universal one, the court held that public toilets used by women must be user-friendly, sustainable, safe, clean, hygienic, and children/senior citizens/disabled-friendly to avoid health hazards.

3.3.5. Right to Sanitation vis a vis Menstrual Hygiene

In 2018, the Delhi High Court in *Setu Niket v. Union of India*⁹⁹ issued an order mandating the Delhi Government to provide free or subsidized access to menstrual hygiene products in schools and to plan for education on menstruation and menstrual hygiene.

In *Court on Its Own Motion v. Government of India and Others*,¹⁰⁰ High Court of Jammu & Kashmir called for the issues of menstrual health to be read in conjunction with Article 21A of the Constitution. Reiterating that the right to health derives from the DPSPs and is an established right under Article 21 of the Constitution, which guarantees the right to life and dignity, the court held that the ability to manage menstruation in a hygienic manner is fundamental to the dignity and well-being of women, especially in a democratic society. It constitutes an integral component of basic hygiene, sanitation, and reproductive health services. Inadequate menstrual hygiene management compromises a girl's education, health, and wellbeing. Therefore, efforts to address these inadequacies must involve the provision of sanitation and hygiene facilities along with

⁹⁸ WP (C) PIL No 98/2011.

⁹⁹ WP (C) 5909/2017.

¹⁰⁰ WP (C) PIL No.36/2020.

creating an enabling social and physical environment that addresses all menstruation-related needs.

4. Conclusion

Adequate sanitation is a sine qua non for a healthy life. Lack of adequate sanitation facilities adversely affects other rights associated with the right to life and dignity of an individual. The concept of right to sanitation at international level has evolved comparatively narrower than in India, its focus being restricted to the issue of human excreta disposal and related cleanliness, whereas in India, it is understood from socio-economic and environmental perspectives. As extensively highlighted in the paper, the Supreme Court has always played an active role in expanding the extent of FRs through numerous judicial pronouncements. The court's attempt to give the widest possible interpretation of the right to life in Maneka Gandhi's case has transformed the judicial stance towards Article 21 of the Constitution. Moreover, a wholly novel conception of the right to life began to emerge after Francis Coralie's case, whereby the court connected the dots between the dignity of an individual and the right to life.

Although the Constitution is silent pertaining to the right to sanitation, the Indian judiciary has acknowledged this right as an integral component of Article 21, essential to living a dignified life. The judiciary has also emphasized sanitation as part of the DPSP for the protection and improvement of the environment. Moreover, the judiciary's stance in interpreting sanitation as a right in special contexts, viz. the prohibition of manual scavenging in relation to untouchability, the right to education, development activities, menstrual hygiene, etc., is noteworthy. Thus, the judiciary has extensively stressed upon the significance of the right to sanitation, reflecting upon its wide dimensions. The need and willingness of the public authorities to provide sanitation services to everyone without

any negligence to achieve the desired goal set forth in SDG-6 and the preamble of the Constitution as discussed above have also been well indicated by the courts. Thus, the liberal approach of the higher judiciary widens the scope to explain the right to sanitation widely in view of its unique characteristics with its interconnections to the other rights in India. In short, the right to sanitation as a basic right emanates from the right to life under the Constitution. Nevertheless, considering the magnitude of the sanitation-related issues and their impact on people's lives, it is suggested that the right to sanitation needs to be given recognition as a self-standing right under the constitution. The researchers thus argue that a specific recognition of the right to sanitation would be appropriate for the effective realization of the right in its true sense. Last but not the least, it is urged that individuals, communities, and nongovernmental organizations work hand in hand to monitor the actualisation of the right to sanitation in the country along with actively participating in the public sphere to bring to the forefront the failure of state machineries to protect the basic rights of the people.