

## **“Water and Sanitation in Developing Countries: Urban Problems and Legal Control”**

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### **INTRODUCTION**

According to WATER SUPPLY AND SANITATION COLLABORATIVE COUNCIL

(WSSCC, 2004), “17 % of world’s population lives without safe drinking water and about 41 % are without proper sanitation”. This condition is largely prevailing in developing countries which is a big obstruction in the development of these countries and welfare of their citizens. The innovations utilized must be fitting and, specifically, straightforward, reasonable and practical. Due to poor quality of water, sanitation the number of people suffering from waterborne diseases like Cholera, Typhoid, Diarrhoea, Dysentery etc. is very huge in developing nations and it is a sin for the governments and the citizens of these developing nations. Sufficient drinking water, sanitation, and cleanliness are all fundamental fixings to guarantee human wellbeing. The same is valid for proper wastewater administration, which is an essential for natural wellbeing. Enhancing these administrations will convey financial additions while additionally fabricating versatility given expanding atmosphere variability.<sup>1</sup>

Numerous developing nations are now today attempting to adapt to perpetual water deficiencies and the insufficiencies of their current water base. They are additionally confronting uncommon populace development, fast urbanization, and expanded financial movement. Fundamental needs remain unmet, and the human right to water and sanitation stays hidden for billions of people around the world. Against this foundation, worldwide water security has ascended on the global motivation. Truth be told, in 2012, a US Intelligence Community Assessment recognized water-related issues in creating nations, such as, expanded danger of infection from perilous drinking water and poor sanitation, as a risk to American interests. Simply a year ago, the World Economic Forum recognized water emergencies as the worldwide systemic danger of third most raised concern. Arrangements, foundations and base to enhance drinking water sanitation, cleanliness and wastewater

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<sup>1</sup> Shyam Divan & Armin Rosencraz, Environmental Law and Policy in India: Cases, Materials and Statutes (2002). <sup>3</sup> Ibid.

administration should be set up today. Such activities will likewise assemble strength to adapt to the future effects of environmental change.<sup>3</sup>

This research focuses on the urban problems in management of water and sanitation. 'The reasons behind slide in the nature and quality of urban life are intricate, including interaction of demographic components, out of date area holding and rental laws, the disappointment of executives to foresee and get ready for future needs and financial limitations. Particularly in India, the model of urban advancement received by our organizers disregards neighbourhood, local and social needs. A considerable lot of these elements are analysed in the 1988 Report of the National Commission on Urbanization which prescribes an arrangement of measures to address the issues of 350 million Indians who live in urban settlements by 2001.'<sup>2</sup> Be that as it may, tragically, a large portion of the National Commission's change plan, not withstanding, remain unimplemented.

The research is also based upon the reaction of judiciary on these issues, ways to implement such laws which can help to cope up these problems and find the loopholes which are not allowing in paving way for the introduction and implementation of any beneficial legislation and measures which in turn, are affecting large number of people in developing countries.

The objective of this research is to highlight the urban problems in the issue of water and sanitation and for our welfare to point out the role that judiciary can play to cope this menace because if legislature fails in its work/duty than we have judiciary to balance that and it forces the legislature to do the needful at the earliest. The scope of this research is limited to the urban problems in maintaining proper water and sanitation facilities and to put a legal control on this problem through legislature and judiciary, but the problem here is that there is a need for some new laws and for this legislature is supposed to act but this research blames legislature solely for this problem. Another problem here is that India and the neighbouring developing countries which are more affected by this problem of water and sanitation have not identified any important treaties and protocols which will be discussed afterwards which are very important measures to curb the menace of unavailability of proper water and sanitation in these countries. Mainly these protocols are seen signed in the African countries and is not very common in countries like India. The author is not discussing or not focusing on these countries where there is far more larger problem of water and sanitation because the countries in South Asia like India, Bangladesh etc. and most importantly, India talk about development and which is good and because of that fast rate of urbanization is taking place which is largely creating this problem so how can they develop if these problems will be persistent. Yes, the people themselves have a great role to play here but what about the legislature and executive which talk about development, they also have some roles to play which this research will be talking about.

The hypothesis for this research is that it's not solely the responsibility of the people for the care of their environment and there is some role of governance in this as well. So, the

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<sup>2</sup> . Ibid.

question emanating from this is that whether development is possible in such scenario and what is the role of governments and a special attention on judiciary also so how they all can also contribute in removing the problems of proper water and sanitation to all so that they can get on the right track of development.

### **PRESENT SCENARIO**

The Millennium Development Goal 7 (MDG7) Target 10 was to isolate by 2015 the level of individuals without supportable access to safe drinking water and key sanitation. Unless the pace of progress in the sanitation part can be breathed life into, the MDG target may not be come to until 2026.<sup>3</sup> Taking the case of India, there are no specific legislations concerning with sanitation and related water problems in India apart from some universal treaties signed on this matter because this issue is not much seen connected to legal framework and is only left upon the people who are supposed to change and the government which is supposed to help but all this is without concrete legal sanction so the people are suffering with these problems. In the rapidly developing and expanding cities where larger amount of population is approaching for their livelihoods but by this people are also contributing in the development of large amount of sewage which is left in the landfills and these have also started to overflow and due to this the groundwater is getting affected, so something needs to be done on an urgent basis to cope with this otherwise the growing cities will continue to generate waste but we won't be having any place to clear it. So connecting this problem with legal aspects, it has been noted that judiciary in India has tried to help and cope this problem relating it with Article 21 which gives us Right to life. A book titled "*Environmental Law and Policy in India*<sup>4</sup>", in its chapter on urban problems discusses the reaction and work of judiciary in the matter of these kinds of environment problems (water, health and sanitation).

In the *Koolwal case*<sup>5</sup>, a writ petition was filed by citizens of Jaipur city against the Municipal Corporation to provide proper sanitation resulted into the court to raise an interesting point that since there is a constitutional duty of the citizens to protect the environment under Article 51 A, so the citizen should also bring in the notice of the court enforcing the duty of state agencies. This marvellous judgment reveals the role that judiciary can play in settling these kind of environment problems, but this is not same everywhere as these state agencies sometimes escapes liability in some cases putting pressure on the duty of the citizens to protect the environment, so in author's opinion the contribution of judiciary is not uniformly appreciable and if becomes uniform than can really prove beneficial as in the *Koolwal case* done by magnificent interpretation of Article 51 A of Indian Constitution. Also in the case of *Chameli Singh v. State of Uttar Pradesh*<sup>6</sup>, the Supreme court held that Right to life implies

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<sup>3</sup> Meeting the Millennium Development Goals « Rights to Water and Sanitation, RIGHTS TO WATER AND SANITATION RSS, <http://www.righttowater.info/progress-so-far/meeting-the-millennium-development-goals/> (last visited Jul 25, 2018).

<sup>4</sup> . Shyam Divan & Armin Rosencraz, *Environmental Law and Policy in India: Cases, Materials and Statutes* (2002).

<sup>5</sup> . L.K. Koolwal v. State of Rajasthan, AIR 1988 RAJ 2

<sup>6</sup> . Chameli Singh v. State of UP, 1996 (2) SCC 549

right to safe water, decent environment, food, medical care, education and shelter. All rights provided in the universal declaration on human rights and convention or the constitution of India cannot be exercised without these human rights. This is also a great support to the given perspective of judiciary above.

According to an article titled “*IMPROVING WATER AND SANITATION ACCESS IN DEVELOPING COUNTRIES: PROGRESS AND CHALLENGES*”, the Millennium Development goal no. 7, presented by United Nations aims reducing the proportion of people without improved proper water and sanitation by one-half worldwide by 2015 (DESA, 2008) and this requires a lot of money as well as efficiency.<sup>7</sup> This article emphasizes upon the need for first knowing from the people only that how much they are satisfied with the present water and sanitation facilities, what more and what new they need for the improvement in the present facilities given. Also, it says that there should be subsidies to people for building toilets, for their tries to improve their water and sanitation facilities and there should be evaluation by the government whether the measures or guidelines given by the government to the people are getting properly followed or not, whether the people are maintaining proper sanitation facilities, whether the toilets are maintained properly, whether the sewage is discharged properly or not. But, according to the author, the point of giving subsidies to people for personal improvement of water and sanitation facility will solely not help because here there is also the duty of the government to do for the people so they can’t sit freely after giving subsidy or any other concession until we realize that how many people are really benefitting from these kind of welfare schemes and actually the needful are getting benefitted or not. The main problem in urban areas is that there is very less space as compared to the occupiers so automatically there will be problems of water, sanitation because the sewage released goes in landfills and these landfills are getting filled due to less space so the role here comes of the government that they realize that this is an issue on which utmost importance should be given because at the end of the day, it is the duty of the government to look after the benefit of its citizens. So the problems of this poor sanitation, water arises because government is not working effectively in this field as people on their basis will for their personal hygiene generate wastewater, sewage and now it will be the duty of the government to take steps for proper discharge of that sewage and this is not getting followed by the government, and if this is not managed properly, then the subsidies and some other like stuff won’t benefit the people because urbanization is advancing at a very high rate and this problem of proper sanitation and water will grow continuously with urbanization so to cope with this situation, in view of the author strict legal control can be a very effective tool.

According to an article entitled, “*NOTES AND COMMENTS ENVIRONMENT, DEVELOPMENT AND Law: INDIAN PERSPECTIVE*”<sup>8</sup>, there are certain loopholes in the

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<sup>7</sup>. Christine Moe, Achieving Water and Sanitation for Health in Developing Countries, NCBI (Sept.20, 2016, 2:41), <http://www.ncbi.nlm.nih.gov/books/NBK50770/>.

<sup>8</sup>. K.I. VIBHUTE, Journal of Indian Law Institute (JILI), Lexis India: Document (Sept. 20,2016, 2:03 AM), [http://www.lexisnexis.com.elibrary.symlaw.ac.in:2048/in/legal/results/enhdocview.do?docLinkInd=true&ersKey=23\\_T24703237865&format=GNBFULL&startDocNo=0&resultsUrlKey=0\\_T24703237868&backKey=20\\_T24703237869&csi=346578&docNo=3&scrollToPosition=0](http://www.lexisnexis.com.elibrary.symlaw.ac.in:2048/in/legal/results/enhdocview.do?docLinkInd=true&ersKey=23_T24703237865&format=GNBFULL&startDocNo=0&resultsUrlKey=0_T24703237868&backKey=20_T24703237869&csi=346578&docNo=3&scrollToPosition=0)

laws for the environment like the officials are not well versed with environment laws, and importantly, all the power of enacting any laws, policies for environment vests into the central government, so its upon them how they think for the benefit of the environment and its citizens and whether they enact the needful laws for the betterment of the environment of which proper water and sanitation is the interest area of this research. So according to the author, here the role of judiciary comes into action by the fact that the judiciary can pass orders directing the government to enact so and so laws on the appeal of the citizens and the judiciary can make the government to take the environmental issues under consideration as we are alive because environment is alive, that's why the people in developing countries have started realizing their rights and duties and have started approaching the courts for their environment(water, sanitation and health in this research), which is going to be very useful because urbanization is not going to stop in these developing countries and the suitable alternative to go hand in hand with this is the only one which is mentioned above.

### ‡ **RIGHTS TO WATER AND SANITATION AS HUMAN RIGHTS (REGIONAL)**

Till now many protocols and conventions have taken place for these problems like African Charter on the Rights and Welfare of the Child (1990), European Social Charter (1961), article 11 of this affirms that the privilege to the security of wellbeing commits State Parties to expel beyond what many would consider possible the reasons for sick wellbeing. This unmistakably requires the arrangement of safe water and sanitation. Also, European Convention for the Protection of Human Rights and Fundamental Freedoms (1951) of which article 2 defines the right to life, the right to water is not explicitly mentioned because impure water and lack of sanitation are biggest problems for human well-being, so the right to life cannot be guaranteed and ensured without these basic human rights of safe water and proper sanitation.<sup>9</sup> The author's verdict here is that these important covenants and treaties are signed mainly in African countries which lag very behind in these areas or the European countries which are developed now which means they have been able to cope with this problem till a certain level which implies that they have been benefitted by these treaties and charters to some extent, but the developing South-Asian countries like India, Bangladesh, Sri Lanka haven't signed these type of treaties or conventions to cope with the aforementioned problems and this according to the author has created the difference.

The problems in those treaties signed is that they don't clearly define the right to sanitation and only mentions it to ensure safe water quality. But this shortcoming can be taken care of in the future if the countries like India come forward to take a stand on these problems.

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<sup>9</sup> . The rights to water and sanitation in regional human rights law « Rights to Water and Sanitation, RIGHTS TO WATER AND SANITATION RSS, <http://www.righttewater.info/progress-so-far/timeline-2/> (last visited Jul 25, 2018).

## ‡ RIGHTS TO WATER AND SANITATION AS HUMAN RIGHTS (IN NATIONAL LAW)

The International Covenant on Economic, Social and Cultural Rights requires States Parties to formally perceive the rights inside their national enactment, to give laws and directions to satisfy these fundamental human rights.<sup>10</sup> But India doesn't seem to be moving as per this convention in the field of water and sanitation as human rights. Now, we will see the comparison between the provisions for proper water and sanitation in National law of India, Bangladesh and Sri Lanka. In India, no specific legislations concerning with water and sanitation apart from the interpretation of Article 21 of Constitution of India by the Supreme Court that both water and sanitation are part of constitutional right to life (Article 21). In the case of *A.P. Pollution Control Board II v. Prof. M.V. Naidu and Others*<sup>11</sup>, the court has stated that it is the duty of the state to provide safe drinking water to its citizens under Article 21. But again, the right of sanitation is missing here. The supreme court has mentioned about the right of sanitation but not in respect to urbanization or like problems but in respect to school children in the case of *Environment & Consumer Protection Foundation vs. Delhi Administration and others*<sup>14</sup>, the decision in that case stated that right to education also consists of proper environment including proper sanitation facilities for the children. So, in the fast-growing urbanization and increasing sanitation and water problems, we are still awaiting a decision from Supreme court mentioning sanitation as a necessary human right to stress upon presently so that sustainable development takes place.

In Bangladesh, there are two important legislations regarding water and sanitation, first is National Water Policy, 1999 which gives the state right to equal distribution of water to all sections of the society. Other is, The National Policy for Safe Water and Sanitation, 1998, which aims to facilitate access to basic level of services in water supply and sanitation to its citizens. It's good that they recognise the right of water and sanitation in the legislations also but their ineffective execution of these legislations is persisting but at least they have such legislations which India doesn't have. But one good thing is that they have planned to achieve some specific goals to be targeted for achieving in the near future including to a very important goal which is to ensure a sanitary latrine to each urban household using technology ranging from pit latrines to water borne sewerage. These are some aspects in which India still lags and should focus on.

Sri Lanka in this respect has tried to work upon these problems with the help of legislations quite amazingly as they had National policy on Drinking Water (2007), recognising access to water as an inalienable right of its people, and in the same year, they launched the National Policy on Sanitation recognising sanitation as a human right which is very impressive as they

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<sup>10</sup> . The rights to water and sanitation in national law « Rights to Water and Sanitation, RIGHTS TO WATER AND SANITATION RSS, <http://www.righttowater.info/progress-so-far/national-legislation-on-the-right-to-water/> (last visited Jul 25, 2018).

<sup>11</sup> . *A.P. Pollution Control Board II v Prof. M.V. Naidu and Others* (Civil Appeal Nos. 368-373 of 1999).

<sup>14</sup> . *Environment & Consumer Protection Foundation vs. Delhi Administration and others*, [2012] Supreme Court WP (Civil) no 631.

followed the International Covenant on Economic, Social and Cultural Rights, in which India lags and requires utmost attention.

### **FACTS AND ANALYSIS**

#### **❖ WATER**

According to a report by UNICEF<sup>12</sup>, ten countries of the world constitute two-third of the global population who are without access to proper water resources. The countries are:

- China (108 million)
- India (99 million)
- Nigeria (63 million)
- Ethiopia (43 million)
- Indonesia (39 million)
- Democratic Republic of the Congo (37 million)
- Bangladesh (26 million)
- United Republic of Tanzania (22 million)
- Pakistan (16 million)
- Kenya (16 million)

The important thing to note here is that out of these ten countries China, India, Indonesia, Bangladesh and Pakistan are five countries from Asia in this list which according to the author is not quite pleasing because if they are home to most number of people not having availability of proper water resources than what is the need of that urbanization and where is the development going in these countries especially in India, China which are among the fastest developing economies in the world so if they are developing then we can say that it's not the right way of development.

#### **❖ SANITATION**

According to UNICEF<sup>13</sup>, around 250 million people in India and 593 million people in China have got improved sanitation facilities since 1990, but, around 626 million people in India and 14 million people in China practice open defecation which is also an important area of concern in providing proper sanitation facilities to the people. However, open defecation is largely prevalent in rural areas but we can still link it with development and urbanization as rural people are also willing to get advanced and are also migrating to urban areas which is the chief cause of urbanization so if development is getting promoted in rural areas then why not construction of toilets is favoured which is also good for urban areas where also there is a

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<sup>12</sup> . Water, Sanitation and Hygiene, UNICEF, <https://www.unicef.org/wash/> (last visited Jul 25, 2018).

<sup>13</sup> . Ibid.

need of construction of large number of public toilets so that proper sanitation is available to all people without any compromise.

The most important thing here is that according to a report by WHO, poor water and sanitation leads to monetary losses of around 260 billion USD in developing countries, or 1.5% of their GDP. This itself is a point which should instigate the governments as well as citizens of these developing countries to take a stand on this topic and law is the best medium for this according to the author.

### **SUGGESTIONS & CONCLUSION**

So, the above content shows a very poor development of these developing countries in the field of providing safe water and proper sanitation to citizens as their basic human right. So, there is an urgent need to act in this area so that it doesn't come in the way of development of these countries. The things which can be done are that countries like India doesn't have any legislations solely concerning with sanitation and water as a human right so first to put a legal control on this, some new legislations should be introduced within the country which recognises proper sanitation as a basic right and also assigning duties to the citizens with respect to construction of toilets, areas around homes and buildings to be kept sanitized by their owners etc., and also having some provisions for punishing the defaulters who doesn't act or work in accordance to these legislations. Also, the government should set a target of specific range for a specific time-span aiming to provide proper sanitation and water to a considerable number of people and timely monitor the progress of the implementation of the legislations created and the effectiveness of their work. Usage of water should be decided by a new legislation and if a family in a city has used quantity over the limit then there should be provision for penalty on that. This is difficult but there is going to be a huge scarcity of water in the world as we all know so this seems fine as an implementation measure. There should be provision for awarding the people by the government who work with the government and/or do something to spread sanitation awareness and work to make it better on a community basis just like the '*Swachh Bharat Abhiyan*' in India.. A lot of sewage is generated in the cities and we don't have any effective measures for its safe disposal so government should work on this making specific committee to work in this area and suggest new ways and review the present condition of their field and regularly monitor the progress of their suggestions and implementations. The governments of these developing countries should join to make an alliance which will meet minimum two times year and discuss the development, progress and challenges in the field of providing proper water and sanitation to their citizens. Along with that, each member of that alliance should present its individual progress and ways implemented to cope with these problems in their countries so that an exchange of ideas can take place and this cooperation becomes fruitful to all countries united for this. The above measures were from government perspective and now coming on to the citizens so the citizens can also play a leading role by going to the courts if the government authorities are not working properly and not performing their duties properly so that the government should also be aware of the fact that the ways that they have implemented and provided are benefitting to the citizens and if they are benefitting then how much is the



efficiency of that, by this the judiciary will definitely help the people just like in the Koolwal case and the government can also work for the betterment of its citizens more effectively.

Finally, to conclude, in author's view this conversion of villages into cities and cities getting bigger and advanced may seem good to the citizens and the governments of these developing countries but they should also see the other side of the coin, i.e., the countries like India are not realizing that if open spaces are getting over by the taking over of big cities and the growth of population combined with this will generate a large amount of waste and sewage, then where will we dispose of this because there will be no open spaces and this will lead to low water quality and combined with poor sanitation this is surely going to generate a bigger problem in the coming years and will come in the way of development as an obstruction. So, in author's view along with using technological ideas and measures in this field, we can also take the help of our legal system because the availability of proper and safe water and sanitation is the inherent right of the citizens so to make them enjoy this right more effectively, law can play a prominent role. To fulfil this human right this should be recognised nationally as a basic human right and individuals should demand it through legislature, executive and judiciary, so, introduction, development and interpretation of new legislations and policies must be corresponding to this human right. If this happens and we become able to cope with this menace by an aid of law then surely it will increase the confidence and trust in the people for their country's legal system and the nation then can again continue towards its development without any obstruction because if people have access to safe water and proper sanitation then they will be happy and if the citizens are happy then half work of the governments is done and it will produce fruitful results as far as a nation's development is concerned.