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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ENSURING THE RIGHT TO SANITATION: A GLOBAL HUMAN RIGHTS IMPERATIVE"

AUTHORED BY - R.SRIVINITHRA¹ & A.MAGESH KUMAR²

INTRODUCTION

The right to sanitation though comes along with the right to water is more sensitive in nature. It plays an integral part in the health of people. Children are more prone to diseases caused due to lack of proper sanitation facilities. Poor sanitation, hygiene and inadequate water supply are also related to the spread of other diseases, including tropical diseases such as schistosomiasis. Among human parasitic diseases, schistosomiasis (sometimes called bilharziasis) ranks second behind malaria in terms of socio-economic and public health importance in tropical and subtropical areas. The disease is endemic in 74 developing countries, infecting more than 200 million people. Of these, 20 million suffer severe consequences from the disease³. The concept of sanitation includes personal hygiene, home sanitation, safe water, garbage disposal. The right to sanitation envisages that everyone should be able to enjoy this right equally.

It is a basic human right and necessity for everyone to have access to proper sanitation. Ensuring universal access would significantly lower the rate of disease and mortality, particularly among children. In addition to the "basic" service level, which calls for an upgraded sanitation facility (such as flush toilets or a latrine with a slab) that is not shared with other homes, "safely managed" sanitation services represent a higher service level that considers the ultimate disposal of excreta.

Proper and adequate sanitation is crucial for realization of a number of fundamental rights under the constitution. The right to sanitation is directly linked with the right to health and right to water. Sanitation is access to, and use of, excreta and wastewater facilities and services that ensure privacy and dignity, ensuring a clean and healthy living environment for all. 'Facilities and services' should include the collection, transport, treatment and disposal of human excreta, domestic wastewater and solid waste, and associated hygiene promotion. Specifically, to meet

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³ http://www.who.int/water_sanitation_health/sanitproblems/en/index2.html

human rights requirements, sanitation must be:

Safe: Sanitation must effectively prevent human, animal and insect contact with excreta.

Toilets

(including latrines) must provide privacy and a safe and dignified environment for all. Water must be

available for good personal hygiene, and facilities for safe wastewater disposal must be in place.

Physically accessible: Toilets must be within, or in the immediate vicinity of, each household, educational institution or workplace and available for use at all times of the day or night, along with associated services such as removal of wastewater and sewerage or latrine exhaustion. Appropriate facilities for use by children, disabled and elderly persons must also be available. In order to prevent disease, toilets must be available for and used by all persons in a particular locality.

Affordable: Access to sanitation, including maintenance, must be affordable, without reducing the individuals or household's capacity to acquire other essential goods and services, such as food, education and health.

Culturally sensitive: The construction and design of latrines should be culturally appropriate. Male and female public facilities, in particular in schools, need to be separate so as to ensure privacy, dignity and safety.

International Bill of Rights –

Water and sanitation are not explicitly recognized as human rights in the International Bill of Rights.

However, in 2002 the UN ECOSOC Committee interpreted Art. 11 of the International Covenant on Economic, Social and Cultural Rights to include, implicitly, the right to water as a component of the right to an adequate standard of living, defining the right as “everyone’s entitlement to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”.

CONVENTIONS ON RIGHT TO SANITATION –

1. The Universal Declaration of Human Rights – 1948
2. Convention on the Elimination of All Forms of Discrimination Against Women – **1979**

This is the first time the right to water and sanitation is explicitly mentioned in an

international legally binding convention: Article 14.2(h) states that women have the right to enjoy adequate living conditions, particularly in relation to housing, **sanitation**, electricity and **water supply**.

3. Convention on the Rights of the Child – **1989**

This convention is the second explicit reference to the right to water; Article 24, gives the child the right to health, placing the obligation upon the State to implement this right, especially through appropriate measures to combat disease and malnutrition, through the provision of adequate nutritious food and **clean drinking water**. The Committee on the Rights of the Child has repeatedly clarified that the entitlement to an adequate standard of living (Article 27) includes **access to clean drinking water and latrines**

4. Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and Lakes - **1999**

The right to water has also been implicitly confirmed in the Protocol on Water and Health. The convention is intended to strengthen national measure for the protection and ecologically sound management of water resources. Article 5, states that ‘equitable access to water, adequate in terms both of quantity and quality, should be provided for all members of the population’

5. Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments - 2007

In 2006 the Human Rights Council passed resolution 2/104 entitled ‘Human Rights and Access to Water’. The Council requested that the Office of the High Commissioner for Human Rights conduct a study upon, “the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments”.

6. Human Rights Council Resolution on Human Rights and access to safe drinking water and sanitation - **March 2008**

The Human Rights Council adopted by consensus Resolution 7/22, appointing an Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. The Human Rights Council refers directly to the explicit obligations regarding access to safe drinking water and sanitation within numerous human rights treaties. Thus the Human Rights Council clearly recognizes that all

governments are bound by human rights obligations to ensure access to safe water and sanitation for all.

Report of the Independent Expert on the Issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation – 2009

7. United Nations Human Rights Council Resolution on Human rights and access to safe drinking water and sanitation - **September 2010**

INTERNATIONAL STATISTICS –

The United Nations estimates that **2.5 billion** people were still without improved sanitation in 2010 and around 1.1 billion practice open defecation.

Trends in sanitation coverage by region show marked differences. Southern Asia and sub-Saharan Africa still struggle with low coverage (41 per cent and 30 per cent, respectively). However, the two regions differ significantly from one another in the proportions of populations using facilities other than those classified as ‘improved’. In sub-Saharan Africa, 45 per cent of the population use either shared or unimproved facilities, and an estimated 25 per cent practise open defecation. In Southern Asia, the proportion of the population using shared or unimproved facilities is much lower, and open defecation is the highest of any region. Although the number of people resorting to open defecation in Southern Asia has decreased by 110 million people since 1990, it is still practised by 41 per cent of the region’s population, representing 692 million people.

- 2.6 billion people in the world lack access to adequate sanitation, including 1.2 billion people who have no facilities at all.
 - Every 20 seconds, a child dies from a water-related disease – that’s 4,000 children every day.
 - The majority of the illness in the world is caused by fecal matter. In fact, 50% of the hospital beds in the developing world are occupied by people suffering water-related diseases.
 - People living in slums often pay 5-10 times more for water than those in rich areas of their own cities – and more than consumers pay in New York.
- The provision of improved sanitation and safe drinking water could reduce diarrheal diseases by nearly 90 per cent⁴.

⁴ http://www.unwater.org/statistics_san.html#sthash.vewsh3gq.dpuf

Drinking water supply and sanitation in India continue to be inadequate, despite longstanding efforts by the various levels of government and communities at improving coverage. The level of investment in water and sanitation, albeit low by international standards, has increased during the 2000s. Access has also increased significantly. For example, in 1980 rural sanitation coverage was estimated at 1% and reached 21% in 2008. Also, the share of Indians with access to improved sources of water has increased significantly from 72% in 1990 to 88% in 2008. At the same time, local government institutions in charge of operating and maintaining the infrastructure are seen as weak and lack the financial resources to carry out their functions. In addition, only two Indian cities have continuous water supply and an estimated 69% of Indians still lack access to improved sanitation facilities.

A recent report of World Health Organization and United Nations Children's Fund say that a staggering 2.4 billion, or one-third of the world's population will continue to remain without improved sanitation in 2015. To be sure, the proportion of the population without adequate provision decreased from 51 per cent in 1990 to around 33 per cent in 2011. East Asia has registered a 40 per cent increase in sanitation coverage. But recent global progress still falls short of the 2015 Millennium Development Goal target to halve the proportion from the 1990 baseline. Instructive for India is a study undertaken for the Water and Sanitation Program and the World Bank. It estimates the cost of inadequate sanitation for the country's economy at \$53.8 billion a year, a figure equivalent to 6.4 per cent of GDP. Among the so-called BRICS countries, India fares by far the worst, with some 627 million resorting to open defecation. The statistics elsewhere are strikingly small; 14 million in China and half that number in Brazil. The importance of proper sanitation to disaster preparedness can hardly be overstated, given the susceptibility of affected populations to waterborne diseases. Clearly, universal coverage must remain the core objective, at least at the level of basic offering of sanitation services and market-based alternatives as a supplement. This may prove a sustainable combination to rid the globe of the ruinous consequences of insanitary conditions.⁵ Lack of sanitation obstructs the right to life and health. Human excreta encourages the transmission of many infectious diseases including cholera, typhoid, hepatitis, polio, cryptosporidiosis, and ascariasis. Diarrhea – a disease directly related to poor sanitation – kills one child every 20 seconds, i.e. more than 4,000 children everyday. This amounts to more deaths than AIDS, malaria and measles combined.

⁵ <http://www.thehindu.com/opinion/editorial/the-right-to-sanitation/article4853820.ece>

Lack of sanitation hampers the right to education. 443 million school days are lost every year due to sanitation and water related issues. Inadequate school sanitation facilities are a common barrier to school attendance, especially for girls.

Lack of sanitation thwarts the right to dignity. Sick and elderly people face a loss of dignity when sanitation facilities are not available in the near vicinity.

According to the OECD, only 5.5 % of development aid was aimed at water and sanitation in 2009, compared to 8% in 1990. As one of the Millennium Development Goals, Member States of the United Nations committed to halving the proportion of people without sustainable access to basic sanitation by 2015. But if the current trend continues, it is estimated that the MDG sanitation target will not be met until 2049.

Role of NGO

Non-governmental organizations (NGOs) and local governments differ in their ways of working and are subjected to very different conditioning factors. However, some NGOs engaged in community-based sanitation are increasingly collaborating effectively with the local governments in South Asia. NGOs considered in this article have taken advantage of a more conducive environment to develop some well-designed community-based sanitation programmes in low-income areas, in conjunction with the local government. Some NGOs have also participated in the development of government policies related to sanitation that have enabled the replication of their approaches. In making the transition from distrust between NGOs and local governments to working towards common ends, NGOs have demonstrated their comparative advantages and focused on developing productive relationships with both the local government and the communities in which they work.

Initiatives of UN to solve the issue of improper sanitation

- Sustainable sanitation: The Five-Year-Drive to 2015

The Sanitation Drive to 2015 is an advocacy campaign working to meet the Millennium Development Goal sanitation target and end open defecation. The campaign supports and inspires people from around the world to take action towards achieving sanitation and hygiene for all by targeting the poorest and most vulnerable people.

- 2008: International Year of Sanitation

2008 was declared International Year of Sanitation. It helped to put sanitation in the spotlight and led to the launch of several initiatives to more vigorously address the current sanitation crisis.

- UN-Water Task Force on Sanitation
Established in 2007, the UN-Water Task Force on Sanitation aims to increase the effectiveness of global efforts to reach the sanitation targets of the Millennium Development Goals (MDGs).
- Goal 6 of the Sustainable Development Goals (SDGs): Sanitation and Clean Water
By 2030, "ensure availability and sustainable management of water and sanitation for all" is the stated objective of Goal 6. Ending open defecation and guaranteeing access to sufficient and fair sanitation and hygiene are the specific goals of Target 6.2.
- UNICEF's WASH Programme

The programme works in over 100 countries to improve water, sanitation, and hygiene (WASH) conditions, especially for children and schools. It promotes community-led total sanitation (CLTS) and menstrual hygiene management (MHM).

IMPORTANT CASE LAWS

Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others, the following points were observed –

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

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

A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial

inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems- not pompous and attractive, but in working condition and sufficient to meet the needs of the people cannot be evaded if the municipality is to justify its existence

3. *Virender Gaur v. State of Haryana*⁶, Supreme Court held that Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit...sanitation without which life cannot be enjoyed.

4. *LK Koolwal v. State of Haryana*⁷, High Court of Rajasthan held that maintenance of health, preservation of sanitation and the environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and amounts

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⁶ (1995)2 SCC 577

⁷ AIR 1988 Raj. 2