

Open Defecation and Violence against Women: Socio-Legal Perspectives

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Abstract

In spite of all kind of development the practice of open defecation is widespread in India. The problem of open defecation, poor sanitation and public health are important governance issues in developing country like India for ensuring human development index. The problem of poor sanitation has also significant impacts on the safety, well-being and educational prospects of women. The lack of access to a clean, safe toilet, especially during menstruation perpetuates risk, shame and fear. The most important factor is that the state does not provide adequate access to safe, secure and hygienic sanitation facilities to every household of the semi urban and rural areas. The abhorrent practice of open defecation has an important gender dimension given the incidents of violence against women. The abhorrent practice of open defecation has an important gender dimension given the incidents of violence against women which includes sexual harassment, molestation, rape etc. The international human rights instruments appear to be quite potential in ensuring the enjoyment of many basic human rights including sanitation in post 2000 developments. In pursuance of this broad objective, the Government of India started number of initiatives in recent past in rural and urban context such as Total Sanitation Campaign (TSC) and National Urban Sanitation Policy, 2008. Further, the existing legal regime governing open defecation and sanitation are relatively inadequate in India. As far as the gender aspect is concerned, the problem of violence against women very much linked with the problem of open defecation and sanitation. Therefore the existing legal framework partly deals the issues in context of criminal laws. Under this background the present article wishes to analyses the law and policy framework at international and national level relating to sanitation in order to guarantee the right to safety and security of women.

Keywords: Defecation; Violence; Total Sanitation Campaign (TSC); National Urban Sanitation Policy.

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Introduction

In spite of all kind of development the practice of open defecation is widespread in

India. The problem of open defecation, poor sanitation and public health are important governance issues in developing country like India for ensuring human development index. These issues are not adequately addressed by the policy maker. In

fact, open defecation is a major health hazard and causes enormous hardship, especially to rural women. The problem of poor sanitation has also significant impacts on the safety, well-being and educational prospects of women. The lack of access to a clean, safe toilet, especially during menstruation perpetuates risk, shame and fear. This has long-term impacts on women's health, education, livelihoods and safety but it also impacts the economy, as failing to provide for the sanitation needs of women ultimately risks excluding half of the potential workforce [1]. The most important factor is that the state does not provide adequate access to safe, secure and hygienic sanitation facilities to every household of the semi urban and rural areas. The abhorrent practice of open defecation has an important gender dimension given the incidents of violence against women which includes sexual harassment, molestation, rape etc. This resulted into the violation of the right to safety, security and privacy of women which are integral components of their right to sanitation under the Article 21 of the Constitution. Therefore, this issue ought to be a priority in any sanitation related to law and policy/ programme. The international human rights instruments appear to be quite potential in ensuring the enjoyment of many basic human rights including sanitation in post 2000 developments. In pursuance of this broad objective, the Government of India started number of initiatives in recent past in rural and urban context such as Total Sanitation Campaign (TSC) and National Urban Sanitation Policy, 2008. Further, the existing legal regime governing open defecation and sanitation are relatively inadequate in India. As far as the gender aspect is concerned, the problem of violence against women very much linked with the problem of open defecation and sanitation. Therefore the existing legal framework partly deals the issues in context of criminal laws. Under this background the present article wishes to analyses the law and policy framework at international and national level relating to sanitation in order to guarantee the right to safety and security of women.

Problem of Open Defecation

The problem of sanitation still most unaddressed development challenges, which depicts sad picture at international and national level particularly in developing countries of the south [2]. As per the United Nations Development Programme's Multidimensional Poverty Index 1.5 billion people in 91 developing countries live with simultaneous deprivations in health, education and standard of living [3]. The practice of open defecation is prevalent

in rural and urban India both at a very high level. Globally, India continues to be the country with the highest number of people 597 million people practicing open defecation as per the joint report published by the WHO and UNICEF [4]. According to U.N over 2.5 billion people, this constitutes 40 per cent populations who have no access to adequate sanitation facilities worldwide, out of which 600 million is thought to be in South Asia. In an estimate, in India nearly 4000 cities they were not having adequate sanitation facilities including Delhi and other metropolitan cities. More than five crores urban populations practice to use open defecation in this country. They severely affected the ground water [5]. The target 10 of goal 7 of the Millennium Development Goals (MDGs) enjoin upon the signatory nations to extend access to improved sanitation to at least half the urban population by 2015, and 100% access by 2025 [6]. As for as India situation is concerned, according to Government of India Census 2011 69.3 percent in rural and 18.6 percent urban Indian population do not have access to toilet, and hence are forced to defecate in the open.⁷

In India per day at least 2000 persons died due to diarrhea. Diarrhea alone claims four lakh lives annually of which 90 percent are children, but tragically enough, the annual central budget is just Rs.2000 crore which is just about two percent of the entire budget for rural development which is close to Rs.1 lakh crore [8]. Only five states in India Sikkim, Kerala, Haryana, Himachal Pradesh and Maharashtra are doing well in sanitation others have a long way to go. In Uttar Pradesh alone accounts for 10 percent of population that suffers on account of inadequate sanitation. In fact Jawaharlal Nehru National Urban Renewal Mission and other programmes are aimed at 100 per cent sanitation coverage in the urban areas [9]. The goal of the Twelfth Plan Five year Plan will be that 50 percent of the Gram Panchayats attain Nirmal Gram status by the year 2017 [10].

International Human Rights Framework

At the global level various international conventions have acknowledges the right to health and sanitation impliedly as well as explicitly. The *Universal Declaration on Human Rights*, 1948 is the pioneering law on the on human rights [11]. It deals with the basic human right questions within the framework of health, food, housing and particularly the right to live with human decency and dignity [12]. The declaration in its preamble as well as Article 25 recognise right to sanitation impliedly. The Article 25 (1) stipulates that:

“Everyone has the right to a standard living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

At the international level, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) 1966, the cornerstone treaty in the field of economic, social and cultural rights. This covenant does not expressly talk about the right to sanitation; Article 11(1) stated that:

“The State parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and for 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 [13].”

The *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) The Convention under Article 14(2) (h):

“State Parties shall take all appropriate measures to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications [14].”

In 1994, at the *International Cairo Conference on Population on Development*, stated that the right to an adequate standard of living included the adequate water and sanitation. The *Principle 2* proclaims that the countries should ensure that all individuals are given the opportunity to make the most of their potential. They bare the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation.

In 2006 UN Sub-Commission Guidelines for the Realisation of the Right to Drinking Water and Sanitation explicitly stated that everyone has the right to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.

The *United Nations Declaration on the Rights of Indigenous Peoples*, 2007 expressly stipulates that indigenous people have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the area of sanitation, health and social security [15].

In 2008, the UN Human Rights Council adopted resolution, which emphasizes that international human rights law, including the ICESCR, CEDAW and CRC entail obligations in relation to access to sanitation.

The United Nation General Assembly on the *Human right to Water and Sanitation*, 2010 also recognizes that the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights [16].

Recently a Resolution adopted by United Nation General Assembly on 24 July 2013 ‘Sanitation for all’ and designates 19 November as World Toilet Day recalling its resolution to follow up the agendas in 2008 and 2010 respectively and conscious of the impact of the lack of sanitation on people’s health, poverty reduction, economic and social development and the environment, in particular water resources [17].

National Laws and Policies

Constitutional Precept and Regulatory Frameworks

The Constitutional law of a nation treated as *grundnorm*, which enshrined fundamental principles to regulate the relations of government and its citizens and also chart out plan and method according to which the public affairs of the nation are to be administered. The Indian Constitution define the powers and functions of the state, impose enormous duties to realize the nation’s goals; and dictates the state to respect the citizen’s rights and freedoms and promote socio-economic and political welfare of the peoples. But in the wake of human rights jurisprudence, the ambit and scope of constitutional rights are being amplified. The judiciary has taken a liberal view regarding the right to life. Nonetheless, the directive principles of state policy embodied in Part IV are a unique and fundamental charter of governance of the country which imposes an obligation on the state to take positive steps for socio- economic and environmental justice to all [18].

The Constitution of India under Article 14, guarantees “equality before the law” and “equal protection of the law” [19]. It empowers the State to take affirmative measure for women under Article 15 (3) [20]. All gender specific laws find their genesis under this Clause. The right to sanitation is a part of the fundamental right to life. Though the right to sanitation has not been included explicitly as fundamental right under the constitution, judiciary has interpreted it as a part of the fundamental right

to life. The Supreme Court and various High Courts have expanded the scope of the fundamental right to life Article 21 and read the right sanitation as its inherent part. For instance, the Supreme Court in a case concerning the use of land reserved for open spaces for better sanitation, environment and the recreational purposes held that right to life encompasses within its ambit sanitation without which life cannot be enjoyed [21]. Thus right to sanitation has derives from the fundamental right to life under Article of the Constitution. Directive Principles of State Policy, under Article 39 enjoins the State to provide adequate means of livelihood for men and women, equal pay for equal work for both men and women, and ensure just and humane conditions of work and maternity relief for women [22].

Policy Initiatives and Strategies

• *Total Sanitation Campaign, 1999*

The evolution and development of rural sanitation came into focus in the Government of India in the World Water Decade of 1980s. The Central Rural Sanitation Programme was started in 1986 to provide sanitation facilities in rural areas. It was a supply driven, highly subsidy and infrastructure oriented programme. As a result of these deficiencies and low financial allocations, the CRSP had little impact on the gargantuan problem. The experience of community-driven, awareness-generating campaign based programmes in some states and the results of evaluation of CRSP, led to the formulation of the Total Sanitation Campaign (TSC) approach in 1999 was a landmark development in the rural sanitation sector reforms in India. It is one of the flagship programmes of the Government of India [23]. A number of initiatives have been taken in recent years. According to new TCS guidelines, 2010, the main aims of the TSC are as under:

- a. Bring about an improvement in the general quality of life in the rural areas.
- b. To accelerate sanitation coverage in rural areas and ensure access to toilets to all by 2012.
- c. Motivate communities and Panchayati Raj Institutions promoting sustainable sanitation facilities through awareness creation and health education.
- d. In rural areas, cover schools by March 2008 and Anganwadis by March 2009, with sanitation facilities and promote hygiene education and sanitary habits among students.
- e. It also seeks to encourage the adoption of cost

effective and appropriate technologies for ecologically safe and sustainable sanitation. Sanitation as well as to foster awareness creation and health education at the local level. these goals are to be achieved through a demand.

- f. Develop community managed environmental sanitation systems focusing on solid & liquid waste management.

• *National Urban Sanitation Policy, 2008*

The National Urban Sanitation Policy (NUSP) 2008 [24] consists of six parts including the three annexure. The first part deals with the background. The second part devotes to prescribe certain visions of the policy. The policy key dimensions are envisaged in third part. The fourth part enumerated the policy goals. The fifth part discussed the implementation support strategies. Part six deals the main components of the policy. The policy vision for urban sanitation in India is that all Indian cities and towns become totally sanitized healthy and livable and ensure and sustain good public health and environmental outcomes for all their citizens with a special focus on hygienic and affordable sanitation facilities for the urban poor and women.

In order to achieve the above vision, following key policy issues must be addressed the poor awareness, social and occupational aspects of sanitation, fragmented institutional roles and responsibilities, lack of an integrated city-wide approach, reaching the un-served and poor, lack of demand responsiveness [25]. The overall goal of this policy is to transform Urban India into community-driven, totally sanitized, healthy and livable cities and towns.

The recently introduced Nirmal Bharat Abhiyan guidelines, 2012 are not different in insofar as they also merely pay lips service to this issue by re-asserting the slogan of the CRSP. The guidelines state that “the Government started the Central Rural Sanitation Programme (CRSP) in 1986 primarily with the objectives of improving the quality of the rural peoples and also to provide privacy and dignity to the women. The main aim of the Strategic plan 2011-2020 is the creation of *Nirmal Bharat* but it also adopts a general opinion by limiting its response to the issue. It merely emphasise the importance of ‘addressing inequalities in access with special attention to vulnerable groups such as women.

Key feature of the Nirmal Bharat Abhiyan as following:

- a. Expansion of sanitation goals from toilets to other aspects such as solid and liquid waste

- management and personal hygiene.
- b. A community-led approach with focus on collective achievement of total sanitation.
 - c. Incentive to all Below Poverty Line (BPL) Households and Above Poverty Line Households (APL) restricted to SCs/STs, small and marginal farmers, landless labourers with homestead, physically handicapped and women headed households.
 - d. The incentive amount to BPL households/ identified APLs for construction of one unit of individual household toilet is rupees 4600 (rupees 5100 for difficult and hilly areas).
 - e. Focus on education and motivation of communities.
 - f. Development of a sanitation market to make available sanitation materials of various quality and prices.
 - g. An incentive programme known as Nirmal Gram Puraskar (NGP) which offers a cash prize to local bodies for achieving total sanitation.
 - h. The responsibility for delivering on programme goals rests with local governments (Panchayati Raj Institutions) with significant involvement of communities [26].

The efforts made by the government brought about significant improvement in rural sanitation scenario. During the Eleventh Plan period, the coverage has progressively moved from 39 per cent to approximately 73 per cent (as of August 2011) [27].

Violence against women at open defecation in light of criminal Law

There is a rapid and alarming increase in violence against women in India. The National Crime Records Bureau has reported ...Incidence & Rate of Crime Committed against Women 309546 ... cases on of rapes in 2013, but these statistics do not highlights the varied circumstances in which these offences committed including the lack of sanitation facilities and the practice of open defecation. In order to fill this gap, our judicial decisions involving the offence of the rape as defined under section 376 of the Indian Penal Code (IPC), 1860 where it has been examined.

However, only those cases were considered where the offence was committed when the victim went for, was engaged in or was returning from open defecation answering the call of nature or relieving herself. This section reproduces the major specific and general finding of the research. Wherever relevant the specific finding has been compared with the finding available matter discussed above. This section also highlights changes in the provisions of

the applicable criminal laws resulting from the Criminal Law (Amendment) Act, 2013 which are likely to affect the manner in which similar cases are decided in future.

Safety and Security of Women

Physical and sexual violence against women while going for defecation in the field under the cover of darkness is not an uncommon incident in rural India. There are a number of cases involving the issue of rape or sexual harassment of women including minors while going for open defecation. Many cases actually ended up in conviction. For example, in a case decided by the Bombay High Court in 2010, a girl aged about 17 years was raped while she sat to ease herself at night. In this case, the person committed the offence was sentenced to suffer rigorous imprisonment for seven years by the trial court. On appeal by the offender, the High Court affirmed the trial court decision and refused to alter the punishment [28].

The root cause of this problem is the lack of proper sanitation facilities within or near to their houses. This issue links sanitation with safety and security of women. This link needs to be recognized in the sanitation framework and priority shall be given to the realisation of the right to sanitation of women while implementing sanitation programmes and schemes.

Right to Sanitation and Health: Juristic Articulation

The Supreme Court of India through the juristic articulation the theory of inter-relatedness between rights was famously articulated in celebrated case of Maneka Gandhi and adopt the approach of harmonization of fundamental rights and directive principles in subsequent decisions become the hallmark of expansion of the understanding of the 'protection of life and liberty' under Article 21 of Constitution of India. Therefore health and sanitation have been considered as part of Article 21 on various occasions by courts in India [29]. In the early 1980's the judicial approach in *Municipal Council, Ratlam v Vardhichand* [30] the Supreme Court speaking through Justice Krishna Iyer in an unmistakable term developed an alternative ratio. A responsible municipal council constituted for the precise purpose of reserving public health and providing better facilities cannot run away from its principal duty, by pleading financial inability. Decency and dignity are non-negotiable facets of human right and are a first charge on local self governing bodies. Dovetailing the environment and health the Supreme Court in *Virender Gaur v State of Haryana* [31] delineated that 'the word environment is of broad spectrum which

brings within its ambit hygienic atmosphere and ecological balance. The citizen cannot exercise the fundamental right unless the corresponding constitutional duty is being carried out by municipality.

In *Janki Nathubhai Chhara v Sardarnagar Municipality* [32] a public interest litigation in which involved unhygienic conditions within a municipality. The area, whose residents 'belonged to the lowest strata in the society' was filthy and unhygienic in normal times and become submerged during the monsoon. The Gujarat High Court, therefore, persuaded the municipality and the state government to install a permanent sewerage and drainage system. Further in *L.K. Koolwal v State of Rajasthan* [33] a writ petition to enforce improved sanitation measures in Jaipur met favorable disposition on the expanded right to life. The court held that:

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

In *M.C. Mehta v State of Orissa* [34] The court constituted a committee of senior government officials to devise measures to prevent water pollution and improve Cuttack's sanitation a year.

In *Dr. K.C. Malhotra v State of MP* [35] the Madhya Pradesh High Court, directed the municipal authorities to cover an open drain, build public latrines and ensure that the drinking water supplied was not contaminated. The state public health department was told to adopt a range of public health measures.

In *Noyyal River Ayacutdars Protection Association v. Government of Tamil Nadu* [36]. The court have also examined sanitation from the point of view of fundamental rights and have read the right to life as including the right to sanitation. In doing so, courts have focused on the link between sanitation, public health dignity and the environment.

With regard to right to health, the leading decision delivered in *Parmanand Katara v. Union of India* [37], *Indian Medical Association v. V.P. Shantha* [38] and some other cases the court created the 'right to health' and access to medical facilities are part of public health system. On the basis of the case law, it appears that the right to sanitation and health are well recognized as part and parcel of Article 21.

Conclusion

From the above discussion it has noticed that the

country like India faced with the serious problem open defecation, sanitation both at rural and urban areas. As we have seen that the lack of sanitation facilities the country born a heavy cost on health of rural urban populations, which significantly impact on livelihoods and economic development. Further, there are different laws and policies for rural and urban areas. There is no doubt in it that in India no general or specific legislative framework on sanitation through which the human right to sanitation should be realized for present and future generations. Therefore it is urgent need of the time to relook the existing laws and policies in a broader understanding of sanitation to ensure the right to health and to ensure access to sustainable sanitation for all, which promote the decency and dignity of human being. The role of judiciary is commendable but there is also a need to improve the capacity of the concerned governmental authorities to perform their duties and functions for realising the same. In a world for water, sanitation and hygiene services are fundamental utilities that everyone is able to take for granted, forever. We work with people around the world to find long-term solutions to the global crisis in water, sanitation and hygiene services. At the heart of our mission is the aim to move from short-term interventions to sustainable water, sanitation and hygiene services, for everyone, everywhere.

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