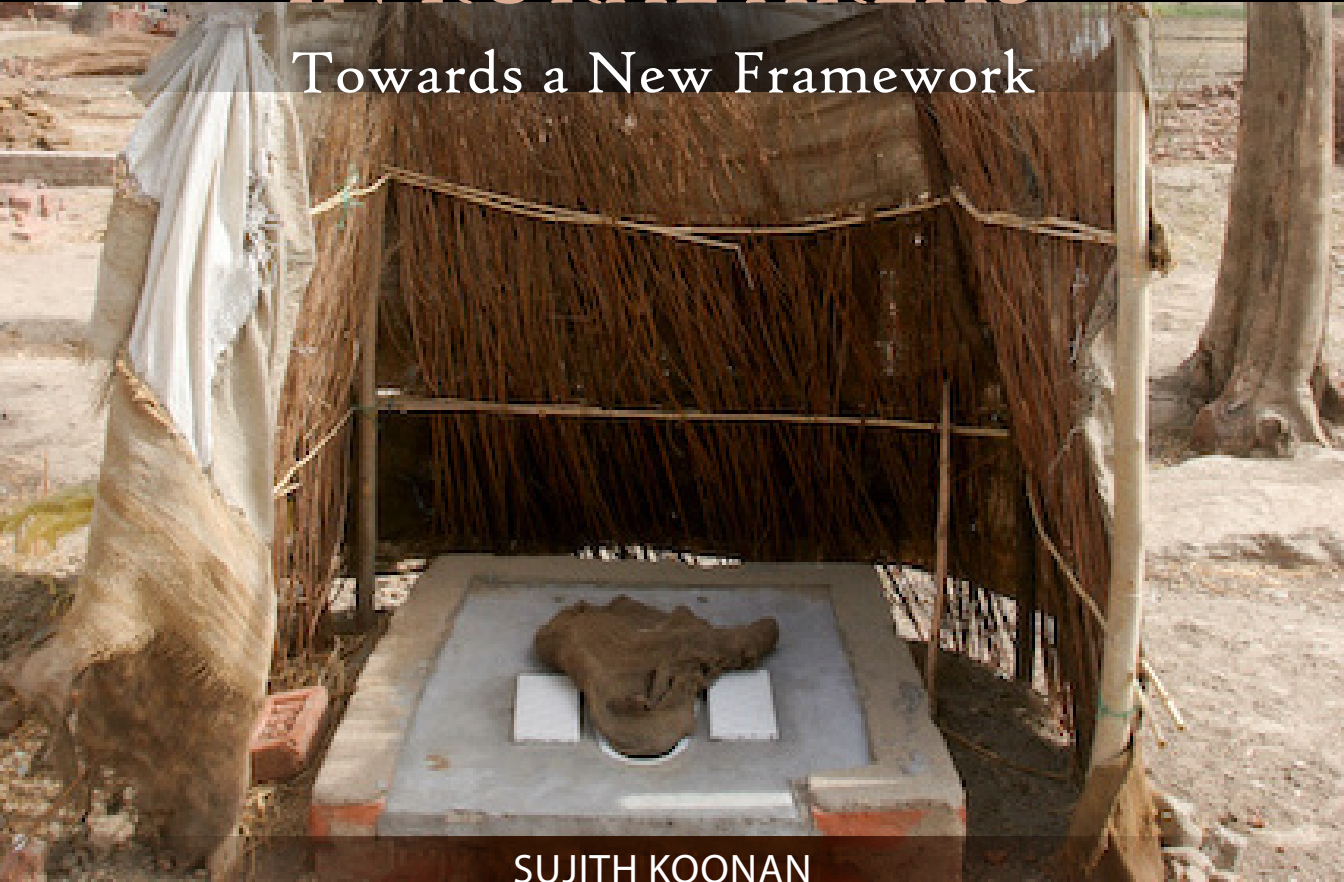


POLICY PAPERS

# REALISING THE RIGHT TO SANITATION IN RURAL AREAS

Towards a New Framework



SUJITH KOONAN



ENVIRONMENTAL LAW RESEARCH SOCIETY



# REALISING THE RIGHT TO SANITATION IN RURAL AREAS

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# CONTENTS

<b>A</b>	<b>SANITATION CRISIS IN RURAL INDIA</b>	<b>5</b>
<b>B</b>	<b>SANITATION IN RURAL INDIA: THE HUMAN RIGHTS CONTEXT</b>	<b>6</b>
	(i) Right to sanitation as a constitutional right	6
	(ii) Linkages with other fundamental rights	7
	(iii) Right to dignity	8
<b>C</b>	<b>REALISING THE RIGHT TO SANITATION: LAW AND POLICY INITIATIVES</b>	<b>10</b>
	(i) Laws to ensure realisation of the right to sanitation	10
	(ii) Policy initiatives and strategies	11
<b>D</b>	<b>TOWARDS BETTER REALISATION OF THE RIGHT TO SANITATION</b>	<b>14</b>
	(i) Setting the right to sanitation as the primary goal	14
	(ii) Linking manual scavenging with the right to sanitation	15
	(iii) Prioritising the safety and security of women	15
	(iv) Subjecting Public-Private Partnerships to the right to sanitation	16
	(v) Respect for the decentralisation principle	16
	(vi) Need for a framework law for sanitation	17
	<b>END NOTES</b>	<b>18</b>



# A

## SANITATION CRISIS IN RURAL INDIA

**Inadequate** sanitation facilities or lack of sanitation facilities is one of the major development challenges in India. It is estimated that one in every ten deaths in India is linked to poor sanitation and hygiene. Diarrhea, a preventable disease, is the largest killer and accounts for every twentieth death.<sup>[i]</sup> An estimated 55 per cent of all Indians, or close to 600 million people, still do not have access to any kind of toilet.<sup>[ii]</sup> The sanitation crisis in rural India is to the extent that around 74 per cent of the rural population still defecates in open.<sup>[iii]</sup> Adding to that, the system of unsanitary bucket latrines/dry latrines still prevails (approximately 13 million!) which leads to house-to-house excreta collection by individuals. Over 700,000 Indians belonging to lower castes are still involved in this indecent and legally prohibited activity for their livelihood.<sup>[iv]</sup> Management of solid and liquid wastes is generally unheard of in rural India.

Major impacts of inadequate and improper sanitation can be summarised as follows:

- It affects public health and the worst affected victims are women, children and the poor.
- It causes a number of diseases. The root cause of many diseases understood as water-borne diseases (e.g. diarrhea and lower respiratory infection) is inadequate sanitation.
- Early drop-out of girl students from schools.
- Lack of proper sanitary facilities in schools affects recruitment and retention of female teachers.
- Safety and security of women are in peril while going for open defecation in the early morning or after sun set.
- Improper sanitation causes environmental pollution (e.g. open defecation and improper disposal of human wastes lead to pollution of drinking water sources).
- Inadequate sanitation imposes huge economic losses. As per an estimate made by the World Bank in 2011, economic loss for individuals is more than Rs.2000 per year in the form of medical expenses, loss of wages etc.<sup>[v]</sup>

# B

## SANITATION IN RURAL INDIA: THE HUMAN RIGHTS CONTEXT

The right to sanitation in India takes its legal basis mainly from the fundamental rights enshrined in the Constitution of India and most importantly the fundamental right to life. Inadequate and improper sanitation scenario in rural India expose the ineffective realisation of the right to sanitation and it is an impediment to the realisation of a number of other fundamental rights guaranteed under the Constitution. It also exposes the ineffective fulfilment of legal responsibilities by the government, including local bodies. These legal aspects of the right to sanitation are highlighted and discussed here.

### (i) Right to sanitation as a constitutional right

The right to sanitation is a part of the fundamental right to life. Though the right to sanitation has not been included explicitly as a fundamental right under the Constitution, the higher 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 under Article 21 and read the right to sanitation as its inherent part. For example, the Supreme Court in a case concerning the use of a land reserved for open spaces for better sanitation, environment and recreational purposes held that the right to life encompasses within its ambit sanitation without which life cannot be enjoyed.<sup>[vi]</sup> Thus, the right to sanitation derives from the fundamental right to life under Article 21 of the Constitution.

The concept of sanitation as it is understood in India includes personal hygiene, home sanitation, safe water, garbage disposal, excreta disposal and waste water disposal.<sup>[vii]</sup> Sanitation in human rights terms means a system for the collection, transport, treatment and disposal or reuse of human excreta and associated hygiene. States must ensure without discrimination that everyone has physical and economic access to sanitation, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.<sup>[viii]</sup> Thus the right to sanitation demands a framework in which all the above mentioned goals of sanitation shall be achieved without any discrimination as to any criteria such as caste, class and economic capacity. In the rural context, it particularly includes provision of safe and adequate toilet facilities for all,



ensuring mechanism for proper disposal of solid and liquid wastes and complete eradication of manual scavenging.

The right to sanitation envisages that everyone should be able to enjoy this right equally. The non-discrimination norm of the right to sanitation is highly relevant for rural sanitation in India because historically oppressed castes still suffer undue disadvantage in accessing sanitation facilities. A recent study estimated the overall sanitation coverage in the rural areas of the country as 34.8 per cent and the same for Scheduled Castes and Scheduled Tribes is 23.7 per cent and 25 per cent respectively.<sup>[ix]</sup> Therefore, these sections of the society need the benefit of the law most (in this case realisation of the right to sanitation) to overcome their social and economic disadvantages.

Being a constitutional right, the right to sanitation casts the primary duty upon the government to create conditions through legal and policy interventions so that everyone can enjoy the right. The government is also duty bound to take all possible measures and use available resources to make the right to sanitation a reality for all. The non-existence of sanitation facilities or differential facilities for different people indicates inadequate and ineffective fulfilment of the responsibilities of the government deriving from the right to sanitation.

## **(ii) Linkages with other fundamental rights**

Proper and adequate sanitation is crucial for the realisation of a number of fundamental rights enshrined under the Constitution. Sanitation is directly linked to other fundamental rights, mainly the right to water, the right to health, the right to education and the right to clean environment. While the right to water, the right to health and the right to environment have been declared by the Supreme Court as part of the fundamental right to life under Article 21,<sup>[x]</sup> the right to education has been included as an explicit fundamental right (Article 21A).

The link between sanitation on the one hand and water, health, education and environment on the other hand is apparent.

Sanitation related diseases, early drop-out of girl students from schools and pollution of drinking water are some of the areas where this link is quite evident. Human rights documents recognise this essential link. For instance, adequate sanitation has been recognised as an important ‘underlying determinant’ of the right to health.<sup>[xii]</sup> Similarly, the inextricable link between the right to water and the right to sanitation has also been recognised.<sup>[xiii]</sup> Thus, sanitation is one of the priorities to be addressed for the effective realisation of other fundamental rights, particularly fundamental rights concerning health, water, education and environment.

### **(iii) Right to dignity**

Dignity is one of the important non-negotiable facets of human rights and it is an integral part of the right to life.<sup>[xiii]</sup> The right to life with dignity necessarily encompasses bare necessities of life.<sup>[xiv]</sup> The term ‘bare necessities of life’ arguably includes proper sanitation facilities as the practice of open defecation or a life with polluted drinking water sources and environment cannot be considered as a life with dignity as understood in the context of the right to life under the Constitution.

The link between sanitation and dignity has a crucial gender dimension also. Dignity of life is meaningless when women in rural India wait for hours (until night) to go to the fields for defecation with the fear of being attacked and abused. Dignity of life is also meaningless when girl students give up their education primarily because of lack of sanitation facilities in schools.

Similarly, the right to life with dignity comes to be questioned in the case of the ongoing practice of manual scavenging that involves removal of human and animal excreta using brooms, small tin plates, and baskets from dry latrines and carrying it on the head for disposal. Despite the legal prohibition of the practice of manual scavenging through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, it still prevails in various parts of the country.

The continuation of this practice highlights a number of issues. The practice of manual scavenging is incompatible with the constitutional provision abolishing untouchability (Article 17)

as mostly lower castes (mainly women and young girls from these castes) are doing this work. It is also incompatible with the fundamental right to life under Article 21 of the Constitution and the right to sanitation as it affects the health and dignity of manual scavengers. This practice also jeopardises public health and the quality of the environment.

# C

## REALISING THE RIGHT TO SANITATION: LAW AND POLICY INITIATIVES

A number of law and policy initiatives have been taken for the realisation of the right to sanitation albeit without recognising it as an explicit goal. This section examines these initiatives in the rural context.

### (i) Laws to ensure realisation of the right to sanitation

Sanitation is a state subject under the Constitution and it is being mostly dealt with at the local level by local bodies. The Constitution of India supports this as it envisages the implementation of sanitation schemes by panchayats. The 73rd amendment to the Constitution calls for devolution of a number of powers and responsibilities including sanitation to panchayats at appropriate levels (village, block and district).

In the rural context, panchayats play a critical role in providing sanitation facilities. Panchayati Raj laws make it a responsibility of the gram panchayat to take all necessary actions for the improvement of sanitation. This includes implementation of rural sanitation schemes and sanitation related activities such as cleaning of public roads, drains, tanks, wells and other public places, construction and maintenance of public latrines and maintenance and regulation of bringing and burial grounds.<sup>[xv]</sup>

Some states have established a state level agency to take care of water and sanitation. For example, the Uttar Pradesh Water Supply and Sewerage Act, 1975 established the Uttar Pradesh Jal Nigam to carry out sanitation related functions, which include:

- (i) preparation, execution, promotion and financing the schemes for sewerage and sewage disposal;
- (ii) establishment of state standards for sewerage services;
- (iii) operation and maintenance of any waterworks and sewerage system if and when directed by the state government; and
- (iv) inspection of all sewerage facilities in the state and to prepare and carry out schemes for sewerage.

Environmental laws also contribute to the realisation of the right to sanitation. Some of the aspects of sanitation such as safe

water, regulation of industrial effluents and waste water disposal come under the purview of the existing environmental laws. For example, state pollution control boards have been established under the Water (Prevention and Control of Pollution) Act, 1974 to prevent and control water pollution. The use of streams or wells for disposal of poisonous, noxious or polluting matter is prohibited under this law.

Thus, Panchayati Raj laws, laws establishing para-statal agencies and environmental laws constitute the major statutory framework relevant to the right to sanitation in rural areas.

## (ii) Policy initiatives and strategies

### **NIRMAL BHARAT ABHIYAN**

In India, sanitation is a concern of high priority at least since the sixth five-year plan (1980-85). The Central Rural Sanitation Programme (CRSP) launched in 1986 was one of the landmark initiatives in this regard. The CRSP was launched primarily with the objective of improving the quality of life of rural people and also to provide privacy and dignity to women. The CRSP was a supply oriented programme with a focus on subsidies. Despite spending a huge amount of money, the CRSP did not yield the desired results. Although more than Rs. 660 crore was invested and over 90 lakh latrines constructed, rural sanitation grew at just one per cent annually throughout the 1990s and the Census of 2001 found that only 22 per cent of rural households had access to toilets.<sup>[xvi]</sup>

At present, rural sanitation is one of the priorities of the government at the central as well as the state level. In 2011, a new ministry (Ministry of Drinking Water and Sanitation) was formed at the central level to address water supply and sanitation separately rather than as a part of the Ministry of Rural Development as was the case earlier. Further, in addition to specific programmes and schemes, sanitation is a key part of various government programmes and schemes relating to rural development such as health (National Rural Health Mission) and housing (Indira Awas Yojana).

A study conducted during 1996-97 under the aegis of the Indian Institute of Mass Communication showed that 55 per cent of those with private latrines were self-motivated. Only two per cent claimed the existence of subsidy as the major motivating factor, while 54 per cent claimed to have gone in for sanitary latrines due to convenience and privacy.<sup>[xviii]</sup> This resulted in a change in the policy strategy by the central government by launching the Total Sanitation Campaign (TSC) in 1999. Further, it was felt necessary to expand sanitation programmes to cover other challenges such as personal hygiene, solid and liquid waste management.

The TSC has been renamed as Nirmal Bharat Abhiyan (NBA) with effect from 1 April 2012 with the objective to accelerate sanitation coverage in the rural areas to achieve the vision of Nirmal Bharat by 2022 with all gram panchayats in the country attaining 'nirmal' status.

Key features of the Nirmal Bharat Abhiyan are:

- Expansion of sanitation goals from toilets to other aspects such as solid and liquid waste management and personal hygiene.
- A community-led approach with focus on collective achievement of total sanitation.
- 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.
- The incentive amount to BPL households/identified APLs for construction of one unit of individual household toilet is Rs.4600 (Rs.5100 for difficult and hilly areas).
- Focus on education and motivation of communities.
- Development of a sanitation market to make available sanitation materials of various quality and prices.
- An incentive programme known as Nirmal Gram Puraskar (NGP) which offers a cash prize to local bodies for achieving total sanitation.
- The responsibility for delivering on programme goals rests with local governments (Panchayati Raj Institutions) with significant involvement of communities.<sup>[xviii]</sup>

The efforts made by the government brought about a significant improvement in the 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).<sup>[xix]</sup> However, this aggregate figure does not provide the actual scenario as there are

wide variations among states ranging from 100 per cent (Himachal Pradesh, Kerala, Sikkim and Tripura) to 32 per cent (Daman & Diu).<sup>[xx]</sup> A drawback of this estimate (and for that matter several other evaluations of the rural sanitation scenario) is that access to toilets is the major criteria. Other aspects of sanitation particularly solid and liquid waste management have been by and large ignored.

### **PROVISION OF URBAN AMENITIES IN RURAL AREAS**

In 2003, a new scheme called Provision of Urban Amenities in Rural Areas (PURA) was introduced by the central government with funding from the Asian Development Bank. As its name denotes, this scheme aims to provide urban amenities in rural areas. The objectives of PURA are proposed to be achieved under the framework of Public Private Partnership (PPP) between gram panchayats and the private sector partner.

The scope of the scheme is to select private partners to develop livelihood opportunities, urban amenities and infrastructure facilities in rural areas. Private sector entities having experience in development and management of community-oriented infrastructure projects will be selected through an open competitive bidding process. The selected private partners will provide amenities which include sanitation facilities such as sewerage, drainage and solid waste management (these are amenities to be provided mandatorily).

The private partner will be responsible for delivering amenities and services under various schemes which include the Total Sanitation Campaign (rural sanitation) and the National Rural Drinking Water Programme (rural drinking water supply). The funding under these schemes will be made available to private partners. The PURA Guidelines state that “the leveraging of public funds with private capital and management expertise for creation and maintenance of rural infrastructure is the essence of the PURA scheme”. Land for implementation of PURA projects will be made available free of cost by the gram panchayat/State Government.

PURA seeks to apply PPPs to almost all social sector schemes at the rural level. It envisages that amenities including sanitation at rural level be taken care of by private parties by utilising money and land provided by the government. This is a replication of policies that are being implemented in urban areas.

# D

## TOWARDS BETTER REALISATION OF THE RIGHT TO SANITATION

Though a comprehensive legal framework on sanitation is yet to come, existing laws such as law relating to Panchayati Raj Institutions and environmental laws address various aspects of rural sanitation and thereby contribute to the realisation of the right to sanitation. The existing legal framework is complemented by a set of programmes, schemes and policies developed by the government (in particular the central government). These policies are expected to work within the parameters and norms set by the legal framework particularly the right to sanitation. Otherwise, sanitation programmes and projects run the risk of violating societal norms and failing to meet the desired objectives. Therefore, it is necessary to ensure complementarity between the legal framework on the one hand and sanitation programmes, schemes and policies on the other hand. This complementarity is lacking in several areas of the ongoing reforms in the rural sanitation sector. In this context, this section highlights some of them where changes are needed or rethinking needs to be done to ensure that implementation of programmes, schemes and policies for achieving total sanitation does not violate established legal norms and rights, and contributes to the realisation of the right to sanitation.

### (i) Setting the right to sanitation as the primary goal

Being a fundamental right, the right to sanitation needs to be given high priority through policies and schemes and such policies and schemes are supposed to function subject to the norms of the right to sanitation which essentially includes non-discrimination and special consideration for vulnerable sections of the society. This is particularly essential because women and lower castes such as Dalits continue to be the immediate and worst victims of inadequate and improper sanitation.

Though the right to sanitation has the status of a fundamental right, sanitation programmes and schemes do not recognise implementation of the right to sanitation as understood in constitutional terms as an objective. Implementation of the right to sanitation should be stated as the primary objective of all sanitation related programmes and policies. Such recognition is necessary to ensure that the benefits of various sanitation programmes, schemes and policies reach those who needs it the most. It is also necessary to



ensure that the implementation of various sanitation programmes, schemes and policies does not discriminate people based on any criteria including caste, religion, land title or economic capacity.

### **(ii) Linking manual scavenging with the right to sanitation**

The sanitation policy framework does not adequately incorporate the objective of eradication of manual scavenging as one of its goals. Though the law prohibiting manual scavenging recognizes clearly the link between prohibition of manual scavenging and sanitation goals, the ongoing reforms in the rural sanitation sector fail to recognize this. For example, the issue of manual scavenging neither finds a place in the Nirmal Bharat Abhiyan Guidelines, 2012 nor in the Rural Sanitation and Hygiene Strategy 2012-2022.

While the issue of dignity should be the most important part of the legal framework prohibiting manual scavenging, its link with the framework for sanitation cannot be ignored. In fact, efforts to implement the law prohibiting manual scavenging need to be complemented by a proper framework for sanitation. Further, the right to sanitation aspect of the practice of manual scavenging deserves an open and broad debate. It needs to be recognized that the practice of manual scavenging is incompatible with the right to sanitation of persons engaged in manual scavenging as well as the public in general as the right to sanitation is not just about toilets but also about proper waste disposal and a healthy environment.

### **(iii) Prioritising the 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 uncommon 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 committing 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.<sup>[xxi]</sup>

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

#### **(iv) Subjecting Public-Private Partnerships to the right to sanitation**

Public-Private Partnership (PPP) is being introduced in the rural sanitation sector. While this is a replication of policies adopted at the urban level, it is not clear what justifies the replication of such policies in rural areas when strong objections exist against the implementation of PPP policies in public amenities, such as water supply and sanitation. These issues need to be discussed with the public and among people's representatives before proceeding with such ideas under PURA. Moreover, the implementation of PPPs should not affect the realisation of the right to sanitation. In case of any inconsistency between PPPs on the one hand and the right to sanitation on the other hand, there is no doubt that the later prevails.

#### **(v) Respect for the decentralisation principle**

The Constitution of India, through the 73rd amendment, envisages decentralisation as a principle of governance and provides for devolution of powers and responsibilities to the local level. The 73rd amendment envisages that the powers and responsibilities regarding rural health and sanitation be vested with local bodies. Thus, sanitation related functions are to be carried out by the panchayats at various levels.

Some of the ongoing reforms in the rural sanitation sector ignore this principle of decentralisation enshrined in the Constitution and sanitation related powers and duties from planning to implementation are being taken away from local bodies. For example, the major control of the PURA schemes is with the central government. The final decision as to the approval of the project will be taken place at the central level by Project Screening and Monitoring Committee – a body consisting of members representing various ministries/agencies of the central government. Gram Panchayat has been given little role or control in the planning or implementation of the scheme.

#### **(vi) Need for a framework law for sanitation**

A statutory framework laying down principles and norms to be followed is needed to guide implementation of sanitation programmes and projects. All key norms and principles such as the right to sanitation, the decentralization principle, women's rights and dignity as well as linkages between manual scavenging and sanitation should be specifically mentioned in the statutory framework. This would facilitate legal control of implementation of sanitation programmes and projects. Such a framework law also provides an opportunity to the people to challenge implementation of policies and schemes in case of violation of legal norms and principles. In the absence of a legal framework, the policy implementation in the sanitation sector goes unchecked and unchallenged. This is not a welcome situation as far as a crucial sector like rural sanitation is concerned.

## END NOTES

- i Ministry of Rural Development, Rural Sanitation and Hygiene Strategy 2012-2022 (New Delhi: Ministry of Rural Development, 2011), p. 9.
- ii There is wide variation in the figures from different sources. For example, the 65th Report (2012) of National Statistics Survey Organisation (NSSO) has indicated that 65.2 per cent of rural households have no latrine facility. The Joint Monitoring Programme report of WHO/UNICEF (2010) says that in India, 638 million people defecate in open. As per the report, sanitation coverage in rural areas in 2008 was 21 per cent and rest 69 per cent defecate in open.
- iii Asian Development Bank, *India's Sanitation for All: How to Make it Happen* (Manila: Asian Development Bank, 2009), p. 10.
- iv *Id.* at p. 10.
- v World Bank, *Economic Impacts of Inadequate Sanitation in India* (New Delhi: World Bank, 2010).
- vi *Virender Gaur v. State of Haryana*, (1995) 2 SCC 577. See also *L.K. Koolwal v. State of Haryana*, AIR 1988 Raj. 2.
- vii Government of India, *Nirmal Bharat Abhiyan Guidelines, 2012* (New Delhi: Ministry of Drinking Water and Sanitation).
- viii Committee on Economic, Social and Cultural Rights, *Statement on the Right to Sanitation*, UN Doc. E./C.12/2010/1, 19 November 2010.
- ix Government of India, *Report of the Working Group on Rural Domestic Water and Sanitation* (New Delhi: Ministry of Drinking Water and Sanitation, 2011), p. 130.
- x See, e.g. *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42 (right to health); *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420 (right to environment) and *Hamid Khan v. State of Madhya Pradesh*, AIR 1997 MP 191 (right to water)
- xi Committee on Economic, Social and Cultural Rights, *General Comment No. 14, The Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, UN Doc. No. E/C.12/2000/4, 11 August 2000. Para. 11.
- xii See, e.g. Committee on Economic, Social and Cultural Rights, *Statement on the Right to Sanitation*, UN Doc. No. E/C.12/2010/1, 19 November 2010 and Committee on Economic, Social and Cultural Rights, *Right to Water - General Comment No. 15*, UN Doc. E/C.12/2002/11, adopted in 29th session, 11-29 November 2002.
- xiii *Municipal Council, Ratlam v. Vardhichand and Ors*, (1980) 4 SCC 162.
- xiv *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors*, AIR 1981 SC 746.
- xv See, e.g. *Arunachal Pradesh Panchayati Raj Act, 1997* Section 30, Schedule I; *Bihar Panchayati Raj Act, 2006*, Section 47 and *Haryana Panchayati Raj Act, 1994*, Section 21.
- xvi *Water and Sanitation Programme (WSP), A Decade of the Total Sanitation Campaign Rapid Assessment of Processes and Outcomes* (New Delhi: WSP and Ministry of Rural Development, 2011), p. 24.

- xvii Government of India, Total Sanitation Campaign Guidelines (New Delhi: Government of India, 2011), Para. 3.
- xviii Government of India, Nirmal Bharat Abhiyan Guidelines, 2012 (New Delhi: Ministry of Water Supply and Sanitation).
- xix Government of India, Report of the Working Group on Rural Domestic Water and Sanitation (New Delhi: Ministry of Drinking Water and Sanitation, 2011), p. 129.
- xx Id. at p. 131.
- xxi Atul S/o Baburao Mandale v. The State of Maharashtra through PSO, 2010 (112) Bom LR 4148.

