

**Workshop on Realising the Right to Sanitation – International and
Comparative Perspectives, 2-3 May 2013**

**Background Note on Regulation of Sanitation in
India – Basic Features**

Philippe Cullet

1. Sanitation challenges in India

Sanitation remains an issue of immense importance in many countries of the South. Among these countries, the scale of the challenge in India is probably unmatched. Further, it faces a broader variety of sanitation-related challenges than most other countries.

In terms of a narrow understanding of sanitation focusing on toilets, there are 626 million people practising open defecation in India. This accounts for 59 percent of the worldwide figure and thus makes India the country that deserves the most attention on a global level.

In a broader sense, India faces like many other countries of the South a number of health and environment related challenges linked to sanitation. Thus, a very limited percentage of sewage is treated before being discharged and sanitation-related morbidity is the highest contributor to health problems.

In addition to this, India faces a fundamental issue that was in principle solved in 1950, that of untouchability. While the Constitution outlawed it (Article 17) and the activity associated with it, manual scavenging, a recent survey estimated that around 700'000 people still earn a living through manual scavenging.

2. Sanitation as a human right

The right to sanitation is not explicitly recognised in the Constitution but the higher judiciary has recognised it a fundamental right linked to the right to life (Article 21 of the Constitution). In *Virendra Gaur v. State of Haryana*, the Supreme Court stated that:

Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, (...) water, sanitation without which life cannot be enjoyed.¹

3. Constitutional Scheme for Sharing of responsibilities for sanitation

The responsibilities for sanitation are broadly divided between the Union, states and local bodies of governance (municipalities in urban areas and panchayats in rural areas). The Constitution provides that states have the main mandate in the sanitation sector. There is, however, no state that has framework sanitation legislation. Most of the sanitation-specific provisions that exist are found in operational legislation that simply attributes competences to certain bodies. None defines a framework or sets out principles for the same. As a result, while responsibilities are allocated, the framework for implementing the fundamental right to sanitation and for performing other sanitation-related functions is not well defined in any state of the union.

While states play the primary role in the sanitation sector, the Union has attempted over time to make its mark in the sector. It is mostly the executive that has been active rather than Parliament. Its interventions include broad statements concerning sanitation in instruments not directly concerned with sanitation, such as the National Water Policy, 2012.ⁱⁱ Further, the government has come up with a number of administrative directions in the sanitation sector. While these are technically not binding on states, they tend to be followed quite well by states because the Union adds financial incentives to push states in certain directions. This is in particular the case with the formulation of guidelines for sanitation in rural areas (see Background note on rural sanitation).

Constitutional amendments adopted in the 1990s gave municipalities and panchayats responsibility over sanitation in areas under their jurisdiction. This was not necessarily the beginning of decentralisation, in particular in urban areas, since a number of local laws predating these amendments already imposed on municipalities to take care of sanitation. In fact, before the right to sanitation was recognised specifically as a right derived from Article 21 of the Constitution, the Supreme Court had made it absolutely clear that municipalities could under no circumstance refuse to fulfil their statutory duties (*Municipal Council, Ratlam v Vardhichand*).ⁱⁱⁱ

4. Regulation of sanitation in India

Sanitation law in India is a complex area of law because it lacks a clear guiding framework and is found scattered in a variety of legal instruments spanning different areas of the law. At the most general level, there is neither legislation providing the framework through which the right to sanitation should be realised nor framework legislation governing the sanitation sector in general.

There is a multiplicity of legal instruments addressing some part of the sanitation sector. This is true with regard to the narrow understanding of sanitation that focuses more directly on toilets and in the context of a broader understanding of sanitation. There are provisions concerning sanitation from the local to the national level. Further, there are different policies and laws for rural and urban areas. In addition, a significant part of the broader sanitation framework is found in areas of law that have closer or looser association with sanitation. This is the case with water legislation that often includes sanitation in its purview, as well as, for instance, environment or health legislation.

The other four Background Notes highlight some of the main dimensions of the broader context for sanitation law in India. These include the different frameworks for rural and urban

areas, the sanitation-related dimension of water quality and pollution (sewage, wastewater, water reuse) and questions related to manual scavengers and sanitation workers.

-
- i *Virendra Gaur v. State of Haryana* (1995) 2 SCC 577 (Supreme Court of India, 1994), available at <http://www.ielrc.org/content/e9407.pdf>.
- ii National Water Policy, 2012, s 11, available at [ielrc.org/content/e1207.pdf](http://www.ielrc.org/content/e1207.pdf).
- iii *Municipal Council, Ratlam v Vardhichand* AIR 1980 SC 1622 (Supreme Court of India, 29 July 1980), available at [ielrc.org/content/e8010.pdf](http://www.ielrc.org/content/e8010.pdf).