

## **BOOK REVIEW - THE RIGHT TO WATER AND SANITATION FOR THE URBAN POOR IN DELHI: LOCALISATION OF HUMAN RIGHTS**

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Participatory democracy is a key to the true idea of citizenship<sup>1</sup>. This is the underlying idea of the concept of localization of human rights. The peculiarity of this concept lies in the fact that the needs of the local people (slum dwellers, for instance) as expressed by them, gets magnified at both domestic and the international level, and such, the interpretation of these expressions is found in the national human rights actions as well as international.<sup>2</sup> Since one of the most pertinent needs of the local people in any society is that of water and sanitation, and also have their own notion of rights relating to this.<sup>3</sup> The element of participation comes in when these needs and the rights relating to them are actively debated upon and voiced by the local people in fora they consider responsible for listening to their claims.

Right to water and sanitation, or for that matter housing, have not been exclusively given a place in a few important international instruments of human rights.<sup>4</sup> Even though the right to water and sanitation in India is not laid down anywhere as such, the courts have time and again interpreted Article 21 of the Constitution and the directive principles of state policy to include the same, for they are considered important for the human dignity.<sup>5</sup> It is pertinent to note that in India, international instruments can be enforced only through the national legislation.<sup>6</sup> Another closely linked human right is the right to adequate housing, interpreted under Article 21 as well. One of the major steps taken on the national policy front in this regards is the Water (Prevention and Control of Pollution) Act, 1974, bringing into its ambit, the right to healthy and

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<sup>1</sup> T.H Marshall, *Citizenship and Social Class* (Cambridge University Press 1950)

<sup>2</sup> Koyen De Feyter, *Localizing human rights* (Cambridge University Press 2006)

<sup>3</sup> Koen De Feyter (et al), *The Right to Water and Sanitation of the Urban Poor in Delhi*. (University of Antwerp and NLU Delhi

<https://www.uantwerpen.be/images/uantwerpen/container2621/files/The%20right%20to%20water%20and%20sanitation%20for%20the%20urban%20poor%20in%20New%20Delhi.pdf>

<sup>4</sup> Ibid. UDHR, ICCPR, ICESCR. However, the author(s) have also pointed out that various international instruments

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. pg. 10

safe environment.<sup>7</sup> Despite of the activist role played by the Supreme Court of India and a few legislations to protect the environment in place, the pressure on resources in a city like Delhi is such that, it has become difficult to materialize the claims relating to them.<sup>8</sup> These crucial human rights have being a subject of a lot of debate lately, since for local people, their *haq* has been time and again taken from them, often without appropriate remedies.<sup>9</sup> This is what “*The Right to Water and Sanitation for the Urban Poor in Delhi*” attempts to empirically study. The socio-legal research conducted by the University of Antwerp in collaboration with National Law University Delhi identifies five major tracks to study the human rights perspective of the marginalized communities.<sup>10</sup> The first track deals with the claims of the local communities that are selected for the purpose of this study (the book essentially deals with this part) and subsequently their translation as per the international human rights instruments. The third track deals with the response to these claims by the responsible institutions, along with the impact of the same on these communities and on the international level. Lastly, the approach deals with the intrinsic linkage between these local needs and international human rights norms.

The research team has done case studies of various slums in Delhi, mainly focusing on the issues like waste management, water supply and housing, and the local bodies responsible for the effective management of the same.<sup>11</sup> It’s disheartening to see the locals making temporary arrangement for themselves for a basic necessity like clean water, which the local bodies like Delhi Jal Board fail to adequately provide in these areas.<sup>12</sup> Not only this, it seems that the *Swach Bharat Abhiyan*<sup>13</sup> hasn’t been able to reach here, as most of these people still defecate in open, have no proper drainage mechanism or waste disposal methods.<sup>14</sup> In this backdrop, it is hypothesized that the human rights attain true meaning only if they’re localized for which people have to be made aware of their human rights and that they deserve to be heard in an appropriate form if their rights are violated.<sup>15</sup> The research design adopted for this purpose is

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<sup>7</sup> Ibid. pg. 11-12

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid. Gaby Ore’ Aguliar has suggested a methodology for studying the perception regarding human rights among the local communities.

<sup>11</sup> Ibid. p-13.

<sup>12</sup> Ibid. pg. 25

<sup>13</sup> *Swach Bharat Abhiyan* is a cleanliness movement introduced by the present Indian government whereby cleanliness in all aspects of life has been continuously promoted. See <http://www.swachhbharaturban.in/sbm/home/#/SBM>

<sup>14</sup> Ibid.

<sup>15</sup> Ibid. pg. 30

appropriate in terms of formulation of correct sample size and relevant data collection method, i.e., the focus group discussions and interviews, as while conducting surveys in slums, an informal approach to induce more participation is required. Not only this, the research team has to be commended for using various methods of observation and content analysis of the relevant documents (published literature on the subject).<sup>16</sup> The parts where case studies have been discussed, photographs describing the real situation in these slums have been put, vividly depicting the plight of the people there.

The subsequent part of the book deals with the legal framework of the right to water, sanitation and housing internationally, nationally and on the local level. The international bill of rights, composed of the UDHR, ICCPR and ICESCR, does not talk about any such right exclusively, as mentioned elsewhere in this piece.<sup>17</sup> However, International Covenant on Economic, Social and Cultural Rights (to which India is a signatory), through a few major articles on right to adequate standard of living and right to health, guarantee what is not explicitly protected in other international legal instruments.<sup>18</sup> The parties to this covenant are required to undertake the minimum core approach in realizing these socio-economic rights. Sanitation comes into the picture at this juncture, mainly because if a person has a right to clean water, that has to be free from contamination which is often the result of poor drainage system, defecating in open spaces etc. However, this does not undermine the exclusive right to sanitation, indispensable for the human dignity these international conventions seek to protect.<sup>19</sup> Similarly, right to housing has also being recognized as a human right on international level.<sup>20</sup> This right includes the right not to be evicted from one's shelter, or security of tenure, in other words. This security is important from the viewpoint of protecting the slum dwellers, since they're deprived of the basic amenities due to the legal issues pertaining to the places they live in.

As far as the Indian courts are concerned, it is argued that the approach employed by these courts towards these essential social rights is that of a conditional nature. Khosla's view of social rights seems quite acceptable, and therefore requires some analysis at this point. His

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<sup>16</sup> Ibid. pg. 33

<sup>17</sup> Supra, 4. pg. 39

<sup>18</sup> Article 11(2) and Article 12, ICESCR.

<sup>19</sup> Ibid. pg. 40

<sup>20</sup> Like most other socio-economic rights, right to housing has also being interpreted under the ICESCR as a requisite to the adequate standard of living, but is not exclusively recognized except in a few special conventions for vulnerable groups, similar to the RTWS.

critique of the *Olga Tellis*<sup>21</sup> judgement elicits a new approach to look at it. The argument is that in this case, court protected right to shelter as a conditional right, and not as a systemic one<sup>22</sup>. A conditional approach is where, he argues, the focus is on implementation and not the nature of measures taken by the government. It is a myth that the Indian Supreme court had adopted a systemic approach to social rights, whereas in reality it is a conditional one as it depends on state action. A systemic approach, on the other hand, is that when violation of a right is shown, there lies a remedy for it. It is not contingent on state action. Khosla has discussed the relevance of discussing the approach at this point is to look into the line adopted by the Indian courts in the interpretation of basic human rights, as unlike countries like South Africa, the Indian constitution does not place RTWS<sup>23</sup> and Right to housing in the Bill of Rights.<sup>24</sup>

RTWS has its legal basis in is the case law decided by the Indian courts in matters where inadequacy or non-affordability of this basic human right has being characterized as the one which directly affects Right to Life and Personal Liberty enshrined under Article 21 of the Constitution. Various decided cases have being referred in the book to substantiate the claim.<sup>25</sup> Recently, a member of the Upper house of the Indian Parliament has introduced a private member bill to include Article 21-B, explicitly providing for a right to health.<sup>26</sup> However, the problem is no more that of a lacking law on these issues, but only that of their true implementation. This chapter has been dedicated to the extensive discussion pertaining to various laws and policies of the Indian government meant to materialize the RTWS and Right to housing, with special reference to the role of NHRC and CSR activities.<sup>27</sup>

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<sup>21</sup> (1986) AIR 180

<sup>22</sup> Madhav Khosla, Making Social Rights Conditional: Lessons from India (January 18, 2011). 8 International Journal of Constitutional Law (I-CON) 739 (2010). See <https://ssrn.com/abstract=1742746> or <http://dx.doi.org/10.2139/ssrn.1742746> .

<sup>23</sup> Abbreviation for Right to Water and Sanitation.

<sup>24</sup> See section 26, Constitution of the Republic of South Africa.

<sup>25</sup> See pg. 51.

*Subhash Kumar vs. State of Bihar* (1991) AIR 420; *F.K. Hussain vs Union of India*, AIR 1990 Ker 321; *Virendra Gaur and Others vs State of Haryana and Others*, (1995) 2 SCC 577; *Vellore Citizens Welfare Reform vs Union of India*, (1996) 5 SCC 647; *Wasim Ahmed Khan vs Government of Andhra Pradesh*, (2002) 2 ALD 264 (DB); *Vishala Kochi Kudivella Samrakshana Samithi vs State of Kerala*, 2006 (1) KLT 919.

<sup>26</sup> Right to health be made a fundamental right: bill in RS, The Economic Times, December 12, 2017.

<https://economictimes.indiatimes.com/news/politics-and-nation/right-to-health-be-made-a-fundamental-right-bill-in-rs/articleshow/62106162.cms>

<sup>27</sup> *Supra*, 19. pgs. 85-88

The research conducted by the team has covered slum areas like Savda Ghevra<sup>28</sup>, Rangpuri Pahadi<sup>29</sup>, Bhanwar Singh Camp<sup>30</sup> and Begumpur<sup>31</sup>. All the slums face a few major issues regarding medical facilities, employment issues due their seclusion from the main part of the city.<sup>32</sup> Another peculiar problem in these slums happens to be the availability of tubewells which are non-functional, therefore people depend on water tankers for sustaining.<sup>33</sup> An astonishing finding from one of the slums is that people are often forced to use water from the community toilets, which leads to the violation of more than one of the important human rights of these people.<sup>34</sup> People also prefer to openly defecate in a few of these slums, mainly due to the appalling conditions of the public toilets; the ones of who have built toilets in their houses, suffer from improper drainage system.<sup>35</sup> One could imagine the situation in the monsoon season, when improper drainage and open defecation would become a breeding place for various diseases, violating the right to health of the people.

Another interesting finding of this research is that in most slums where private companies take up the responsibility of distribution of resources, it is not taken up well by the locals, primarily because for them, paying for a basic necessity like water, which is their *'haq*, makes no sense. This points to an important perception of people living in slums, as to their human rights. However, others also believe that if government fails to do their job properly, it's okay for the private companies to do so, also because they provide with better services.<sup>36</sup> There were others who believed that if people do not voice their opinions and take care of their surroundings, government cannot be wholly blamed for the situation and private companies just come to mint money.<sup>37</sup> At some places, the concerned officials took up an activist role in installing pipelines for effective water supply for the locals, and when the pipeline system breaks down, it is

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<sup>28</sup> "Savda Ghevra- a planned resettlement colony in West Delhi, built on 257 acres of land". See *ibid.* pg. 91.

<sup>29</sup> "A JJ cluster, built on 2.33 acres of Delhi Development Authority and Forest land, with 2511 households." See *Ibid.* pg. 91

<sup>30</sup> "A JJ cluster built on 0.81 acres of DDA land having 1088 households". See *ibid.* pg. 91.

<sup>31</sup> "A JJ cluster built on 0.68 acres of DDA land having 1,122 households." See *ibid.* pg. 91

<sup>32</sup> *Ibid.* pg. 93

<sup>33</sup> *Ibid.*

<sup>34</sup> See pg. 94. "Some people also reported taking water from the community toilets for their various needs and some reported buying water in times of scarcity. The community also shares water depending on how their interpersonal relationships are. People often use water from several sources and use it for the purposes of Washing, drinking and bathing depending on the quality of water and quantity of water available from one source."

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.* pg. 110

<sup>37</sup> *Ibid.* pg. 113. See also pg. 128.

supplied with the help of tankers.<sup>38</sup> However, it seems that none of these areas could attain the best of both worlds, mainly because while some had efficient water management, they lacked a proper waste disposal mechanism and vice-versa, which caused a lot of issues.<sup>39</sup> A common problem in all these areas is when the water is available, it becomes difficult to collect the sufficient amount of it, as people have to stand in long queues, which becomes an even bigger issue during summers, and as a result many people are unable to collect water at all.

While people mostly seem aware of their basic rights, it does not resolve the fact that there are major barriers to the localization of human rights, especially the obstacles in participation. Some experiences indicate to the great power imbalance and corruption issues which render the participatory process redundant.<sup>40</sup> There are however, several complaints filed and protests held by the local communities to claim their right to water and sanitation.<sup>41</sup> Most of them have now started feeling that it is pointless complaining to the government about their issues, as they often go unheard, or are heard only during elections.<sup>42</sup>

There has been, however, a paradigm shift in the way the Indian courts have approached the issue. One recent case has being that of the Kathputli colony in Delhi. The inhabitants of the locality are artists and performers, and the issue of their relocation due to DDA's renovation project of the locality, has gained a lot of momentum. The case is a complex one because there are existing disparities, social and economic within the inhabitants themselves. While some live in shacks, others have a comparatively better arrangement. This would mean that while some will get to shift to better accommodation, some would have to choose to be worse off than they are now.<sup>43</sup> Fieldwork suggests that the participatory mode of resolving disputes and negotiation has being followed in this case, or so the impression is created. If residents are to be believed, the engagement model in this case is essentially that of the authority sending them information as to how the project has been envisioned, with interaction with the community at

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<sup>38</sup> In Bhanwar Singh Camp, the MLA concerned has maintained an efficient water management, which the respondents claim has made their lives easier. However, since this an unauthorized colony, duty bearers do not fulfill their responsibility. As discussed in one of the sections, security of tenure as a crucial part of right to housing becomes pertinent here. See pg. 133.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid. pg. 112.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. pg. 144

<sup>43</sup> Subhadra Banda, Yashas Vaidya and David Adler, The Case of Kathputli Colony, Mapping Delhi's First In-situ Slum Rehabilitation Project, CPR Working Paper 3, p.23, (2013), Centre for Policy Research, New Delhi. See [www.cprindia.org](http://www.cprindia.org) . Last visited on 27-11-17.

large being absent.<sup>44</sup> With the localisation of human rights and participatory citizenship gaining momentum, it becomes imperative to understand its relevance. Nikolas Rose had referred to this as “enterprising self,” in which the process of liberalization has made “the responsibility of ensuring housing and access to services...not the responsibility of the state or the elite but of the poor themselves, leading to “self-responsibilization.<sup>45</sup> But in the instant case, the reality seems to be completely different. Kathpuli colony case raises issues beyond the scope of this piece, but nevertheless crucial to this discourse, namely, issues of consent, engagement, rehabilitation and employment.<sup>46</sup>

While slum dwellers assert that they have a *haq* to water and sanitation, this awareness could not be really brought into use due to various barriers in the participation, unlike the rhetoric that marginalized communities need to be made aware of their rights, since unawareness is the root of all problems. It is to be understood that the notion of a right as understood by the local communities is very different from what is interpreted in the national policies and international norms. Since India follows the dualist school, ratified international legal instruments (most of them) have only a persuasive value. The international norms can only be included in the national legislations, and international norms as such cannot be directly implemented in certain cases, human rights being one of those areas. At the bottom-most level, the effective enforcement of human rights is laden with many problems as discussed in the preceding section. There are countries which have extensively developed a *meaningful engagement* doctrine through judicial interpretation whereby the courts look into the interaction between the local communities and the government.<sup>47</sup> However, as seen in the Kathputli colony case, where the court ordered the effective engagement to be followed, it seemed practicality impossible. It is however, comforting to see the local communities being aware of their rights, making claims for the same and protesting against the violation of these rights. But indeed, if this spirit has to be maintained and encouraged among the the local communities, the response to these claims needs to be effective and adequate. People get trapped in myriad of false promises which are conveniently forgotten, and they are deprived of the basic necessities of life for years. While participation of the marginalized sections of the population is expected,

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<sup>44</sup> Ibid. 24.

<sup>45</sup> Nikolas Rose, *Powers of Freedom: Reframing Political Thought*, (Cambridge: Cambridge University Press, 1999).

<sup>46</sup> *Supra*, 34.

<sup>47</sup> South African Constitutional Court has in various decisions described how to effectively engage in negotiations and reach a solution where the question was regarding the enforcement of socio-economic rights.

they must not be disappointed with the response results to their claims. As initially hypothesized in the book, that human rights are become pointless unless the process of the articulation of claims by them, their translation into national policy language, leading to inclusion in international norms is done. It is apparent from the findings of this wonderful research work, that localization of human rights is the only way forward, for making the marginalized more and more participative and aware of their human rights.

