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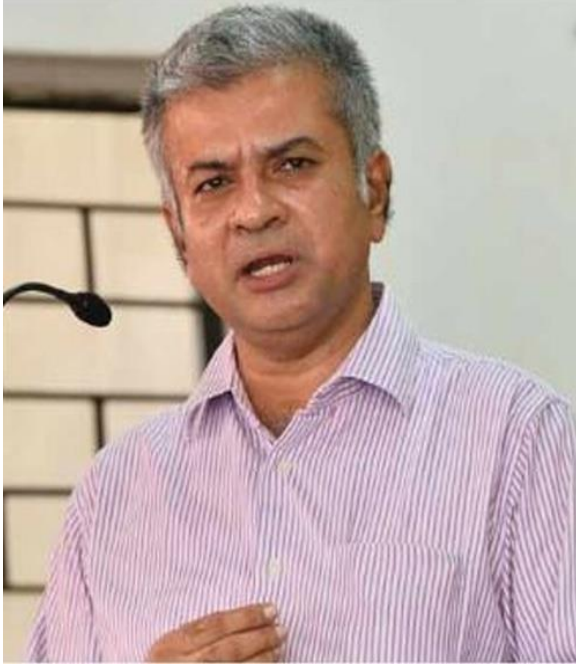
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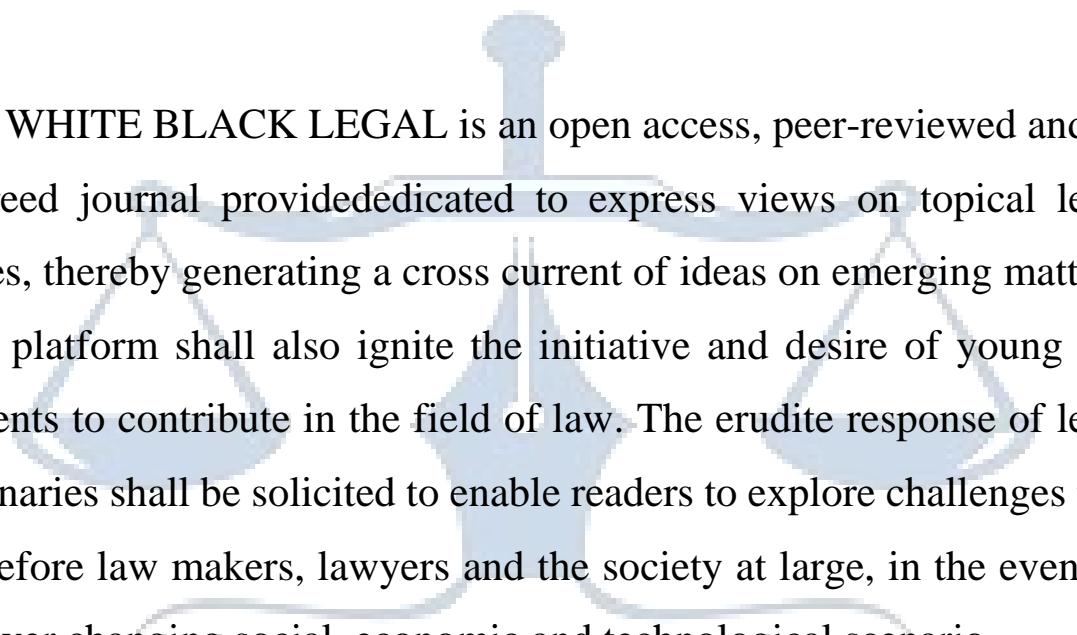
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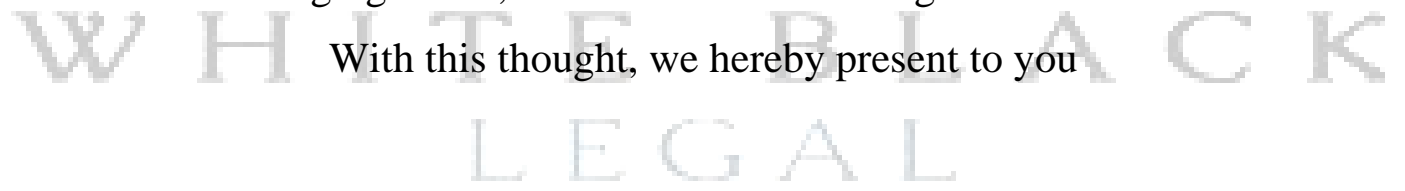
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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



HUMAN RIGHTS UNDER THREAT: THE IMPACT OF CLIMATE CHANGE IN RAJASTHAN

AUTHROED BY- PIA SINGH KASWAN
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Abstract:

This paper looks into the intersectionality between climate change and human rights with a specific focus on the State of Rajasthan examining the impacts on rights of water and sanitation. Rajasthan being an arid and semi-arid region creates unique climate and challenges that the state and its people will face as a consequence of climate change including water scarcity, extreme weather events and societal unrest. The impact these issues have are universal but are not uniform as they affect the marginalized and vulnerable groups disproportionality including women, children and socio-economic groups who face the brunt of the issues exasperated by climate change like access to safe water and sanitation facilities.

This paper explores how climate change exasperates existing societal and economic disparities, and how such impacts of climate change violate their human rights that are supposed to be respected both domestically and internationally, but are not accessible and are constantly violated as a consequence of climate change. Drawing to the attention the legal frameworks, judgments and international conventions the paper highlights the obligations of the state to protect the rights of its citizens' right to a healthy environment, water and sanitation. It argues that addressing the human rights implications of climate change requires a holistic approach prioritizing everyone including the marginalized groups by providing specific spotlight and policy initiatives to address their needs and promoting climate justice by which the agency of the public increases against the governments inaction or oversight which lead to violation of their human rights. Empowering the vulnerable populations to build resilience, mitigation and adaptation work against climate change is important to ensure dignified lives amid the ever increasing effects of climate change.

Keywords: Climate Change, Human Rights, Rajasthan, Water Scarcity, Sanitation, Climate Justice

Introduction:

Climate Change is one of the greatest challenges of our times.¹ Climate Change refers to change in global and regional climates due to human activities like burning of fossil fuels, deforestation and industrial processes. The ramifications of Climate Change includes issues like Global Warming, Extreme Weather Events, Melting Glacier, loss of ecosystems and ecology leading to the extinction of flora and fauna, and other issues that under the umbrella term of climate change are posing an existential crisis for all of humanity. Observational data results from land and oceans show several ecological, economic and social systems being affected by climate change globally. Climate change affects how economies and societies operate, from extreme weather events causing infrastructural damages amounting to substantial financial losses in crores of rupees to issues like escalation of international conflicts and migration due to food scarcity and depleting resources. As our weather patterns change due to rising global temperatures, these weathers impact all but the impacts are more severely borne by the vulnerable groups like women, low income households and low socially marginalized people as a consequences of lack of agency and legal protections, infrastructural disinvestment and under or no representation in public discussion and policy making. In the past, the impacts of climate change were limited and local, whereas now, the impacts are more extreme and have extended to larger, even global regions in impact. However, due to local and regional variability like physical features and climate, the effects of climate change are felt and understood differently. Thus, the purpose of this paper will be to focus on the State of Rajasthan and the impacts of Climate Change, specifically the effects on water and sanitation.

The state of Rajasthan is located in the north-western part of India and the largest state in land area with a total area of 3.42 lakh square kilometres and the seventh most populated state with an estimated population of 8.36 crore in 2022 and 6.85 crore according to the 2011 census. The state has a unique geography, with the Thar Desert on the western side covering 70% of the state, with the Aravalli Ranges one of the oldest mountain ranges in the world, cutting the desert diagonally in the eastern parts and providing some of the most vital resources for the state. Rajasthan is known for its arid climate and limited rainfall, however during the monsoons it receives precipitation which is crucial for the state's agriculture and resource management. The state is one of the richest states in India in

¹ "Climate Change is one of the biggest challenges of our times", European Environment Agency, European Union, November 2021 <https://www.eea.europa.eu/themes/climate/climate-change-is-one-of/folder_contents>accessed on 3 May 2024

terms of mineral resources, including limestone, marble, rock phosphate, gypsum etc., which are important for industrial sectors such as construction and chemicals. Additionally, the state is also rich in natural resources and biodiversity, with the Aravallis and the Great Indian Desert creating unique ecosystems and climatic conditions. With protected areas like the Ranthambore and Bharatpur Bird Sanctuary the need for conservation and sustainable management of resources are important for the region and its inhabitants.²

The State of Rajasthan and its people maintain a profound connection to their land and environment deeply rooted in their vibrant cultures and traditions. The state's natural resources due to their uniqueness and diversity play an important role in the day to day life of the people. Many communities still hold on their territories in spite of instances of small scale migration. Most maintain their ethnic and territorial boundaries. The degradation of the environment had impacted these settled communities.³ As the state experiences extreme climate, categorized by the hot summers soaring above 40°C and chilly winters where temperatures can drop to below freezing, its environment is fragile to issues of climate change in terms of mitigation and adaptation. The adverse effects of climate changes, particularly concerning water scarcity, droughts, water contamination and sanitation in the state are felt throughout but the degree of impact varies depending on factors like socio-economic status of individuals and communities.

The state of Rajasthan is highly vulnerable to climate change and its adverse impacts and has been shown to be an area of greatest climate sensitivity, maximum vulnerability and lowest adaptation capacity.⁴ Issues such as water scarcity, heat waves, desertification/ loss of biodiversity, droughts etc., will impact the livelihood of the people, as it will lead to food and water scarcity and loss of resources. Rajasthan's vulnerable communities face escalating challenges as climate change exacerbates environmental degradation and extreme weather events. This topic explores the intersectionality between climate change and human rights in Rajasthan, shedding light on the socio-economic disparities, vulnerabilities, and rights violations experienced by marginalized populations particularly

² Flora and Fauna, Rajasthan Foundation, Government of Rajasthan <<https://foundation.rajasthan.gov.in/FloraFauna.aspx>> accessed on 3 May 2024

³ Kumar Suresh Singh, “Rajasthan, Part 2, Volume 38 of @People of India: State series, Volume 38 of People of India”, (Anthropological survey of India 1998)

⁴ Government of Rajasthan, “Rajasthan State Action Plan on Climate Change”, 2010-2014 <https://environment.rajasthan.gov.in/content/dam/environment/RPCB/Reports%20n%20Papers/ClimateChange_09_04_2012.pdf> accessed on 7 May 2024

in relation to rights associated to Water and Sanitation.

Human Right to Water:

Rajasthan's climate is characterized by very low to low rainfall and is an arid/semi-arid state with deserts covering a major share of the land. Three major rivers pass through the state however; the state only contains 1% of the total water resources of the country, as most of the rivers are seasonal except for Chambal which is a perennial river, despite its 10% of India's total land area and 5% of the total population. Rajasthan is thus classed as water extremely stressed state as per capita annual availability of water is 0.000780 BCM (Billion Cubic Meters) and is expected to fall below 0.00045 BCM by 2050, wherein, '*According to the international standards set up by IWS, availability of water below 0.001 BCM indicates water scarcity.*' (Rajasthan State Action Plan on Climate Change), and its issues will only be exasperated by the adverse effects of climate change. Climate extremes including droughts and floods are quite frequent and expected to intensify due to climate change in the state. The stable climate of a unique ecosystem like that of Rajasthan is one of the most vulnerable to the impacts of climate change according to the IPCC (2007) stating, "*Many semi-arid and arid areas are particularly exposed to the impacts of climate change and are projected to suffer a decrease of water resources (high confidence)*". On one hand, water scarcity and droughts have become more evident, but on the other hand, irregular and higher precipitation could cause flash floods wherein these phenomena have significant risks to cause disruptions in the water supply and sanitation systems and other urban infrastructure, as most urban centres are not equipped with drainage systems in Rajasthan adequately.⁵

⁵ Report and Recommendations of the President, "Rajasthan Secondary Towns Development Sector Project- Additional Financing: Report and Recommendations of the President", Project No. 42267-034, Asian Development Bank, June 2023

unsystematic release of effluents in drains by these industries including textile, printing and cement which are not only highly polluting industries but are also water intensive lead to waste being discharged into rivers converting them into sewage drains which many times are used by farmers in their fields. Health impacts of water scarcity and change in the composition can lead to issues like limited access to clean drinking water, malnourishment, waterborne diseases like cholera dysentery due to contaminated water, vector borne diseases like malaria and Lyme disease will increase will altered precipitation and rising temperatures. Due to rising heat and lack of water availability will lead to heat strokes, dehydration and heat exhaustion. One of the most impactful health risks also includes mental health issues that will be on the rise as a consequence of extreme weather events, increase in daily temperatures and issues like displacement or loss of property and life will lead to issues of stress, PTSD, anxiety etc., as a consequence of uncertainty and challenges of climate change.

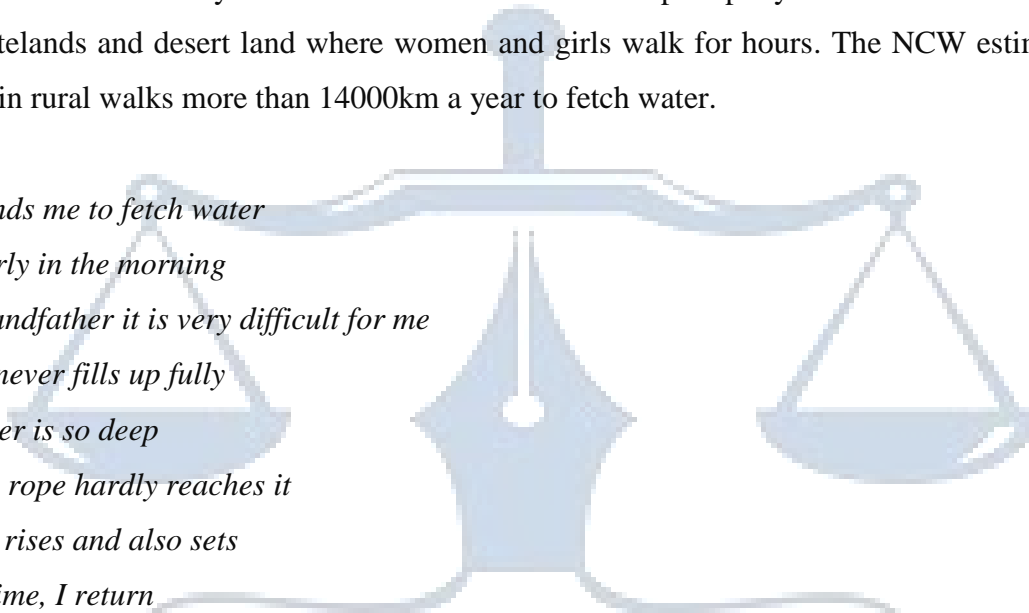
“SDG 6: Targets and Indicators to Track Progress 6.2: By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations”

Under Article 21 of the Indian Constitution wherein the right to life was guaranteed through judicial interpretations come to include the right to a healthy environment which by the judgment of the Hon’ble Supreme Court in *M.K. Ranjitsingh v. Union of India*⁶ has come to include the rights to be free from the adverse effect of climate change.

Gender inequality is the norm of the region where women have little agency and have limited scope of participation in decision making and households. There is a lack of gender based mitigation and adaptation polices in dealing with the issues like extreme weather events and shortage of water. Certain examples of how climate change in terms of water impacts women more and disproportionately are: if ground water reduces the duty of the household and due to traditional roles the duty lies with the woman and are thus burdened with walking many miles for water sacrificing their time and opportunities to fetch water, it induces lack of sanitation as adequate water is not available for women and girls and as contaminated is used due to lack of safe water it leads to health problems that can even turn deadly, this inevitably leads to girls dropping out of school and from

⁶*MK Ranjitsingh vs. Union of India*, 21 March, 2024, Civil Writ 2024 INSC 280

public life, to live a life without dignity and are especially harmful for menstruating and pregnant women where sanitation is of the utmost importance as un-sanitary practices can lead to diseases and infections. As the burden of water collection falls on the woman in these rural and urban environments, the time lost in fetching water could have been translated into opportunities and financial gains. Their work of fetching water is seen as labour that does not require financial compensation or benefits and is thus unpaid labour. According to the NCW (National Commission for Women)⁷ they calculated the financial cost of fetching water by women as, 150 million women per day fetch water each year and translate into 10 billion rupees per year. The terrain of Rajasthan is hot wastelands and desert land where women and girls walk for hours. The NCW estimated that a woman in rural walks more than 14000km a year to fetch water.



*“She sends me to fetch water
Very early in the morning
Oh! Grandfather it is very difficult for me
My pot never fills up fully
The water is so deep
That my rope hardly reaches it
The sun rises and also sets
By the time, I return
Unable to collect even one pot-full of water”*

Health issues in women and children are high in Rajasthan like diarrhoea, gastritis, jaundice etc., there issues are exasperated due to rampant malnourishment and nutrient deficiencies in women and children that is also caused due to food insecurity and discriminatory food rationing between men and women. Lack of personal hygiene wherein women are forced to have a bath only once or twice a month, lead to infections and many illnesses which in turn aggravates issues like malnourishment. As women in rural Rajasthan are also mostly engaged in the agricultural sector are affected when the yield reduces and there is reduced quality in yield. As there is a lack of awareness on impacts of climate change the blame and consequences of such irregular yield and the financial costs will be put on the women.

⁷Research Foundation for Science- Technology and ecology, “Report on women and water”, National Commission for Women, New Delhi Jan 2005

When there is water scarcity, women are the worst affected said a village woman from Gujarat. “When there is no water in the villages, no crops grow. Men migrate to the cities for work and women are left to fend for themselves, old people, children and cattle”

A similar situation exists for children especially girls where they are forced to work by fetching water and other related works which impacts the children negatively as they are unable to be children and rather have to work; it also leads to them being forced to work instead of attending school; children as are of growing age need higher nutritional food and water but are forced to use hard water and lower quality food leading to malnourishment and other water-borne diseases. Child mortality due to water-borne diseases and issues related to water scarcity is very high especially in areas prone to droughts and arid areas of Rajasthan.

Caste based discrimination also plays an important role in discrimination in terms of water in Rajasthan. An example is Indra Meghwal a 9-yr old boy in the Jalore District of Rajasthan who was beaten to death by his teacher for drinking water meant for the upper caste teacher. However, this is not an isolated incident as similar cases have been occurring all around the country and are especially common in Rajasthan as the scarcity of water increases. As there is lack of agency and protection for lower castes in Rajasthan in terms of resources, they are discriminated against by not being given adequate water resources and are mostly redirected to upper castes. Many times lower caste groups are also lower income groups who due to lack of finances are unable to access and get safe water for drinking and household use and thus have to rely on hard water and water contaminated by fluoride and other metals leading to health problems and malnourishment.

Human Right to Sanitation:

Right to access to sanitation is an important human right and one which requires adequate attention as the consequences of not having adequate access to sanitation can lead to health complications even to the extent of leading to death. Sanitation refers to the access to facilities where the person can maintain their physical hygiene to a standard where they are not adversely affected by it. Inadequate sanitation can lead to and is one of the leading causes of major infections like typhoid and diarrhoea. Right to sanitation usually refers to having the facilities for management of human excrete and its sanitary disposal but also includes other areas of hygiene and wellbeing of a person's body.

The issue of sanitation specifically to Rajasthan is one where due to lack of proper water and safe water for households their sanitation is compromised. Water scarcity, poor water quality and inadequate sanitary facilities impact many families in Rajasthan. One of the most important scopes for right to sanitation is the policy of the state to be open defecation free as it increases the risks of infections and diseases. However due to rising issues like water scarcity and improper waste disposal are the leading causes for non-enjoyment of this right which are exasperated by climate change. One of the most important aspects of right to sanitation is the access to sanitation facilities particularly in rural areas where there might not be adequate infrastructure for toilets or sewage systems which may force people to open defecate which can lead to an unhygienic and unhealthy environment. This may cause significant health issues but also poses other societal issues. In urban environments the issue is also prevalent wherein due to close quarters and congested cities the people who due to socio-economic reasons do not have access to sanitation facilities have to turn to open defecate. This may pose many health issues as the proximation to untreated sewage and waste creates an unsafe environment. As in poorer neighbourhoods and slums there are no proper sewage systems and if they exist they are mostly open sewage drains, which can lead to water borne diseases and vector borne diseases and is a risk to the public health. This violates the rights of the public under Article 21 of the Indian Constitution as it is a risk to their life and also violates their right to a healthy and clean environment.

Issues of sanitation can have adverse consequences on different groups of people in a disparate manner, especially women, children and other vulnerable groups. Women and girls are in particular affected as they have difficulty accessing safe and private sanitation facilities. Lack of access to sanitation within their homes leads to them having to defecate in open which leaves them vulnerable to safety risks and gender based violence. Lack of sanitary facilities especially impact menstruating women and girls as it is especially seen as unhygienic in states like Rajasthan where during their menstruation they are discriminated against and have even fewer sanitary facilities available.

The State of Rajasthan as has arid landscape and climate it creates unique issues related to sanitation, such as due to remote locations of villages the funding or transportation of sanitation facilities can be an issue. As it is mostly an arid area there is a concern of water scarcity which due to rising temperatures and increased population has put an excessive burden on the water resources of the state and its infrastructure, which lead to usage of unsafe water and poor hygiene practices. Within the

state the urban rural disparities and the difference in water resources availability in the state verses the south western part of the state creates disparities. Unplanned settlements and slums often do not have proper public infrastructure which leads to open defecation and poor hygiene practices.

As the practice of open defecation is used due to lack of access to safe sanitary facilities, it leaves women extremely vulnerable to gender based violence and offences. In 2014, 2 girls below the age of 18yrs were gang-raped and murdered while they had gone outside to defecate. According to a report by the Times of India, approximately 90% of cases of molestation and rape of women and girls is when they leave their houses to defecate in the open which are usually quiet and secluded areas.⁸

For marginalized communities, those disadvantaged groups often face issues in accessing sanitation facilities especially in rural Rajasthan where these social hierarchies are extremely rigid and are extremely discriminatory towards the marginalized groups which includes their access to sanitation and public facilities for personal hygiene. Their access to sewage, clean and safe water and access to toilets are all impacted due to lack of access which leads to unsanitary practices. Unsafe sanitary practices due to lack of infrastructure and protection i.e., adequate agency of the group/person, to access their right to sanitation and safe water are impacted leading to health issues and environmental degradation which perpetuates water borne diseases and other contamination related issues. Women who are part of marginalized groups bear a disproportionate burden where they face discrimination due to their group identity and also as a woman making them extremely vulnerable to the consequences of lack of access and practice of safe hygiene. Social Stigma and discrimination, and lack of support from the government exasperate the issue and are often overlooked in sanitation interventions, wherein the prioritization of human right to sanitation must be protected and utilized to improve their enjoyment of the right.

Issues of climate change that were discussed earlier like rising temperatures and extreme weather events will impact the right to sanitation for which proper mitigation and adaptation practices must be part of the state's policy in discussing both right to sanitation and climate change. In a report by the Bohra & Andrianasolo regarding the correlation between dengue and socio-economic factors with

⁸ Barbara Frost, 'Two girls died looking for a toilet. This should make us angry, not embarrassed', *The Guardian* (1 June 2014) <https://www.theguardian.com/global-development/2014/jun/01/girls-toilet-rape-murder-anger-embarrassment> accessed 7 May 2024

the data being collected from the Jalore district of Rajasthan, it was found that socio-economic factors of dwelling, occupation, sanitation and waste disposal system etc, were “significantly correlated”. Climate change is expected to increase the risk of exposure to vector borne and water borne diseases and will aggravate issues of malnourishment and deaths related to human hygiene. Unsafe or contaminated water used for drinking and sanitary purposes will increase the consumption of pathogens leading to a public health crisis. Other factors such as increasing population, lack of access to sanitation facilities and health care facilities will influence the climate induced impacts.

State policies and initiatives like the Swachh Bharat Abhiyan and its promotion of sanitation will increase the awareness among the public and will increase vigilance to such issues, however, for any concrete improvement the government must improve the facilities and infrastructure for any meaningful change. Under the SBA it is mandatory for every house to have a toilet within its compound and have community facilities where such measures are not possible like slums. Such initiatives will improve the state of the sanitation practices in Rajasthan however, other factors which impact the rights of people in terms must not be forgotten including access to safe water, proper closed sewage and proper waste disposal management system are all important to protect the people and their health as the effects of climate change will increase. Adaptation measures must be ensured.

Human Right to Sanitation is a right protected under our constitution which being the grundnorm of the state must be respected and protected. The Constitution does not explicitly recognize the right however the higher courts have interpreted the right under Article 21 which provides for the right to life to include the right to sanitation. Rajasthan is not new to this as in 1988 the Rajasthan High Court ordered the Jaipur Municipality to ensure sanitation.⁹ There have been further case laws by the Hon’ble Supreme Court and respective High Courts where the right to sanitation was accepted and respected under Article 21 as part of right to human dignity.¹⁰ The right to sanitation must be protected as a human right because it gives all citizens the right and makes others and the government duty bound and legally obligated to respect the right and provide for the enjoyment of the right. The main beauty of the Human Rights Based Approach is the fact that those persons or groups which are not visible during policy making and initiatives are made visible and better protection is guaranteed for

⁹ National Human Rights Commission, India, “*Right to Sanitation*”, Report 2021

¹⁰ K.J. Joy and Sarita Bhagat, “*Right to Sanitation in India: Nature, Scope and Voices from the Margins*”, Pune: Forum for Policy Dialogue on Water Conflicts in India, 2016, p. 1-14.

their enjoyment. Climate change in its current lens does not particularly focus on marginalized and vulnerable groups of the society and thus is important that their rights are also seen to influence the climate change efforts.

Conclusion

The Hon'ble Supreme Court in their judgment titled *M.K. Ranjitsingh v. Union of India Civil Appeal No. 3570 of 2022*, dated 21st of March'2024 observed that as India has significant commitments under International conventions in the pursuit of global environmental conservation goals and mitigate and reduce the impacts of Climate Change, these conventions include the UNFCCC and the Paris Agreement wherein the state in its INDCs (Intended Nationally Determined Contributions) has pleaded to reduce and mitigate the impacts of climate change by shifting from fossil fuels which have higher greenhouse emissions to renewable energy. The judgment also took into account the efforts made by the Indian State to combat climate change through its environmental legislations and policies including projects like the National mission for a Green India, National Solar Mission and National Mission on Strategic Knowledge for Climate Change.¹¹

The Hon'ble Supreme Court also took into account the multitude of judicial precedents that exist which are the main sources of the right to clean and healthy environment and the rights against the adverse effects of climate change. The Constitution in Article 48A provides that the state shall protect and improve the environment of the state; Article 51A (g) provides that it is the duty of every citizen of India to protect the natural environment and living creatures. These are not justiciable provisions however are supposed to be the basis for policies and the recognition of importance of the environment. Article 21 of the Constitution recognizes the right to life and personal liberty and that Article 14 provides for equality before law and equal protection of laws which have been interpreted again and again by the Hon'ble Courts and Tribunals to include the right to healthy environment.

The Hon'ble Supreme Court in *M.C Mehta v. Kamal Nath*, had interpreted Article 21 stating, “Any disturbance of the basic environment elements, namely air, water and soil, which are necessary for “life”, would be hazardous to “life” within the meaning of Article 21 of the Constitution.”

¹¹ Department of Science & Technology, *National Mission on Strategic Knowledge for Climate Change, Mission Document* (National Action Plan on Climate Change July,2010)

The Hon'ble Supreme Court further in its judgments in *Virender Gaur v. State of Haryana*, *Karnataka Industrial Areas Development Board v. C. Kenchappa* and other cases acknowledged the right to a healthy environment and gradually acknowledging the adverse effects of climate change and its impact on the right to a healthy environment under Article 21.

The United Nations Organization and its organs and other international organizations have been stipulating that the human rights of the citizens include obligations of the state to include related to climate change, including adaptation and mitigation efforts. Many International, regional and domestic courts have acknowledged the right to a healthy environment as a fundamental human right. The Hon'ble Supreme Court observed in *M.K. Ranjitsingh v. Union of India* as,

“It is imperative for states like India, to uphold their obligations under international law, including their responsibilities to mitigate greenhouse gas emissions, adapt to climate impacts, and protect the fundamental rights of all individuals to live in a healthy and sustainable environment”

Therefore restoring the water-related ecosystems and climate systems is essential and can be seen as part of Article 21 as all these issues are interlinked and interdependent to their Right to Life and Personal Liberty. The Hon'ble Supreme Court in *Maneka Gandhi vs. Union of India (1978)* while interpreting Article 14, 19 and 21 had stated that Article 21 not only includes right to life but also a life of dignity with access to all necessities needed for not only life but also living, based on the interpretation the Hon'ble Supreme Court in *M.C. Mehta v. Union of India (1987)* interpreted the right to a clean and 'healthy' environment. Furthermore, the UNGA (United Nations General Assembly) considered as the global community's parliament, passed a resolution specifically recognizing the right to water and sanitation as essential human rights and needed for realization of all human rights. Water is fundamental to achieving all the sustainable development goals and the Paris Agreement on Climate Change¹² and thus must be central to the discussion on Human Rights-Based Approach to Climate Change.

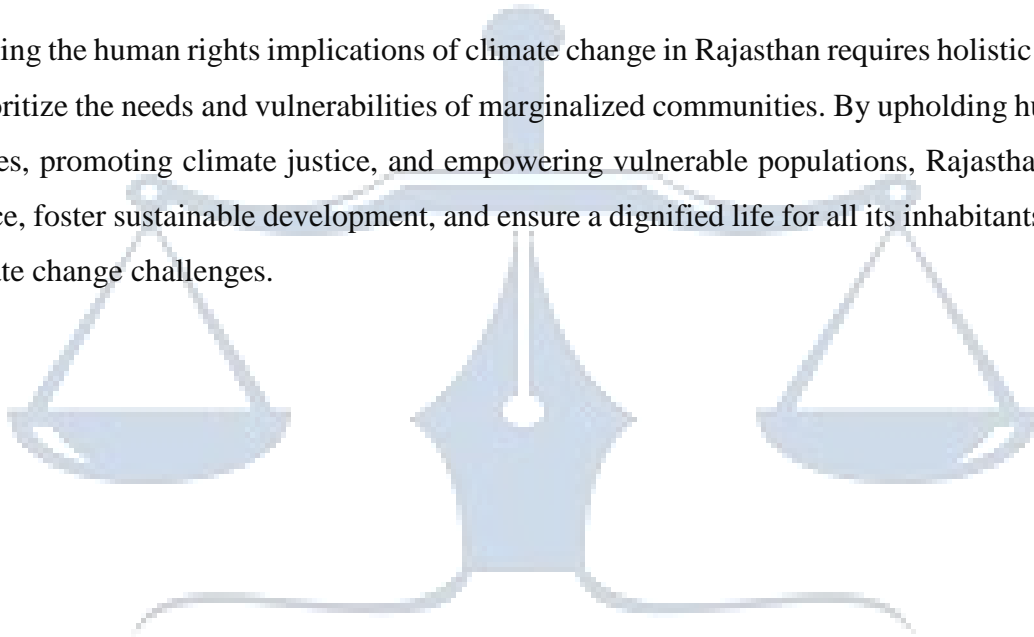
Despite domestic and international rights and frameworks, the situations stipulated above show that the Fundamental Right under Article 21 are being violated as the prevailing environmental degradation and water crisis continue. The state and authorities have a duty to protect these rights, yet

¹² Virginia Mariezcurrena, “A human Rights-Based Approach to Water”, SIWI (Stockholm International Water Institute)

their failure to do so is in violation of their duty of care and legal obligations. Thus the Human Right given under Article 21 of the Indian Constitution and under Section 2(d) of the Protection of Human Rights Act, 1993 are being violated, but are also violations of India's obligations under International Human Rights Regime under which is together seen as the International Bill of Rights are being violated.

Thus the degradation of water and issues like scarcity of water are not only environmental and climate crisis but are also human rights emergencies and need adequate attention to mitigate the impact.

Addressing the human rights implications of climate change in Rajasthan requires holistic approaches that prioritize the needs and vulnerabilities of marginalized communities. By upholding human rights principles, promoting climate justice, and empowering vulnerable populations, Rajasthan can build resilience, foster sustainable development, and ensure a dignified life for all its inhabitants in the face of climate change challenges.



W H I T E B L A C K
L E G A L