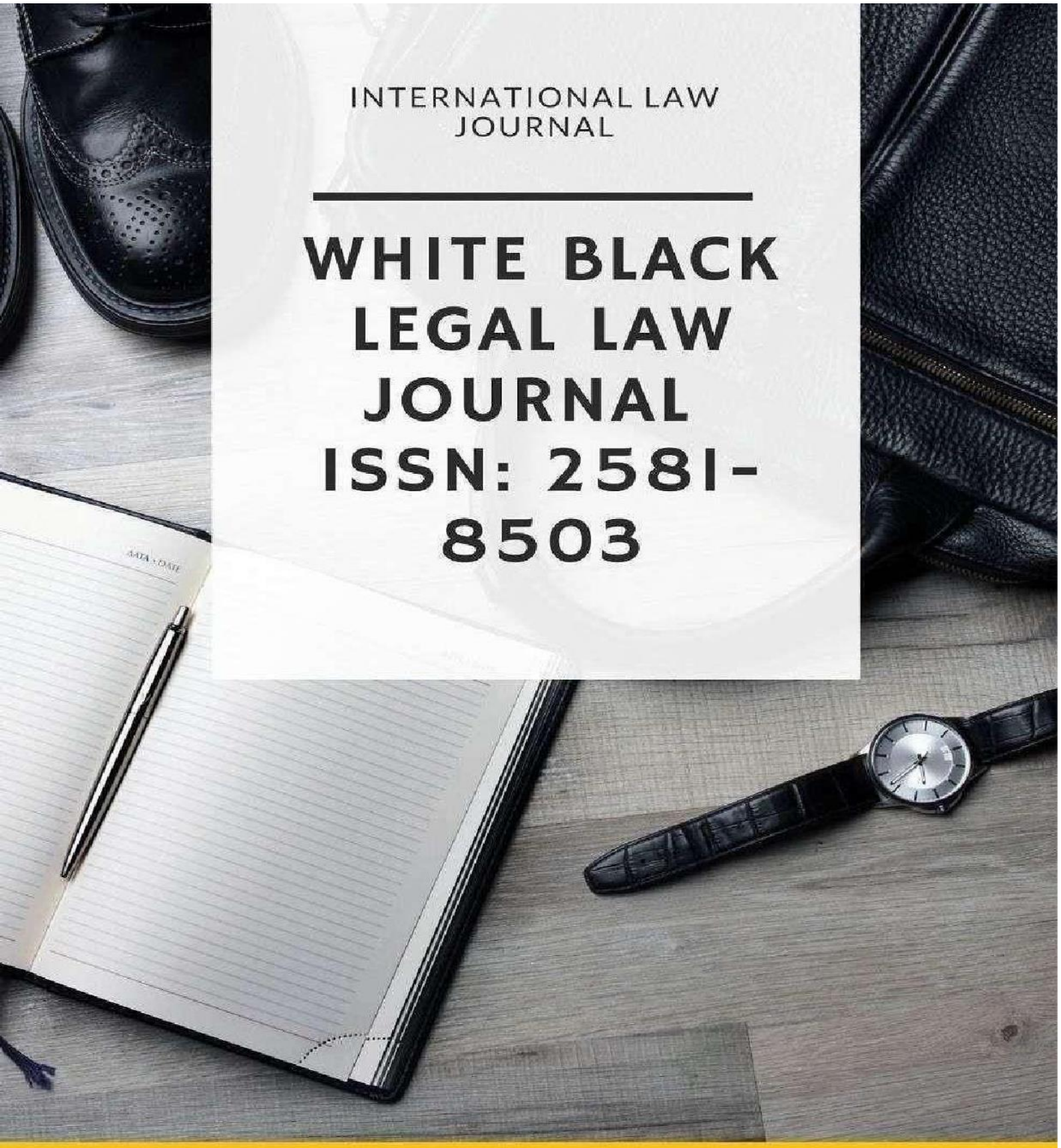

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WHEN THE STATE LOOKS AWAY: SANITATION, HUMAN DIGNITY, AND URBAN INDIA'S GOVERNANCE DEFICIT

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ABSTRACT

India's urban sanitation crisis is at once a governance failure and a human rights emergency. Despite a constitutional order that has, through successive judicial interpretations, extended the right to life under Article 21 to encompass the right to a dignified environment, and despite India's affirmative vote on United Nations General Assembly Resolution 64/292 of 2010 formally recognising sanitation as a human right, hundreds of millions of urban residents concentrated overwhelmingly in informal settlements continue to be denied access to safe, private, and functional sanitation facilities. This paper examines the structural gap between rights recognition and rights realisation in the domain of urban sanitation in India. It analyses the applicable international human rights framework, including the AAAQ standards articulated by the Committee on Economic, Social and Cultural Rights, and assesses India's constitutional and legislative architecture against those standards.

It traces the evolution of sanitation jurisprudence from *Maneka Gandhi* and *Olga Tellis* through *M.C. Mehta* and *Safai Karamchari Andolan*, identifying both the doctrinal achievements and the enforcement limitations of judicial activism. It further documents the empirical dimensions of urban sanitation deprivation including the gendered, caste-based, and migration-related axes of exclusion and subjects the Swachh Bharat Mission (Urban) to sustained human rights critique. The paper concludes by proposing a rights-based reform framework centred on the enactment of a Right to Sanitation Act, institutional reform of urban

local bodies, and targeted judicial innovation.[1]

INTRODUCTION

There is something revealing about the gap between what India's Constitution promises and what its cities deliver. Article 21 of the Constitution of India guarantees every person the right to life and personal liberty,[2] and since *Maneka Gandhi v. Union of India*,[3] that guarantee has been understood to mean not merely the absence of arbitrary state action, but the assurance of conditions necessary for a life of dignity. Yet in thousands of urban slums, resettlement colonies, and pavement communities across the country, the most elementary precondition of dignified life a clean, safe, and private place to attend to one's bodily needs remains conspicuously absent. This paper begins from that gap, and tries to understand how it came about and what law can do about it.

The question of whether access to sanitation constitutes a justiciable right is no longer, properly speaking, an open one. United Nations General Assembly Resolution 64/292 of 2010 explicitly recognised the human right to safe and clean drinking water and sanitation as essential to the full enjoyment of life and all other human rights.[4] India voted in favour of that resolution. The Committee on Economic, Social and Cultural Rights had, in General Comment No. 15 of 2002, already articulated the analytical framework availability, accessibility, acceptability, and quality, the so-called AAAQ standard for assessing compliance with sanitation-related rights obligations under the International Covenant on Economic, Social and Cultural Rights.[5] India ratified the ICESCR in 1979.

What remains genuinely open is the question of why, given this normative architecture, the reality on the ground remains so far from what the law requires. India's urban population surpassed five hundred million in the early 2020s.[6] That growth has been accompanied by a persistent and troubling dualism: formally planned, infrastructure-rich neighbourhoods coexist with vast informal settlements where basic services clean water,

[1]***Keywords:*** *Right to Sanitation, Article 21, Urban Governance, Swachh Bharat Mission, Manual Scavenging, AAAQ Framework, Human Rights, India*

[2]Constitution of India, art. 21.

[3]Maneka Gandhi v. Union of India, AIR 1978 SC 597.

[4]G.A. Res. 64/292, The Human Right to Water and Sanitation (July 28, 2010).

[5]Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, U.N. Doc. E/C.12/2002/11 (Nov. 26, 2002).

[6]Office of the Registrar General & Census Commissioner, India, Census of India 2011: Urban Agglomerations and Cities (2011); see also Ministry of Housing and Urban Affairs, India Urban Observatory Data Platform (2023).

sewage disposal, solid waste collection are chronically inadequate. The National Sample Survey Office's 76th Round documented that a substantial proportion of urban households continue to rely on shared or community facilities, and that community toilets in slum areas are frequently non-functional, poorly maintained, and unsafe for women using them at night.[7]

This paper argues that the persistence of sanitation deprivation in urban India is not an accident of underdevelopment or a simple resource problem. It is the product of three identifiable and addressable structural failures: a normative gap, arising from the absence of explicit statutory recognition of the right to sanitation; a governance gap, arising from the under-resourcing and institutional weakness of urban local bodies; and an exclusion gap, arising from the design of sanitation programmes that systematically fail to reach the most marginalised populations. Each of these failures is, in principle, correctable. The paper's central aim is to demonstrate that the legal tools for that correction already exist, or can be created within the existing constitutional framework.

OBJECT AND SCOPE OF THE STUDY

This study pursues six interconnected objectives. The first is to map and systematise the international human rights framework on the right to sanitation and clean environment, from the foundational instruments of 1948 and 1966 through to the 2010 UNGA resolution and the Sustainable Development Goals, with specific attention to the treaty obligations that bind India and the normative elaboration provided by the Committee on Economic, Social and Cultural Rights.

The second objective is to examine the constitutional and legislative framework governing sanitation rights in India, including the judicial interpretation of Articles 21, 47, and 48A of the Constitution, the institutional implications of the Seventy-Fourth Amendment for urban sanitation governance, and the content of the principal environmental and sanitation statutes.

The third objective is to undertake a systematic analysis of Indian judicial decisions on sanitation and environmental rights, identifying the normative content of the rights as articulated by courts particularly the Supreme Court's development of a substantive right to life

[7]National Sample Survey Office, Drinking Water, Sanitation, Hygiene and Housing Condition in India: NSS 76th Round (2018–19), at 34 (Ministry of Statistics and Programme Implementation 2019).

and the practical limitations of judicial enforcement as the primary mechanism for rights realisation.

The fourth objective is to document the empirical dimensions of urban sanitation deprivation in India, drawing on published government data, independent research, and civil society reports, with careful attention to the intersectional vulnerabilities arising from gender, caste, migration status, and residential tenure. The fifth objective is to critically assess the Swachh Bharat Mission (Urban) and related policy frameworks from a human rights perspective, identifying the specific areas of non-compliance with international standards. The sixth and final objective is to develop a rights-based reform framework including legislative, institutional, and judicial components capable of being implemented within the existing constitutional order.

RESEARCH PROBLEM / RESEARCH STATEMENT

The central problem this research addresses is the persistent and widespread denial of sanitation and clean environment rights to marginalised urban populations in India a denial that persists notwithstanding an established constitutional framework, a growing body of judicial jurisprudence, and a series of governmental programmes that nominally protect and promote these rights. This denial is not a service delivery shortfall in the ordinary sense. It constitutes a structural human rights violation with disproportionate and compounding impacts on the urban poor, women, Dalit communities, circular migrants, and residents of informal settlements.

Three specific dimensions of the problem can be identified. The first is a normative gap. The right to sanitation under Indian constitutional law has been recognised through judicial interpretation of Article 21 rather than through explicit legislative provision, leaving its content, scope, and enforceability uncertain and variable. The absence of a Right to Sanitation Act means that rights are enforced episodically through litigation in cases that happen to reach courts rather than systematically through the operation of a statutory entitlement regime. The result is a rights landscape in which enforcement depends on the accident of access to legal processes.

The second dimension is a governance gap. The Seventy-Fourth Constitutional Amendment devolved sanitation functions to urban local bodies, but that devolution was not

accompanied by adequate financial resources, technical capacity, or robust accountability mechanisms.[8] Urban local bodies in most Indian states remain chronically under-resourced, politically marginalised, and institutionally incapable of planning and delivering rights-compliant sanitation services at scale. The gap between constitutional aspiration and municipal reality is not merely large it is, in most cities, structurally entrenched.

The third dimension is an exclusion gap. Existing sanitation programmes and legal frameworks systematically exclude the most vulnerable urban populations: residents of unnotified slums who lack formal tenure, circular migrants without a permanent residential address, pavement dwellers, and homeless persons who fall outside the coverage of programmes predicated on household registration. Under international human rights standards, the right to sanitation attaches to persons by virtue of their humanity and their presence within a State's jurisdiction, not by virtue of their registration in a municipal database. The systematic exclusion of unregistered residents is therefore not a pragmatic administrative limitation it is a human rights violation in its own right.

IV. RESEARCH QUESTIONS

The study is structured around a primary research question: to what extent does Indian constitutional and statutory law recognise, protect, and enforce the right to sanitation and a clean environment as a justiciable human right in urban contexts, and what reforms are necessary to ensure its effective realisation?

This primary question is supplemented by five subsidiary inquiries:

(i) What obligations arise under international human rights law with respect to sanitation, and how do those obligations interact with India's domestic legal framework?

(ii) How have Indian courts interpreted and enforced sanitation-related rights, and what are the structural limitations of that jurisprudence?

(iii) What are the structural causes of sanitation deprivation in urban India, and which populations bear the greatest burden?

(iv) To what extent do the Swachh Bharat Mission (Urban) and related programmes comply with human rights standards?

(v) What elements are necessary for a comprehensive rights-based governance framework for

[8]Constitution of India, arts. 243P–243ZG (inserted by the Constitution (Seventy-Fourth Amendment) Act, 1992); see Shyam Divan & Armin Rosencranz, Environmental Law and Policy in India 47–52 (Oxford University Press 2d ed. 2001).

urban sanitation in India?

HYPOTHESIS

The principal hypothesis of this research is that while the normative foundation for a justiciable right to sanitation in urban India is sufficiently established in constitutional jurisprudence and international law, the persistent failure to realise that right in practice is primarily attributable to three structural factors: the absence of a comprehensive legislative framework translating constitutional rights into statutory entitlements; the institutional weakness and fiscal inadequacy of urban local bodies as primary duty-bearers; and the systematic exclusion of the most marginalised urban populations from the coverage of existing programmes.

The subsidiary hypothesis is that the Swachh Bharat Mission (Urban), while representing a quantitatively significant infrastructure intervention, is not designed or implemented as a human rights programme, and consequently fails to deliver the quality, equity, and sustainability of sanitation access that a rights-based approach would require. The Mission's orientation toward numerical targets toilet units constructed, cities declared open defecation free substitutes measurable outputs for genuinely rights-compliant outcomes.

METHODOLOGY

The research employs a doctrinal legal methodology, involving the systematic analysis of primary legal sources constitutional provisions, statutes, judicial decisions, and international instruments to identify, interpret, and critically assess the rules and principles governing the subject of inquiry. Primary sources include the Constitution of India, the relevant central environmental and sanitation statutes, decisions of the Supreme Court and High Courts, UN treaty body documents, Special Rapporteur reports, and General Comments of the Committee on Economic, Social and Cultural Rights.

This doctrinal approach is supplemented by a rights-based analytical framework that evaluates law and policy against the normative standards developed in international human rights law. The framework draws specifically on the tripartite typology of State obligations to respect, protect, and fulfil rights and on the AAAQ standard as elaborated in General Comment

No. 15.[9] The methodology is qualitative and interpretive. The study draws on published empirical data government surveys, audit reports, civil society assessments rather than generating original field data. Comparative analysis of South African, Philippine, and Kenyan constitutional and legislative approaches to socio-economic rights informs the reform proposals advanced in the concluding section.

VII. LIMITATIONS

The study has several acknowledged limitations. First, it relies on published data and does not involve original empirical fieldwork; the conclusions on the ground-level reality of sanitation deprivation are therefore dependent on the accuracy and coverage of the data sources cited. Second, the doctrinal methodology necessarily treats law as a relatively coherent system and may understate the importance of political economy factors land tenure politics, municipal electoral dynamics, contractor interests that shape implementation outcomes in ways that legal analysis alone cannot fully capture.

Third, the comparative analysis of South Africa, the Philippines, and Kenya is necessarily selective; a more exhaustive comparative study might yield additional insights or complicate some of the conclusions reached here. Fourth, the legislative reform proposals advanced in the final section are developed at a level of principle and core content rather than as draft statutory text; translating them into detailed legislative drafting would require additional disciplinary inputs, including public administration expertise and financial modelling, beyond the scope of this study.

VIII. SCHEME OF THE STUDY

The study proceeds through seven substantive chapters. Chapter II analyses the international human rights framework on sanitation, tracing the normative evolution from the Universal Declaration of Human Rights (1948) and the ICESCR (1966) through the 2010 UNGA resolution, the AAAQ framework of General Comment No. 15, treaty-based obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination Against Women, and India's SDG 6 commitments.

[9]Committee on Economic, Social and Cultural Rights, General Comment No. 15, supra note 4, 20–29; see also Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, U.N. Doc. E/1991/23, Annex III (Dec. 14, 1990).

Chapter III examines the constitutional and legislative framework for sanitation rights in India Article 21 and its expansive judicial interpretation, the Directive Principles under Articles 47 and 48A, and the principal environmental and sanitation statutes including the Environment (Protection) Act 1986, the Water (Prevention and Control of Pollution) Act 1974, the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013, and the National Green Tribunal Act 2010. It also examines the implications of the Seventy-Fourth Amendment for urban sanitation governance.

Chapter IV undertakes a systematic analysis of judicial decisions from *Maneka Gandhi* and *Olga Tellis* through *M.C. Mehta*, *Vellore Citizens Welfare Forum*, *Almitra H. Patel*, and *Safai Karamchari Andolan*. Chapter V documents the empirical dimensions of urban sanitation deprivation, examining the scale of the problem and its intersection with caste, gender, migration, and informality. Chapter VI critically assesses the Swachh Bharat Mission (Urban) and its successor programme. Chapter VII advances the rights-based reform framework, including comparative constitutional analysis, the proposed Right to Sanitation Act, and judicial reform proposals. Chapter VIII presents the conclusions and principal recommendations.

LITERATURE REVIEW

A. International Scholarship on the Human Right to Sanitation

The foundational contribution to the international human rights literature on sanitation is the work of Catarina de Albuquerque as the first United Nations Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation. Her technical reports to the Human Rights Council, spanning the period 2008 to 2014, and her comprehensive *Handbook* published by the United Nations in 2014,[10] represent the most authoritative articulation of the normative content of the right available in the literature. De Albuquerque's conceptualisation of the right in terms of the AAAQ framework availability, accessibility, acceptability, and quality and her development of the obligation to participate and accountability as substantive dimensions of the right, rather than procedural add-ons, have informed both treaty body practice and this study's analytical framework.

[10]Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), Realising the Human Rights to Water and Sanitation: A Handbook (United Nations 2014).

Malcolm Langford and Anna Russell's edited collection *The Right to Water: Theory, Practice and Prospects* (Cambridge University Press, 2017)[11] provides a rigorous theoretical account of the right's status in international law, its relationship to the broader socio-economic rights framework, and the challenges of its practical implementation. The volume's treatment of justiciability and the progressive realisation principle is directly relevant to the doctrinal analysis undertaken in Chapters II and III of this study.

Virginia Dandan's work on the progressive realisation principle under the ICESCR particularly her contributions as a member of the Committee on Economic, Social and Cultural Rights provides essential conceptual tools for understanding the relationship between the principle of progressive realisation and the core minimum obligation that survives any resource constraint.

The Committee's General Comment No. 3 of 1990,[12] which articulates the architecture of progressive realisation and minimum core obligations, and General Comment No. 15 of 2002,[13] which applies the AAAQ framework to water and, by implication, sanitation, are primary sources of central importance to this study.

B. Indian Scholarship on Constitutional Environmental and Sanitation Rights

Shyam Divan and Armin Rosencranz's *Environmental Law and Policy in India* (Oxford University Press, 2nd ed., 2001)[14] remains the standard academic reference on the intersection of constitutional law and environmental rights in the Indian context, providing the most comprehensive doctrinal account of the development of environmental jurisprudence from the 1970s through the consolidation of the principle of absolute liability in *M.C. Mehta v. Union of India.* Although the volume predates the 2010 UNGA resolution and the most recent developments in international sanitation law, its analysis of the gap between the constitutional mandate for municipal environmental governance and the institutional reality of under-resourced urban local bodies remains an indispensable diagnostic framework for the structural problem this study addresses.

[11]Malcolm Langford & Anna Russell eds., The Right to Water: Theory, Practice and Prospects (Cambridge University Press 2017)
[12]Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations, supra note 8.
[13]Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, supra note 4.
[14]Shyam Divan & Armin Rosencranz, Environmental Law and Policy in India (Oxford University Press 2d ed. 2001).

Upendra Baxi's *The Future of Human Rights* (Oxford University Press, 3rd ed., 2008)[15] and his earlier essay 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India'[16] provide the indispensable theoretical framework for understanding both the possibilities and the limits of judicial activism in the domain of socio-economic rights realisation in India.

Baxi's insight that public interest litigation transformed the Supreme Court from a court for the 'haves' into a forum for the 'have-nots,' while simultaneously identifying the structural limitations that prevent litigation from substituting for systematic governance, shapes the critical analysis of judicial enforcement in Chapter IV of this study.

Jyoti Macwan and Meena Saraswathi Seshu's article 'The Right to Sanitation: Moving Beyond Policy to Implementation'[17] advances the argument central also to this study that the gap between policy commitments and implementation outcomes is not primarily a technical or financial problem, but a problem of structural exclusion and the absence of genuine accountability mechanisms. Sandra Liebenberg's *Socio-Economic Rights: Adjudication Under a Transformative Constitution* (Juta Law Publishers, 2010)[18] provides the comparative constitutional framework for the analysis of South African socio-economic rights adjudication in Chapter VII, and her account of the 'reasonableness' standard developed in *Government of the Republic of South Africa v. Grootboom* is examined in detail in that chapter.

Arjun Appadurai's essay 'The Capacity to Aspire: Culture and the Terms of Recognition'[19] introduces a sociological dimension that the legal analysis would otherwise miss: the observation that poverty and marginalisation constrain not only material resources but the very capacity to formulate and articulate aspirations, including the aspiration to adequate sanitation. This insight helps explain why the normalisation of sanitation deprivation

[15] Upendra Baxi, The Future of Human Rights (Oxford University Press 3d ed. 2008).
[16] Upendra Baxi, Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India, 29 Rev. Int'l Comm'n Jurists 37 (1982).
[17] Jyoti Macwan & Meena Saraswathi Seshu, The Right to Sanitation: Moving Beyond Policy to Implementation, 49 Econ. & Pol. Weekly 42 (2014).
[18] Sandra Liebenberg, Socio-Economic Rights: Adjudication Under a Transformative Constitution (Juta Law Publishers 2010); see also Government of the Republic of South Africa v. Grootboom, 2001 (1) SA 46 (CC) (S. Afr.).
[19] Arjun Appadurai, The Capacity to Aspire: Culture and the Terms of Recognition, in Culture and Public Action 59 (Vijayendra Rao & Michael Walton eds., Stanford University Press 2004).

in affected communities a phenomenon well documented in the civil society literature is not evidence of consent or preference, but of the deeper structural oppression that rights frameworks are designed to disrupt.

The empirical literature relied upon includes the National Sample Survey Office's Drinking Water, Sanitation, Hygiene and Housing Condition in India: NSS 76th Round (2019),[20] WaterAid India's *The Crisis Behind Closed Doors: Urban Sanitation in India 2022,*[21] the Comptroller and Auditor General's Performance Audit of Swachh Bharat Mission (Urban), Report No. 31 of 2020,[22] and the Centre for Science and Environment's *Urban Water and Sanitation Divide: Factsheet 2020.*[23] Together, these sources provide the empirical foundation for the critical assessment of the SBM(U) and the structural analysis of urban sanitation deprivation undertaken in Chapters V and VI.

[20]National Sample Survey Office, Drinking Water, Sanitation, Hygiene and Housing Condition in India: NSS 76th Round (2018–19) (Ministry of Statistics and Programme Implementation 2019).
[21]WaterAid India, The Crisis Behind Closed Doors: Urban Sanitation in India 2022 (WaterAid 2022).
[22]Comptroller and Auditor General of India, Performance Audit of Swachh Bharat Mission (Urban), Report No. 31 of 2020 (CAG 2020).
[23] Centre for Science and Environment, The Urban Water and Sanitation Divide: Factsheet 2020 (CSE 2020).