

LEGAL
ORGANISATION
OF WATER AND
WASTEWATER IN
COMPARATIVE
PERSPECTIVE
Case of **India**

MARCH 2019

RESEARCH REPORT

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Introduction

The history of water regulation in India is traceable to its colonial times. Indigenous struggles against colonialism led the British to adopt a more friendly stance towards the rights of the locals despite their environmental exploitation. Their subsequent water policies had two noteworthy aspects. First, they recognised a virtually unlimited right of a landowner to the groundwater under his land, and a limited right of a riparian owner to a reasonable share of the river water. Second, they sought to preserve and maintain embankments and recognise local water-related practices prevalent in the villages.¹

This colonial legacy has failed to survive. India's present-day water law regime is shaped by its constitution and post-colonial legislation and policies. Even if one is able to identify similarities between the pre-colonial and post-colonial regimes, these appear to be mostly unrelated and co-incidental. In other words, pre-independence history is largely irrelevant to understand India's modern-day water regulation principles. This Report provides an overview of the existing constitutional, legal and policy structures in India that comprise its water law regime. It does so with a focus on urban sanitation challenges. For this reason, the constitutional provisions, legislation, delegated legislation and policies discussed are selectively tailored towards explaining the Indian position on urban sanitation.

Part I of the Report addresses constitutional principles relevant to understanding India's water law regime. First, it discusses the distribution of legislative powers between the Centre and States, and identifies where the power to make environment-related legislation generally, and water-related legislation specifically, might lie. Second, it discusses the Indian constitution's provisions containing rights and duties so as to locate environmental law principles within them. Simultaneously, it explains important Supreme Court judgments that have interpreted the said rights and duties provisions towards environmental preservation, including to the rights to clean water and urban sanitation.

Part II explains the existing Indian water law regime in terms of statutes and important delegated legislation. First, it discusses three central laws that address the preservation and protection of water resources, namely the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, and the Environment (Protection) Act, 1986, and the protectionist regimes created thereunder. Then, it briefly explains the manner in which the law provides for distribution of water to residents.

Part III discusses the policy measures undertaken by the Government of India to ensure better urban sanitation. First, it discusses policies related to, and the present on-ground situation of, access to toilets. Then, it embarks on a similar discussion in respect of policies about septage and sewage treatment.

1 Relevant Constitutional Principles

This Part explains three aspects of Indian constitutional and environmental law. First, it explains how the Constitution of India distributes legislative powers between the Centre and the States. Second, it discusses relevant provisions in the fundamental rights, directive principles and fundamental duties chapters of the constitution. Simultaneously, it discusses important Supreme Court judgments that have recognised a fundamental right to clean environment, including the right to clean water and urban sanitation, using the provisions contained in the chapters discussed earlier.

Water laws and constitutional separation of legislative powers

The Indian constitution divides legislative power between the Union (Parliament) and the States in the following way. Schedule VII of the Constitution contains three lists: Union List, State List and Concurrent List.² Parliament has the exclusive authority to make laws in respect of matters listed in the Union List, state legislatures have the exclusive authority to make laws in respect of matters listed in the State List, and both Parliament and state legislatures have concurrent authority to make laws in respect of matters listed in the Concurrent List.³ Importantly, Parliament also has a 'residuary' legislative power under which it can make laws on a subject not mentioned in any of the three lists.⁴ This residuary power extends to passing any law that levies a tax not expressly listed in any of the lists.⁵

Ordinarily, laws are passed according to this near-neat division of powers. The Constitution, however, also provides for two other sources of legislative authority for the parliament which are relevant to this discussion. First, Parliament may make a law that gives effect to an international agreement (such as a treaty or convention) or any decision taken at an international conference or meet.⁶ Second, Parliament may also make law on a state subject if all Houses of the legislatures of at least two states pass a resolution authorising Parliament to do so.⁷ Such a law, once passed, applies not only to the states who initially authorised Parliament to make it, but also to any other state if all Houses of its legislature pass a resolution adopting it.⁸

India's three principal water preservation laws can be understood in this context. The Water (Prevention and Control of Pollution) Act, 1974 ("**Water Act**") was passed after the legislatures of twelve states – Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal – passed resolutions authorising the parliament to make a law addressing water pollution & conservation.⁹ This resolution was necessary as "water" is a subject listed in the State List.¹⁰ Next, the Water (Prevention and Control of Pollution) Cess Act, 1977 ("**Cess Act**") was enacted without any such resolution, but since this law deals with the levy of a 'cess' (i.e. a tax), Parliament's residuary legislative powers encompass the authority to enact it. Finally, the Environment (Protection) Act, 1986 ("**EP Act**") was enacted to honour and implement the decisions taken at the UN Conference on the Human Environment (Stockholm, 1972).¹¹ (Arguably, Parliament need not have invoked this special power to enact the EP Act because the subject of environment protection is not mentioned in any of the three lists, thus falling within the scope of Parliament's residuary legislative authority.)

This explains where India's principal water laws stand in terms of division of legislative powers among the parliament and the states. However, it would be a mistake to think that the constitution has nothing else to do with environment protection and it leaves that subject completely to legislative whim. India's vibrant constitutional text, bolstered by a robust judicial interpretation of it, ensures that having a clean environment is much more than just a legal right for Indians.

Rights & Duties: Constitutional Text and Judicial Interpretation

From the perspective of environment preservation, Article 14 and Article 21 are the two key provisions in the fundamental rights chapter of the constitution. Article 14 contains a guarantee of equal treatment,¹² which has judicially been interpreted to include a guarantee against any arbitrary state action.¹³ Article 21 guarantees a right to life and personal liberty to all persons and provides that the only permissible way in which the State may abridge this right is through a fair & reasonable procedure

established by a fair & reasonable law.¹⁴ (The words “fair” and “reasonable” have been interpreted as including the requirement of non-arbitrariness contained in Article 14.)¹⁵ The Indian Supreme Court has read the terms “life” and “personal liberty” under Article 21 very expansively, and the recognition of the right to a clean and healthy environment is a product of this expansive reading.

The first important step in the judicial expansion of the scope of Article 21 beyond its plain text was the recognition that “life” means something more than mere animal existence, that it means a life with dignity.¹⁶ It was within this understanding that “life” was understood as including certain basic necessities – food,¹⁷ shelter,¹⁸ health,¹⁹ employment,²⁰ social security and just and humane conditions of work,²¹ etc. – to which every person had a fundamental right under Article 21. A clean and healthy environment was also included in this list in 1991.

In *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598, the Petitioner filed a writ petition alleging that the sludge discharged by the industries of an iron and steel company was polluting the Bokaro river in the State of Bihar. Though the court dismissed the petition with costs (it found that the petition was motivated by personal grudges and animosity rather than genuine concern for fundamental rights), it made the following larger, crucial observations in its judgment:²²

“Article 32 is designed for the enforcement of Fundamental Rights of a citizen by the Apex Court. It provides for an extraordinary procedure to safeguard the Fundamental Rights of a citizen. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life. A petition under Article 32 for the prevention of pollution is maintainable at the instance of affected persons or even by a group of social workers or journalists.”

This can fairly be described as a watershed moment in Indian environmental law.²³ Subsequent to this judgment, the Supreme Court repeatedly held that Article 21 encompasses a fundamental right to a clean and healthy environment.²⁴ The right to clean water has been specifically recognised.²⁵ E.g., in *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62, the Supreme Court declared that an exemption from the industry-zoning

regulation, given by the State Government to a polluting industry with the effect that the industry could now be located within 10 km of a freshwater lake (the source of drinking water for nearby residents), was unconstitutional and violative of Article 21.²⁶ Further, the right to water is not limited to the present generation; the principle of inter-generational equity is also contained within Article 21.²⁷

A second important step has been to recognise a positive obligation on the State to protect the environment from degradation.²⁸ In large part, this stems from the Directive Principles of State Policy contained in Part IV of the Constitution (principles that are “fundamental in the governance of the country”) despite that these principles are supposed to be judicially unenforceable.²⁹ Among the directive principles is an obligation on the State to protect and improve the environment.³⁰ Similarly, in the Fundamental Duties chapter, a duty to protect and improve the environment is placed on every citizen of the country.³¹ The Supreme Court has used these provisions not only in interpreting Article 21 in the expansive manner discussed above,³² but also in issuing necessary directions to the government for environmental preservation.³³

In *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1999 SC 1502, noting that water supply was disrupted in 15 villages in the state of Andhra Pradesh due to industrial pollution, the Supreme Court issued directions to the Central Pollution Control Board and the concerned State Pollution Control Board to “jointly prepare a scheme of action for containing the industrial pollution and for disposal of industrial waste as also for reclaiming the polluted lands and the polluted water supply.”³⁴

In *Research Foundation for Science Technology National Resource Policy v. Union of India*, (2005) 10 SCC 510, in context of groundwater contamination due to hazardous waste dumping activity, the Court directed the State Pollution Control Board to conduct tests on the groundwater and prepare a report on its contamination.³⁵ In *Susetha v. State of Tamil Nadu*, (2006) 6 SCC 543, the Court directed the State and the Village Panchayat (the local self-government body) to ensure that tanks in or around the village in question were maintained properly. The Court also directed these authorities to take necessary steps to prevent water shortage.³⁶

The Supreme Court has been activist specifically in the context of urban sanitation as well. In *Municipal Council, Ratlam v. Vardichan*, (1980) 4 SCC 162, the Court was faced with a lamentable state of affairs as regards the drainage

system in a locality in the State of Madhya Pradesh. The locality had a filthy drain which was contaminated primarily by the discharge from an alcohol plant. It not only caused odour problems but also was a breeding ground for mosquitoes. Water from this drain also leaked onto the land of some residents, filling into the pits and causing the same problems there. Further, toilets in that locality had no outlet, which resulted in further accumulation of waste and dirty water across the locality. The Supreme Court issued a number of directions to the city's Municipal Council, including, to ensure that the discharge from the alcohol plant stops is dealt with as required, to construct public latrines with proper drainage facilities, to have the cesspools and pits filled up, and to stop the breeding of mosquitoes. The Court also threatened contempt action against responsible officers in case the directions were not complied with!³⁷

Though Article 21 finds no express mention in the *Vardichan* judgment, the judgment is driven by the same kind of humanist concerns that drive the Supreme Court's

Article 21 jurisprudence. Krishna Iyer, J. wrote as follows for the majority:³⁸

“Why drive common people to public interest action? Where directive principles have found statutory expression in Do's and Dont's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice.”

In *Sector 14 Residents' Welfare Assn. v. State of Delhi*, (1999) 1 SCC 161, the Court accepted the recommendations of a committee it had constituted by an earlier order to investigate the problems of sewerage management systems in NOIDA and Delhi's Trans-Yamuna Area. Specifically, the court accepted the time-bound action plan stated in the recommendations.³⁹ Instead of issuing any directions itself, however, the court gave the *committee* “full authority” to issue appropriate directions to the concerned officers.⁴⁰ At the same time, the court declared that “appropriate action” would be taken against errant officers who fail to comply with the committee's directions.⁴¹

2 The Legal & Regulatory Framework

This Part discusses important statutes and delegated legislation that make up India's water law regime. First, it discusses the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Cess Act, 1977, the Environment (Protection) Act, 1986, and the protectionist regimes created thereunder. It further briefly addresses why no central legislation governs the distribution of water to residents, and how the said field is regulated.

The Water Act

This 1974 legislation was the first to address water pollution and conservation directly. It made it an offence to put inside a stream, well or sewer, or on land, any substance that is noxious or poisonous or which would disrupt the flow of water.⁴² However, as discussed above, the Act was to apply to only those states where the legislature passed a resolution adopting it. All Indian states except the State of Gujarat have passed such a resolution as on date.⁴³

A. The Pollution Control Boards

The Act provides for the establishment of two kinds of body corporates, namely one Central Pollution Control Board (“**Central PCB**”) for the entire country and one State Pollution Control Board (“**State PCB**”) for each state.⁴⁴ Mainly, it is these bodies that are responsible for prevention and control of water pollution. Their compositions, which are also prescribed,⁴⁵ have been the subject of some criticism in scholarship – members of these boards are all government appointees in some way, there hardly being any independent person to represent the interests of affected citizens.⁴⁶

Among the two boards, the State PCB's functions are more comprehensive and direct in terms of on-ground action.⁴⁷ Some of these are especially noteworthy.

First, every State PCB has an *inspection & review* function: it must inspect sewage & trade effluents as well as the plants established for the treatment of these substances, and review the plans or specifications relating to these plants and water treatment plants.⁴⁸ For this purpose, it

is empowered to collect information from the ground either through self-inspection or by compelling persons engaged in water abstraction or effluent discharge etc. to furnish information about their practices.⁴⁹ It is also empowered to collect and analyse samples.⁵⁰

Second, it has a *standard-setting* function: it must set new standards and modify or repeal existing standards, as required, for the discharged sewage & trade effluents as well as for the quality of the water that receives these substances.⁵¹ It must also set specific stream-wise standards based on the water quality and tolerance limits of each stream.⁵²

Third, it has an *innovative* function: it must not only come up with “economical and reliable methods” of sewage & effluent treatment (after considering the flow characteristics of the water as well as local ecological conditions),⁵³ but also with ways to utilise sewage & effluents in agriculture⁵⁴ and efficient methods for the disposal of these substances on land (given that the water quality does not allow for its disposal in water bodies).⁵⁵

Fourth, the State PCB has a *regulatory* function: it must pass necessary orders not only to prevent waste discharge into water bodies but also to require any person to construct new systems, modify existing systems or take remedial measures geared towards reducing existing pollution and/or preventing further pollution.⁵⁶ The State Board has extensive powers in this respect. These are discussed in detail in Section C below.

Fifth, it has an *education and training* function: it must disseminate information about water pollution and its prevention and control, and coordinate with the Central PCB in training the personnel to be engaged in water preservation as well as mass education programmes.⁵⁷

Sixth, it has an *advisory* function: it must advise the State Government on whether the location of any industry is likely to cause water pollution in a stream or well.⁵⁸

In contrast, the Central PCB's functions are narrower and are directed more towards exercising oversight. First, it has a *management* function: it must co-ordinate the functioning of the State PCBs and solve any disputes that arise among them.⁵⁹ Second, like the State PCBs, it has an *education & training* function: it must collect and disseminate technical and statistical information about water pollution and sewage treatment.⁶⁰ It must also organise information dissemination programs through mass media.⁶¹

Both the Central PCB and the State PCBs share the function of conducting, encouraging or sponsoring research on water pollution and conservation.⁶² For the better execution of these functions, both Boards are given the power to establish new laboratories or designate existing laboratories where research, including sample analysis of water and/or sewage, may be carried out.⁶³ However, separately, the Central and State Governments are empowered to establish their own laboratories and appoint their own analysts,⁶⁴ and whenever a sample testing is conducted and the reports given by a government laboratory and a board laboratory conflict, the government laboratory's report shall prevail.⁶⁵

B. Governmental Oversight

Both boards are bound by directions from their respective immediate governments – the Central PCB by the Central Government's directions,⁶⁶ and the State PCB by the State Government's directions.⁶⁷ Additionally, all State PCBs are also bound by the Central Government's directions,⁶⁸ and in case these directions conflict with those issued by the State Government, the Central Government's directions shall prevail.⁶⁹ Where the Central Government finds that any State PCB has failed to comply with its directions, as a result of which a “grave emergency” has occurred, it may order the Central PCB to implement the State PCB's functions in the relevant area for a specified time and purpose.⁷⁰

C. Regulation by the State PCB

As stated above, the State Board is vested with extensive powers to check water contamination. Besides the aforementioned powers to obtain information and collect samples for analysis, the State Board may empower any person to enter any place to conduct examinations and ensure compliance.⁷¹ Further, no new industry likely to pollute streams, wells, sewers or the land may be established without the prior consent of the State Board,⁷² and the State Board has the power to impose conditions as it deems fit,⁷³ as well as to refuse consent in certain cases.⁷⁴ Such consent is required even for present industries that are engaged in polluting activities.⁷⁵ Importantly, the State Board may also exempt any person from those provisions of the Act that prohibit persons from polluting streams, wells, sewers and land.⁷⁶

Prior to 1988, the Board was powerless to itself prevent ongoing water pollution. It was required to approach the courts for any injunctive relief against the polluter.⁷⁷ After the 1988 Amendment to the Water Act, however, the Board may issue any directions to any person or authority and such person or authority shall be bound to comply with the

same.⁷⁸ This power includes the power to issue orders for the closure or regulation of any industry, the prohibition of any ongoing activity, and the regulation of electricity or water supply.⁷⁹

D. Financial Principles

The general financial model under the Water Act is as follows. The Central PCB is funded by the Central Government from its annual budgetary allocation and a provision is made in this respect in the finance bill.⁸⁰ Likewise, the State PCB is funded by the State Government after due appropriation being made by the state legislature by law.⁸¹ In addition, both Boards are permitted to raise money from other sources through borrowing in the form of loans, bonds, debentures, etc.⁸² The monies thus received by the Boards are to be spent only in the execution of their statutory functions.⁸³ The boards are also mandated to prepare their budget, annual report, audit report and accounts.⁸⁴

The Water Act prescribes some other sources of revenue for the State PCB as well. For instance, when any officer authorised by the State Board collects a sample (for analysis) from the premises of any occupier, such occupier, subject to an opportunity to be heard, shall reimburse the State Board for the cost of conducting analysis on that sample.⁸⁵ A similar rule applies when the occupier himself requests the State Board to conduct an analysis of a sample from his premises.⁸⁶

Finally, the discussion on financial arrangements for the Central PCB and the State PCB is incomplete without an analysis of the Cess Act.

The Cess Act

Though enacted in 1977, this Act came into force only in the year 1992 after the Central Government notified the date of enforcement in the official gazette.⁸⁷ It deals primarily with revenue collection. However, aspects of it also aim at preventing water pollution, as discussed in Section B below.

A. Revenue Generation

The very objective behind enacting this legislation was, in the words given in the Act itself, “to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974.”⁸⁸ Levies made under it are deposited in the Consolidated Fund of India from where it may be appropriated to the Central PCB and the State PCB through appropriate legislation in this respect.⁸⁹

The Act extracts a levy from two entities: first, from every person carrying on any industry specified in Schedule I of the Act, and second, from every local authority responsible under the law to supply water to the residents.⁹⁰ This levy is assessed like taxes – a return is filed by the person liable to pay the cess,⁹¹ the particulars in the return are verified by the assessing officer, and the assessment of tax is subsequently made.⁹² Further, if there is a default in payment, the amount may be recovered by the Central Government in the same manner as it recovers land arrears.⁹³

B. Water Preservation

The Act grants a 25% rebate on the payable cess to those persons or local authorities that install a sewage & effluent treatment plant. Clearly, this provision is aimed at incentivising the setting up of treatment plants and thus reducing water pollution.⁹⁴ This intent is further made clear by other provisions of this Act, which provide as follows:

1. Any person or authority that violates those provisions of the Water Act that prohibit the setting up of new industries and outlets etc. without the prior consent of the State Board, or any standards set by the Central Government under the EP Act, shall pay a heightened cess.⁹⁵
2. The rebate shall not be given to any person or entity that either consumes more water than the prescribed maximum quantity or violates those provisions of the Water Act that prohibit the setting up of new industries and outlets etc. without the prior consent of the State Board.⁹⁶

In this way, the Cess Act complements the Water Act in regulation of water pollution and helps secure a source of finance for the PCBs' functions.

The EP Act

As revealed by its preamble, this legislation was enacted to implement the decisions taken at the UN Conference on the Human Environment (Stockholm, 1972).⁹⁷ It applies to all kinds of environmental pollution, including water, air, land and noise.⁹⁸

A. Powers of the Central Government

Like under the Water Act, the Central Government has the power under this Act to prescribe standards for discharge of sewage and effluents,⁹⁹ conduct and sponsor research,¹⁰⁰ enter any place to investigate and ensure compliance with the prescribed standards,¹⁰¹ collect samples,¹⁰² establish

laboratories and appoint analysts to conduct analyses of collected samples.¹⁰³ The Central Government also has the powers to make rules,¹⁰⁴ under which it enacted the Environment (Protection) Rules, 1986.¹⁰⁵ These rules provide for both general standards as well as industry-based standards for some kinds of effluent discharge.¹⁰⁶

B. Solid Waste Management Rules

Exercising the same powers, the Central Government also passed the Solid Waste Management Rules, 2016 in supersession of the Municipal Solid Waste (Management and Handling) Rules, 2000.¹⁰⁷ These rules are relevant to the topic of water conservation as the dumping of solid waste on land contaminates groundwater. The rules define 'disposal' as the final and safe disposal of post-processed waste to prevent groundwater contamination.¹⁰⁸ Likewise, they define 'sanitary land filling' as the final and safe disposal of the said waste in a facility designed with measures protecting against groundwater contamination, among other things.¹⁰⁹ Special requirements are provided to be followed at a land fill site. These include the requirement that a sample of the groundwater at the chosen site shall be collected before the site is established, and the water quality shall be continuously monitored thereon to study any deterioration resulting from waste

disposal on that site.¹¹⁰ Further, all existing land fill sites that have reached their full potential shall be discontinued and rehabilitated. This rehabilitation is to include the pumping and treatment of the contaminated groundwater beneath it.¹¹¹

Access to Drinking Water

Since water is a state subject under the constitutional division of legislative and executive powers,¹¹² the responsibility of distributing safe drinking water falls on State Governments. Governance structures are further decentralised within each state – the constitution provides for establishment of local self-governing bodies in urban areas¹¹³ and makes them responsible for the implementation of several functions such as "water supply for domestic, industrial and commercial purposes" and "public health, sanitation conservancy and solid waste management".¹¹⁴ Therefore, each state has its own mechanism of distributing safe drinking water to its residents.¹¹⁵

At the same time, the question as to what constitutes safe drinking water is determined centrally by the Bureau of Indian Standards.¹¹⁶ The Central PCB also uses these figures in determining existing pollution levels.¹¹⁷

3 Policy Goals and Implementation

As per government statistics, 89.9% households in the country had access to drinking water facility by 2015-16.¹¹⁸ The split between urban and rural households was 91.1% and 89.3% respectively.¹¹⁹ But other aspects of sanitation – access to toilets, sewerage and septage – are not viewed as positively by the government. It has taken a series of measures to improve the existing situation.

Access to Toilets

India's Millennium Development Goals (MDGs) Framework aimed at reducing the percentage of people without access to basic drinking water and sanitation in the country to 50% by 2015.¹²⁰ As per the government's statistics, by 2015-16, the aim stood achieved in respect of drinking water with approximately 90% households in the country having access.¹²¹ However, the government's performance

fell short in respect of sanitation facilities with only 48.4% households having access to improved sanitation facility.¹²² Specifically among the urban areas, the percentage was 70.3%.¹²³

WaterAid's 2016 report titled 'Overflowing Cities: State of the World's Toilets' tells a story that is much worse. As per this report, out of the 188 surveyed countries, India has the highest number of urban-dwellers without access to safe private toilets (followed closely by China).¹²⁴ This number is approximately 15.72 crore¹²⁵ which amounts to 37.4% of India's total urban population (approximately 38.1 crore).¹²⁶ Of these people, approximately 4.1 crore people defecate openly,¹²⁷ and once again, no other country has a higher number of people practising open defecation.¹²⁸ There is thus a stark contrast between the figures projected by WaterAid and the government in their respective reports

(37.4% persons having access to safe private toilets v. 70.3% households having access to improved sanitation facility).

Finally, the Swachh Bharat Mission (SBM) launched in 2014 is claimed by the central government to be a massive step in the direction of complete access to toilets. A real-time Individual Household Latrine (IHHL) index is available on the Housing and Urban Affairs Ministry's website which shows the number of toilets constructed since 2014. As per this data, in all but four states of the country, 91-100% of households have access to latrines.¹²⁹

Sewerage and Septic Tanks

In a report prepared by IIM Lucknow in 2010, sewage management was identified as the single biggest challenge for the Central PCB.¹³⁰ As per the report, adequate attention is not being paid to sewage treatment.¹³¹ Most of the sewage treatment plants installed under the Ganga Action Plan and the Yamuna Action Plan are not working,¹³² and only 7000 MLD of waste out of the total 33000 MLD generated is collected and treated.¹³³

In February 2017, under the Atal Mission for Rejuvenation and Urban Transformation (AMRUT),¹³⁴ the Ministry of Urban Development of the Government of India adopted the National Policy on Faecal Sludge and Septage Management (FSSM) to complement the Swachh Bharat Mission.¹³⁵ The policy was adopted because only 64% of India's 846 municipal sewage treatment plants were operational, resulting in a net capacity to process only 37% of the total human waste generated every day in urban India.¹³⁶ As per government statistics, 62.5% of wastewater in urban India remained untreated or partially treated.¹³⁷ The Swachh Bharat Mission could only achieve the *containment* of human waste, not its treatment, and this gave rise to a need for the FSSM Policy.¹³⁸

The policy aims at achieving 100% access to safe sanitation facilities for all persons,¹³⁹ including community-planned management where necessary.¹⁴⁰ Under the policy, each State is required to develop its individual FSSM plan making provision for the design of septic tanks, pits etc., involvement of private entities in the process and their licensing & monitoring, punishments for untreated discharge and unsafe handling of faecal waste, regular monitoring of the entire FSSM process, and the levy of cesses/taxes to finance the local septage management systems.¹⁴¹ While the central government has offered some financial support to the state governments, they are advised to primarily manage funding themselves by levying taxes and involving private entities.¹⁴²

Finally, the Ministry of Urban Development and the Central Public Health and Environmental Engineering Organization (CPHEEO) released a Standard Operating Procedure document for Cleaning of Sewers and Septic Tanks in November 2018 to provide for proper and non-hazardous methods and techniques of cleaning sewers and septic tanks.¹⁴³ The document places strong emphasis on the use of machines in the cleaning process instead of requiring people (manual scavengers) to enter these tanks and sewers to clean them.¹⁴⁴ Some key points contained in the document are:

1. Urban local bodies shall make information about registered private service providers publicly available. These service providers are organisations which provide sewage and septic tank cleaning services through mechanical means.¹⁴⁵
2. Sewer systems shall be mapped to GPS to ensure a smoother complaint resolution process.¹⁴⁶
3. Urban local bodies shall also maintain details of persons who own the vehicles or cleaning machines operating within their jurisdiction. They shall also ensure that these persons empty the collected septage only at the sites designated for this purpose.¹⁴⁷

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26. *A.P. Pollution Control Board II v. Prof. M.V. Nayudu*, (2001) 2 SCC 62, at para 45.
27. *Amarnath Shrine, In re*, (2013) 3 SCC 247, at para 19.
28. For an explicit holding to this effect, *see Amarnath Shrine, In re*, (2013) 3 SCC 247, at para 12. However, this does not mean that the idea of positive obligations was not recognised prior to 2013. Even in prior cases (discussed later), Indian courts passed orders mandating the State to take steps for environmental conservation.
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30. *id.*, Art.48A.
31. *id.*, Art.51A.
32. *See e.g. Susetha v. State of T.N.*, (2006) 6 SCC 543, at para 14; *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647, at para 13; *Amarnath Shrine, In re*, (2013) 3 SCC 247, at para 15.
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50. *id.*, S.21.
51. *id.*, S.17(g).
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63. *id.*, S.16(3) and S.17(2).
64. *id.*, Ss.51-53.
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71. *id.*, S.23(1).
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80. *id.*, S.34.
81. *id.*, S.35.
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110. *id.*, Sch.I, criteria E & H. This schedule contains specifications for sanitary landfills.
111. *id.*, Sch.I, criterion J(iii).
112. See *supra* text to note 10.
113. Art.243Q.
114. Art.243W read with Sch.XII.
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SCALING CITY INSTITUTIONS FOR INDIA: SANITATION (SCI-FI)

Sanitation programme at the Centre for Policy Research (CPR) is a multi-disciplinary research, outreach and policy support initiative. The programme seeks to improve the understanding of the reasons for poor sanitation, and to examine how these might be related to technology and service delivery models, institutions, governance and financial issues, and socio-economic dimensions. Based on research findings, it seeks to support national, state and city authorities develop policies and programmes for intervention with the goal of increasing access to inclusive, safe and sustainable sanitation. Initiated in 2013, the programme is primarily funded by the Bill and Melinda Gates Foundation (BMGF).

