



Knowledge Brief

Right to Sanitation

A Gender Perspective

Introduction

Sanitation has a long history in India and the world. Sanitation systems were introduced as a response to public health crises, particularly in early 19th century Western Europe and in mid-19th century colonial India.* However, sensitivity to sanitation issues in India has a longer history starting from the Indus Valley Civilisation.*

The concept of sanitation has been constantly evolving. Earlier, it was limited to the disposal of human excreta by different means, such as cesspools, open ditches, and pit latrines. Today, it is a

more comprehensive concept that includes liquid and solid waste disposal, food hygiene, and personal, domestic, and environmental hygiene.* The contemporary rationale for sanitation has overtaken the prevention of public health crises. Sanitation is now understood as a multifaceted issue with implications for numerous service sectors as well as human rights such as the right to education, gender/gender equality, environment/right to a safe environment, and sanitation work/rights of sanitation workers. Conceived like this, sanitation contributes to the realisation of a number of fundamental human rights.

This Knowledge Brief delves into some such rights-based aspects. Part I of the Brief discusses the legal status of the

*Vijay Prashad (2001), 'The Technology of Sanitation in Colonial Delhi', 35 (1) *Modern Asian Studies* 113, 114 and Susan E. Chaplin (2012), *The Politics of Sanitation in India: Cities, Services and the State*, Orient Longman, 4.

*Kumar Alok (2010), *Squatting with Dignity: Lessons from India*, Sage, 17-18.

*For example, the National Urban Sanitation Policy, 2008.

right to sanitation in India and in international law. It also describes the reasons for articulating the right to sanitation and explains its utility, especially for the poor and marginalised. Part II focuses on the gendered dimensions of the right to sanitation in the Indian context.

PART I

Why should WE have the right to sanitation?

There are mainly three justifications for framing sanitation as a distinct human right.

First, various sanitation issues in India have implications for human dignity. For instance, issues such as open defecation, lack of facilities for menstrual hygiene management, and manual scavenging directly compromise or violate human dignity. Human dignity and human rights are compromised when an individual is forced to do open defecation or hold the need to urinate or defecate because of lack of facilities. Similarly, the right to education is compromised when a student is forced to skip classes during menstruating days due to lack of sufficient facilities in the school.

Second, sanitation plays an instrumental role in the realisation of other recognised human rights such as the right to water, health, education, and environment. For instance, inadequate

sanitation leads to pollution of water and environment and consequently affects the rights to water and environment.

Third, sanitation issues may disproportionately affect the rights of the poor and the marginalised such as women, transgenders, differently abled and sanitation workers. For instance, open defecation is an issue from the points of view of privacy, dignity and safety of the individual concerned as well as environmental pollution. At the same time, it disproportionately affects differently abled and elderly people.

An explicit recognition of the ‘right to sanitation’ (hereafter, RTS) may particularly help the poor and marginalised to force the State and public administration systems (including through judicial means such as public interest litigation) to take initiatives to help individuals to make their rights a reality such as construction of individual household and public toilets as well as treatment plants (see table below).

How the poor and marginalised deploy ‘rights’ to access water, sanitation, and hygiene

- *Pani Haq Samiti v. Brihan Mumbai Municipal Corporation* (Bombay High Court, 2014)

Pani Haq Samiti, a collective working for slum dwellers in Mumbai, approached the High Court of Bombay to challenge the policy (of the State Government and the Municipal

Corporation of Greater Mumbai) that denied water supply to slums on the ground that slum dwellers do not have a valid right to the land on which they live. The slum dwellers' claim to water was based on the fundamental human right to water, as enshrined under Article 21 of the Constitution of India. They argued that the nature of right to land - or another similar argument - does not matter as far as fundamental rights are concerned. The High Court accepted this view and held that:

“As the right to life guaranteed under Article 21 of the Constitution of India includes right to food and water, the State cannot deny the water supply to a citizen on the ground that he is residing in a structure which has been illegally erected. Such a citizen... cannot be deprived of his fundamental right to food and water.”

- *Delhi Sainik Cooperative Housing Building Society Ltd. v. Union of India* (High Court of Delhi, 2021)

A group of people had approached the High Court of Delhi to challenge the policy of the government to deny basic amenities (including drinking water and sanitation) on the ground of lack of proper right to land. The judgement of the Court said:

“[i]t is a settled legal position that the right to access to drinking water is

fundamental to life and it is the duty of the State under Article 21 of the Constitution to provide clean drinking water to its citizens...the petitioners in my opinion cannot be deprived of a right to access to drinking water merely on the ground that it is an unauthorised colony.”

Do we have the right to sanitation?

Both international law and domestic law in India recognise RTS. At the international level, there are several legally binding and non-legally binding instruments that recognise RTS explicitly or implicitly (see the table below).

Key international instruments on RTS*

Legally binding instruments—treaties

- The Convention on Elimination of Discrimination against Women, 1979, Article 14(2)(h)

State parties shall ensure to women: ...the right to enjoy adequate living conditions, particularly in relation to ...sanitation...

- Convention on the Rights of the Child, 1989, Article 24

*For legal instruments relating to the right to sanitation, see https://ielrc.org/water/doc_hr.htm.

1) States parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2) States parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, and the prevention of accidents.

Not-legally binding instruments

- General Comment 15 – The Right to Water, 2002

The legal basis of the right to water:

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal and domestic hygienic requirements.

- United Nations General Assembly Resolution – The Human Rights to Safe Drinking Water and Sanitation, 2015

Acknowledging the importance of equal access to safe drinking water and sanitation as an integral component of the realisation of all human rights,

1. affirms that the human rights to safe drinking water and sanitation as components of the right to an adequate standard of living are essential for the full enjoyment of the right to life and all human rights;

2. recognises that the human right to safe drinking water entitles everyone, without discrimination, to have access to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use, and that the human right to sanitation entitles everyone, without discrimination, to have physical and affordable access to sanitation, in all spheres of life, that is safe, hygienic, secure, socially and culturally acceptable and that provides privacy and ensures dignity, while reaffirming that both rights are components of the right to an adequate standard of living.

- UN Committee on Economic, Social and Cultural Rights, Statement on the Right to Sanitation, 2010

7. Since sanitation is fundamental for human survival and for leading a life in dignity, the right to sanitation is an essential component of the right to an adequate standard of living, enshrined in Article 11 of the International Covenant on Economic, Social, and Cultural Rights. The right to sanitation is also integrally related, among other Covenant rights, to the right to health, as laid down in Article 12 paragraphs 1 and 2 (a), (b) and (c), the right to housing, in Article 11, as well as the right to water, which the Committee recognised in its General Comment No. 15. It is significant, however, that sanitation has distinct features which warrant its separate treatment from water in some respects. Although much of the world relies on waterborne sanitation, increasingly sanitation solutions which do not use water are being promoted and encouraged.

8. ...States must ensure that everyone, without discrimination, has physical and affordable access to sanitation, 'in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity'. The Committee is of the view that the right to sanitation requires full recognition by State parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability

The **legal system in India** also recognises RTS. While the Constitution of India does not recognise RTS explicitly, it does so indirectly. In fact, RTS is viewed as a "derivative" fundamental right—meaning a right deriving from one or more explicitly recognised fundamental rights. The higher judiciary in India (the Supreme Court and High Courts) has interpreted the fundamental right to life under Article 21 of the Constitution to include RTS. It is a part of the fundamental right to life and is a justiciable right, which means individuals can approach the higher judiciary directly in cases of violation of their RTS.

Sanitation is also a part of the 'Directive Principles of State Policy' in Part IV of the Indian Constitution. It is part of Article 47, which provides that it is a duty of the government to raise standards of living. Sanitation is undoubtedly a factor that contributes to a decent standard of living. Sanitation is also a part of Article 48A that makes it a duty of the State to 'protect and improve the environment'. Directive Principles are not enforceable and therefore no individual can approach a court against the government for its failure to give effect to one or more Directive Principles. However, it is important in the sanitation context because they are fundamental norms for the government to implement.

RTS as a fundamental right under the Constitution of India: a few landmark cases

- *Virender Gaur v. State of Haryana*, (1995)2 SCC 577 (The Supreme Court of India)

“Article 21 protects the right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit...sanitation without which life cannot be enjoyed.”

- *National Highway Projects v. State of Bihar*, 2022 SCC Online Pat 1048 (High Court of Bihar)

“The right to sanitation comes within the expansive and further expanding scope of Article 21... The nature of obligation imposed upon the State is not only that of those upon it by virtue of being a welfare state but also the realisation of fundamental rights for every citizen, even more so the rights enshrined within Article 21, which forms the nerve centre of our constitutional consciousness. Equally, the State has also upon its obligations imposed by International law-various Human Rights Instruments and Resolutions to ensure that the basic right of sanitation is available to all, irrespective of any differences in social or economic status.”

- *LK Koolwal v. State of Haryana*, AIR 1988 Raj. 2 [High Court of Rajasthan]

“Maintenance of health, preservation of sanitation and the environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.”

What does it mean to have the right to sanitation?

Explicit or implicit recognition of RTS is only one step; a more critical aspect is the realisation of the right. The litmus test of RTS is whether people, particularly the poor and marginalised, and especially women and gender non-conforming people, are able to enjoy their RTS.

Guarantees of RTS under international human rights law

Availability: Availability of sufficient number of sanitation facilities.

Quality: Sanitation facilities must be hygienically and technically safe to use. To ensure hygiene, access to water for cleaning and hand washing at critical times is essential.

Acceptability: Sanitation facilities, in particular, have to be culturally

acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

Accessibility: Water and sanitation services must be accessible to everyone within, or in the immediate vicinity of, household, health and educational institutions, public institutions, and workplaces. Physical security must not be threatened when accessing facilities.

Affordability: The price of sanitation and water services must be affordable for all without compromising the ability to pay for other essential necessities guaranteed by human rights such as food, housing, and health care.

RTS as understood in international human rights law is individualistic in nature. It focuses on individuals' need to have proper mechanisms for urination, defecation, menstrual hygiene management (MHM) and solid and liquid waste management. While these are very important, it misses out certain issues in the sanitation sector in India, for instance, the impact (or lack thereof) of various sanitation initiatives on women, on the workforce in the sanitation sector, and on the environment. Any discussion on RTS in India would be grossly incomplete and inappropriate without discussing these issues. Thus, RTS in the Indian context must be understood in a more collective sense, with all these inter-

linkages, as opposed to the individualistic understanding dominant in international law.

An **expanded understanding of RTS in the Indian context** has four aspects.

First, individuals are entitled to have a safe and adequate mechanism that respects the values of human dignity, privacy and environmental sustainability. For instance, a closable toilet with water supply. Second, the primary obligation to make RTS a reality for everyone rests with the State. This involves an obligation to refrain from unnecessary interference with initiatives by individuals and households as well as an obligation to take initiatives such as building and running sanitation infrastructures such as sewerage networks, toilets, and treatment plants or by providing financial and technical help to communities, individuals, and households to build toilets. Third, the efforts to make RTS a reality must not lead to violation of other human rights such as gender equality and rights of sanitation workers. For instance, the maintenance of sanitation infrastructure must not be at the cost of dignity and rights of sanitation workers and women. Fourth, the realisation of RTS must not lead to environmental pollution. For instance, sanitation initiatives must not focus only on the super structure part, but also on how waste (including human excreta) is stored, treated, and managed from the point of view of environmental health.

Having provided an overview of the overarching RTS framework, this knowledge brief will now focus on the gender dimensions of RTS.

Part II

A gendered understanding of the right to sanitation

RTS acts as a protective shield against problematic issues such as denial of access to safe sanitation and disciplining of female bodies and bodily functions. It provides a tool for women to challenge and resist, politically and legally, regressive practices rooted in patriarchy. While it brings the State under an obligation to make the enjoyment of RTS a reality for everyone, it casts a special obligation on the State to take measures to prevent discriminatory and oppressive practices against women. In this context, this part discusses some key issues in the sanitation sector from the perspective of RTS of women and girls.

a) Basic sanitation: gendered norms and practice

Basic bodily functions such as urination and defecation are gender-neutral in nature. However, social and cultural factors (for example, patriarchy) impose numerous behavioural restrictions on women such that carrying out these basic bodily functions become significantly different and burdensome

for them.

The idea of human dignity demands that people of all gender identities require privacy while exercising basic sanitation.. However, social norms and cultural conventions systematically impose differential standards for people. Thus, the privacy norm is higher for women when compared to men. Women are not supposed to be seen while going for defecation including open defecation. Thus, they generally go for open defecation under the cover of darkness or they restrain from using washrooms when men are in the vicinity.* Similarly, while open urination by men and boys is culturally accepted as ‘normal’, that is not the case with women and girls. This also means women have to hold or wait until they get a ‘convenient’ place and time. Holding back such bodily needs indeed comes with serious implications for their bodily and mental health. This is not to argue that women should also be allowed to do open urination, but to illustrate how patriarchy imposes controls on and disciplines female bodies.

b) Menstrual hygiene management

Women and girls have specific sanitation needs because of their biological functions, such as menstruation and child birth. Thus, RTS demands adequate consideration for

*Kathleen O'Reilly (2010), ‘Combining Sanitation and Women’s Participation in Water Supply: An Example from Rajasthan’, 20(1) *Development in Practice* 45.

these biological differences. From women's perspective, RTS cannot be limited to infrastructure facilities that satisfy the requirements of privacy and dignity for urination and defecation. An equally important issue is menstrual hygiene management (MHM). Menstruation, although a normal bodily function, leads to violation of equality and dignity of menstruating bodies. Menstruating bodies are portrayed as 'inferior', 'unclean', 'disabled' and 'monstrous'.* Menstruation is seen or understood with a lot of negativity and disgust such as 'dirty', 'smelly', 'unhygienic' and 'unclean'.* Cultural norms governing behaviour during menstruation is a tool of patriarchal domination. Women and girls are expected to (rather, told or taught) to follow 'menstrual etiquette', which means dealing with it silently, discreetly, and with shame.* The cultural taboo around menstruation imposes several access and movement restrictions on menstruators. At the household level, this includes

restriction to enter the kitchen, restriction to sleep on a bed, restriction from eating certain foods, and prohibition to touch holy books.*

RTS could play a crucial role in addressing these concerns. First, sanitation infrastructure (for example, toilets) must consider MHM needs such as dustbins to dispose menstrual products and running water to wash oneself. Second, access to menstrual products is an important aspect. Besides the use of traditional materials such as cloth, a prevalent or emerging practice is the use of menstrual products such as sanitary napkins, menstrual cups, and tampons. These products may not be affordable for some. In other words, 'menstrual poverty' is an issue of equity and human rights for the poor and the marginalised.* Third, the absence of any specific mechanism for the safe disposal of used menstrual products will lead to burying, burning, or careless discarding. These disposal practices affect the quality of the environment.* Thus, the focus of RTS

*Rachael Gillibrand (2023), 'Unclean', 'monstrous effects', 'the curse': Menstruation has a long history of stigma, shame, Scroll.in, 28 August 2023, <https://scroll.in/article/1054887/unclean-monstrous-effects-the-curse-menstruation-has-a-long-history-of-stigma-shame>.

*Vatsalya (2014), 'Women with Wings: Celebrating Womanhood—Menstrual Hygiene Management Path to Better Health, Dignity, Opportunities and Empowerment', 5.

*Marian Baird, Elizabeth and Sydney Colussi (2021), 'Mapping Menstrual Leave Legislation and Policy Historically and Globally: A Labour Entitlement to Reinforce, Remedy, or Revolutionize Gender Equality at Work', 41 Comparative Labour Law and Policy Journal 187, 190.

*Vatsalya (2014), 'Women with Wings: Celebrating Womanhood—Menstrual Hygiene Management Path to Better Health, Dignity, Opportunities and Empowerment', 8.

*Margaret E. Johnson (2019), 'Menstrual Justice', 53(1) U.C. Davis Law Review 1-79.

*Rose George (2016), 'The Other Side to India's Sanitary Pad Revolution' The Guardian (30 May 2016) www.theguardian.com/commentisfree/2016/may/30/india-sanitary-pad-revolution-menstrual-man-periods-waste-problem; M Lekhi (2016), 'Why We Need a Proper Menstrual Waste Disposal System' The Times of India (7 August 2016), <<http://blogs.timesofindia.indiatimes.com/Chargesheet/why-we-need-a-proper-menstrual-waste-disposal-system/>>.

must not only be on making MHM products available and accessible for all, but also to ensure disposal systems that do not violate the right to a clean environment for all.

Fortunately, MHM is an issue that has progressively received more attention. Until a decade ago, the policy framework relating to sanitation was completely silent on MHM. For instance, the erstwhile framework for rural sanitation, the Nirmal Bharat Abhiyan Guidelines 2012. However, these Guidelines were amended in 2013 to add a separate paragraph that recognised menstruation-related sanitation needs of women and girls.* Beyond this explicit recognition, the amendment called for two specific kind of actions: (i) to utilise the funds

allotted for activities that enhance awareness, information, and skills on MHM; and (ii) to utilise funds allotted for solid and liquid waste management for the safe disposal of used absorbents. A similar approach has been taken by the Swachh Bharat Mission (SBM) Gramin Guidelines-- it underlines women's sanitation needs linked to menstrual cycle and calls for special attention to MHM.* In 2015, the Government of India took a more expansive approach by adopting the Menstrual Hygiene Management—National Guidelines, 2015. The Government of India is currently in the process of drafting a National Menstrual Hygiene Policy.*

<p>Menstrual Hygiene Management—National Guidelines, 2015.</p>	<p>Scheme for Management of Menstrual Hygiene Among Adolescent Girls in Rural India, 2016.</p>
<ul style="list-style-type: none"> • Dissemination of information regarding MHM. • Facilitating access to necessary infrastructure and products such as separate toilets, affordable and accessible absorbents, water, soap, and a mechanism for safe disposal of used absorbents. • Underlining the duty of the government to ensure these two aspects of safe and hygiene MHM. 	<p>Facilitates supply of low-cost sanitary napkins to adolescent girls in the age group of 10-19 years through door-to-door distribution as well as provision through schools and <i>anganwadis</i>.</p>

*Modification in Nirmal Bharat Abhiyan Guidelines Including Activities Related to Menstrual Hygiene Management as a Permissible Activity, Doc No W.11013/16/2013-NBA (Part) (10 December 2013).

*Swachh Bharat Mission-Gramin Guidelines 2014, para 5.9.2.

*See Draft National Menstrual Hygiene Policy, 2023, <https://main.mohfw.gov.in/sites/default/files/Draft%20Menstrual%20Hygiene%20Policy%202023%20-For%20Comments.pdf>.

MHM and the right to environment— Solid Waste Management Rules, 2016

1. The government, more importantly urban local bodies, stay duty bound (as per rules) to set up mechanisms for the safe collection, transportation, treatment, and disposal of municipal solid waste.
2. Manufacturers of sanitary napkins are duty bound to: ‘explore the possibility of using all recyclable materials in their products’ (Rule 17) and provide a pouch or a wrapper for the disposal of used napkins (Rule 17).
3. Users of napkins must wrap used napkins securely in the material provided by the manufacturer (Rule 4).

c) Gender-based violence

Gender based violence (GBV), including sexual violence against women, is a key issue in the context of sanitation. The practice of open defecation by women, particularly in rural areas, involves walking a long distance under the cover of darkness. Several cases have been reported where women and girls are sexually violated in this process. Similarly, public and community toilets also pose risks to the safety of women.

However, the inference is not that women and girls are comparatively safer with toilets in their homes. Although household toilets have been promoted under various sanitation schemes in the name of safety and dignity of women,

data shows that a large majority of physical and sexual violence against women occurs in households at the hands of known people rather than strangers.* Thus, household toilets may reduce GBV by strangers, but should not be construed as a solution to GBV in general.

Violence or fear of violence while exercising a basic bodily function like defecation or urination is undoubtedly a human rights issue. It is not only a violation of RTS, but also a larger question of gender equality and justice. The legal framework in India responds to this issue in two ways.* First, the punishment prescribed by criminal law for physical and sexual violence (also applicable to GBV in the sanitation context) is an attempt to offer post-facto justice. Such criminal action may deter future violators but does not particularly and specifically address the survivor’s pain and suffering. Second, the law and policy framework relating to sanitation arguably offers a preventive solution by eliminating women’s vulnerability through the provision of household toilets. As argued earlier, it ensures safety

*Newslick Report (2023), Crime Against Women in India Up by 4%: NCRB Report 2023, Newslick, 5 December 2023, <https://www.newslick.in/crime-against-women-india-4-ncrb-report-2023>.

*For more details, see Sujith Koonan and Lovleen Bhullar (2019), ‘Sanitation, Gender Inequality and Implications for Rights’, in Philippe Cullet, Sujith Koonan and Lovleen Bhullar (eds), *The Right to Sanitation in India—Critical Perspectives* (Oxford University Press, 2019), pp 380-401; Sujith Koonan (2019), ‘Sanitation Interventions in India: Gender Myopia and Implications for Gender Equality’, 26(1-2) *Indian Journal of Gender Studies* 40-58.

from ‘strangers’ but does not address deeper structural reasons behind GBV within the household. Thus, both criminal law and sanitation laws and policies touch upon the issue of GBV in the context of sanitation to some extent. Perhaps a larger paradigm shift of social values and dignity is needed to eliminate GBV.

d) Women’s participation in the sanitation sector

The sanitation sector in India places women in different roles with diverse implications for their rights, including RTS.

First, women are often projected as the primary beneficiaries of sanitation initiatives such as household toilets that bring them safety, privacy, and dignity. This is problematic to the extent that it follows patriarchal value of differential privacy and dignity for women vis-à-vis men. Such an approach is not only antithetical to the principle of gender equality, but also against the idea of RTS--it may convey the message that household toilets are meant for women and therefore it is fine for men to continue with the practice of open defecation.

Second, sanitation policies use women-based narratives for their awareness creation work. For instance, posters depicting women in open defecation have been used to highlight their dignity, privacy, and safety.

Similarly, men were depicted often in a protective role with the responsibility to construct toilets so as to eliminate risks to women.* This amounts to reducing women to mere ‘targets’ and ‘victims’, which consequently deprives them of autonomy and agency. The Government of India responded to this issue by adopting ‘Guidelines on Gender Issues in Sanitation 2017’ that explicitly instruct implementing agencies to not use gender stereotypes and patriarchal norms for awareness creation.

Third, the sanitation sector involves women workers and sanitation champions at the local level, for instance Swachhagrahis, Swachhata Didis and Rani Mistris. These initiatives offer women livelihood and have been successful as sanitation initiatives such as the SBM. However, from a gender equality point of view, participation also demands substantive role as authors of policy, at par with men.

These three aspects mentioned above point to how the sanitation sector can go against basic objectives of gender justice by reinforcing patriarchal gender roles and norms, and thus contradict the principles of gender equality.

e) Gender and sanitation work

Sanitation work is socially stratified to

*Sujith Koonan (2017), ‘Making India Open Defecation Free at the Cost of Gender Equality’, <https://www.ielrc.org/content/n1701.pdf>.

the extent that a majority of people in manual scavenging and sanitation work are women. The only noticeable exception to this pattern is probably the task of cleaning of sewers and septic tanks, a task that is dominated by men, albeit men from marginalised groups. This exception also indicates the gendered categorisation of labour and of female bodies as incapable of ‘difficult’ tasks such as entering a sewer.

Sanitation work exemplifies how multiple marginalised identities cumulatively lead to the violation of human rights. In India, sanitation has been relegated to the historically oppressed castes. Not much has changed even after several decades of independence and multiple affirmative action policies. Thus, caste and gender together produce and sustain the marginalisation of sanitation workers who are predominantly women in India.* From a human rights point view, sanitation constitutes a range of serious violations of basic human rights guaranteed in the Constitution of India and other statutes.

f) Gender beyond man-woman binary

A gendered view or understanding of

*P. Sakthivel, M. Nirmalkumar and Akshaya Benjamin (2019), ‘Sanitation Workers in India’, in Philippe Cullet, Sujith Koonan and Lovleen Bhullar (eds), *The Right to Sanitation India: Critical Perspectives*, Oxford University Press, at 346-379; Sujith Koonan (2021), *Legal Discourses on Manual Scavenging in India: From ‘Right’ to a ‘Crime’*, 51(2) *Indian Anthropologist*, 41-56.

sanitation must be cautious about not falling into the binary of men and women. Sanitation policy and infrastructure is designed for heterosexual bodies and consequently excludes the needs and concerns of people with other gender identities. For instance, transgender persons face a lot of issues in accessing public or community toilet facilities and in some cases face physical and sexual violence.*

Further, the discourse on special sanitation needs centres women, but neglects other gender identities. It needs to move menstrual hygiene management and taboos to include various other kinds of bodily and social experiences of people with diverse gender identities because “... not all girls and women menstruate and not all who menstruate are girls and women”.* Sanitation policy and work needs to consider the stigma around menstruation and sexual minorities, and the multiple forms of exclusion and marginalisation it creates for people of diverse gender identities.

Conclusions and Recommendations

Sanitation is a basic human right, and the Right to Sanitation promises to bring

*Paul Boyce et al (2018), ‘Transgender-inclusive Sanitation: Insights from South Asia’, 37(2) *Waterlines* 102-117.

*Bridget J. Crawford and Emily Gold Waldman (2022), *Menstruation Matters: Challenging the Law’s Silence on Periods*, New York University Press, 132.

it to all. It is a powerful tool to fight against sanitation-related discrimination and oppression based on caste, class, and gender. While the central and State government has implemented measures to make RTS a reality for all, their major focus has been improvement of infrastructure. The environmental, caste, labour, and gender aspects of RTS continue to be our blind spots and key challenges.

The gendered dimensions of RTS foregrounds two aspects. On the one hand, it is necessary to consider the specific needs and concerns of women, girls, and those with non-cis identities. On the other hand, a cautious approach will help check the impact of sanitation schemes and policies on gender equality and justice. It may therefore be a good idea to frame key benchmarks from a gender perspective to assess sanitation policies and schemes and their implementation. These may include:

- a list of gender specific needs and concerns to assess the sanitation policy framework and its implementation;
- awareness creation for policy makers and implementing agencies on the gender dimensions of RTS;

- awareness creation for policy makers and implementing agencies to understand sanitation as a fundamental right rather than just a ‘mission’;
- reporting by implementing agencies to include measures taken to address gender concerns;
- adequate representation of women in policy making and implementation; and
- training of individuals, communities, and practitioners to claim RTS as a fundamental right.

