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SANITATION INTERVENTIONS IN INDIA

GENDER MYOPIA AND IMPLICATIONS FOR GENDER EQUALITY

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1. INTRODUCTION

Women have specific sanitation needs. They are arguably prone to several sanitation-related vulnerabilities such as gender-based violence while accessing sanitation facilities and difficulties in managing hygiene during menstruation. Sanitation-related needs and vulnerabilities of women are partly due to biological reasons and partly due to social and cultural factors. Social and cultural norms coupled with the lack of basic sanitation facilities such as toilets render the performance of daily sanitation functions burdensome and embarrassing for women.

In this context, this paper examines the existing law and policy framework in India pertaining to sanitation from a gender perspective. The first section of this paper describes sanitation-related needs and vulnerabilities of women and examines to what extent the legal and policy framework addresses these needs and vulnerabilities. The second section analyses the implementation of sanitation interventions from a gender perspective. It examines to what extent the recognition of sanitation-related needs and vulnerabilities of women at the law and policy level has been translated into actions at the local level. The third section recaptures the major arguments discussed in the paper. This paper, in addition to the relevant secondary literature, significantly relies on the fieldwork conducted in the states of Rajasthan and Uttar Pradesh during the period 2014-2016.

2. GENDER DIMENSIONS OF SANITATION ISSUES IN INDIA

Lack of sanitation or inadequate sanitation poses several risks to human beings. For instance, polluted environment takes a serious toll on public health. Open-defecation also poses safety-related risks such as gender-based violence, snake bites and animal attacks (Wendland et al, 2009; Darapuri, 2012). However, all individuals are not equally prone to these risks or vulnerabilities. Caste, class and gender make some people more vulnerable to these risks than others. Gender is one such category immensely relevant in the sanitation context. Women face several unique vulnerabilities and risks due to lack of sanitation or inadequate sanitation. Over the years, the law and policy framework related to sanitation has progressively recognised several sanitation-related needs and vulnerabilities of women. In this context, this section describes and reviews sanitation-related needs and vulnerabilities of women. This part also reviews to what extent the existing legal and policy framework for sanitation in India addresses gender-related concerns and issues.

2.1 SANITATION-RELATED NEEDS AND VULNERABILITIES OF WOMEN

2.1.1 Open-defecation: a physical and cultural burden for women

The absence of sanitation facilities poses several challenges for women. Women generally do not want to be seen while going for or doing defecation or urination due to social and cultural reasons. As a result, women, especially girls and young women, do not prefer to go to the field for open-defecation during the day. Instead, they undertake coping strategies such as the reduction of the intake of food (especially fibrous foods such as pulses or leafy vegetables) and liquids during the day in order to avoid the need to go to the field for open-defecation (Bapat & Agarwal, 2003). An unbalanced diet may also result in negative long-term consequences, including various disorders of the bowel, such as constipation, piles, serious inflammation and irritable bowel syndrome (Tearfund, 2008). It is also not uncommon that women try to suppress the urge during the day time and wait till the sun set. This may cause health problems such as urinary tract infections, chronic constipation and other gastric disorders (Burra et al, 2003; Pardeshi, 2009). Sanitation needs of women during menstruation, pregnancy and postnatal recovery are also overlooked where toilets are not available and open-defecation is the only option (Burt et al, 2016: 5).

The lack of, or inadequate, sanitation facilities seems to pose safety-related risks for women. Some of these concerns, for example snake bites, chasing by stray dogs, collapsing of community toilet as happened in Mumbai (Koppikar, 2017), are not necessarily gender specific. Certain cultural norms, however, make women more vulnerable to these risks than men as women are likely to use toilets more often than men or women are more likely to go to secluded places (eg in the bushes) to defecate and urinate.

At the same time, the narrative that women generally go for open-defecation under the cover of darkness cannot be generalised beyond a point. For instance, at least A few women from rural Rajasthan and rural Uttar Pradesh stated during the fieldwork that they do not follow the 'before sunrise, after sunset' timing. According to them, it is very difficult to hold when they have the urge and therefore they do not wait. This is probably because finding a secluded place for open-defecation may not a big challenge for them due to the availability of land in these areas. This may not be the situation everywhere especially in places where secluded and open areas are not easily accessible.

It also appears that the element of fear as it has been generally highlighted in the literature can also not be generalised (eg Lennon, 2011; WSSCC & SHARE, 2015). During the interview with the womenfolk, some of them refuted this fear element. For instance, some women in Sagrampur village in Uttar Pradesh stated that they do not like to go to toilets all the time and they find it easier to go to the nearby forest or field. They explicitly underlined that they are no more or no less afraid of going to the forest or field for defecation than men. The opportunity women get to socialise has also been mentioned as a reason for the preference for open-defecation among them (Singh, 2013: 954). This does not mean that open-defecation should be promoted as it serves a social goal for women. It illustrates how women are otherwise restricted or controlled socially and how they use open-defecation as an opportunity to overcome, at least partly, those restrictions or control.

Open-defecation also poses other kinds of inconveniences and risks. For instance, the practice of standing and hiding repeatedly while defecating because of passing people or vehicles may

cause health problems (Pardeshi, 2009: 83). This is particularly a problem in urban areas and peri-urban areas where open land is very limited or fast shrinking. Women are also more vulnerable to accidents such as falling into a *nallah*/drain or being hit by a vehicle or animal attacks and insect bites (ibid). These risks do not arise for men, at least in the same intensity as women face, because culture does not impose serious disciplinary norms on men. For instance, it is culturally 'acceptable' for men to be seen walking to a field for defecation and it is even more 'acceptable' to be seen urinating in public.

In urban areas, open-defecation is not a major problem for people living in planned areas where household toilets and drainage facilities are available. However, these facilities are not available to everyone especially to those living in urban slums and some of the resettlement colonies (Travers et al, 2011). As a result, open-defecation is prevalent except in areas where community toilet complexes or public toilets exist. However, even these toilet facilities often fail to address the sanitation needs and concerns of women. They are inadequate or unsafe and in some cases unusable on a host of grounds such as the high density of population, lack of sewerage, water and/or electricity connections, inconvenient opening and closing hours, lack of facilities such as dustbins for disposing menstrual waste and broken doors/roofs and the absence of latches on doors (Sheikh, 2008; Khosla & Dhar, 2013). Consequently, the practice of open-defecation continues unabated and arguably poses considerable personal risks for women and girls. The closing of community toilet complexes at night affects some women more adversely than others. Some studies note that the closing of community toilet complexes at night forces newly married woman to defecate in plastic bags as they are subjected to more restrictions than other women (Sahoo, 2015: 86).

2.1.2 Sanitation needs of women: silenced by culture

Sanitation needs are gendered. Women have specific sanitation needs different from men mainly due to two reasons. First, women's bodies are biologically different. For example, menstrual hygiene management and pregnancy-related needs are women specific and not experienced by men. Second, social and cultural norms impose a lot of burden on women, which make it difficult for them to manage or address their sanitation needs (Burt et al, 2016). For instance, social and cultural norms make the acts of urination and defecation more private to women when compared to men.

Thus, access to toilets is more important for women and girls when compared to men. This is so both in private spaces like home and in public places. In this regard, the pay and use system mostly prevalent in urban areas pose special difficulties especially for working women as they, unlike men, need to use it both for urination and defecation. Given the fact that the wage level of women is comparatively low, this system is either an economic burden to women or a health burden as they tend to reduce the consumption of water to avoid going to a public toilet. The absence of facilities to ensure menstrual hygiene management at public toilets aggravates women's sanitation experiences and sufferings (Burt et al, 2016). The lack of attention to these issues and concerns reflects a law and policy framework for sanitation that is gender myopic and antithetical to the idea of gender equality. This is not to suggest that gender equality is to be ensured by creating a social and cultural atmosphere wherein women, like men, could also indulge in open urination and defecation, but to underline the need for the law and policy framework to take into consideration the social and cultural constraints faced by women in the context of sanitation.

Menstrual hygiene management (MHM) is another important sanitation-related concern for women. This is a concern partly due to the cultural notion that equates or explains

menstruation with a lot of negativity and disgust (Vatsalya, 2014:5). Women and girls are expected to (rather told or taught) to deal with it silently and discreetly. This is, for instance, clear when a school teacher in rural Uttar Pradesh stated that even though dust-bins are provided at the school, girl students do not use it to discard the used absorbents due to the fear of being noticed by boys. Lack of adequate facilities at schools may force girl students to not change the absorbents at school (WSSCC & FANSA, 2016: 17-18). In most cases, women use (and re-use) cloth as absorbents. Cleaning and drying of cloths or the disposal of used cloths cause indignity, fear and stress. In order to avoid other people noticing it, women usually wash and dry the used cloths inside their house. Lack of water supply at home sometimes forces women and girls to walk to a nearby pond to wash or walk to a field to bury or burn the used absorbents (ibid 5). In addition to the inconvenience, the unhygienic management of menstruation may cause a number of health risks, for instance the risk of reproductive tract infection (Winkler & Roaf, 2015; WSSCC & FANSA, 2016: 17-18).

The cultural taboo around menstruation imposes several access and movement restrictions on women and girls. At the household level, this includes the restrictions to enter kitchen, to sleep on bed and to eat certain food as well as the prohibition to touch holy books (Vatsalya, 2014: 8). Restrictions are not limited to private spaces. For instance, most of the Hindu temples, if not all, prohibit the entry of women during menstruating days on the grounds of purity and pollution. Certain temples prohibit the entry women for the whole period from menarche to menopause. These restrictions have triggered a campaign challenging the cultural construct of menstruation, namely 'Happy to Bleed' (Pandey, 2015). A litigation is pending before the Supreme Court of India that challenges the prohibition of women of certain age (after puberty and before menopause) from entering the Sabarimala temple situated in the state of Kerala (Vishwanath, 2017). Thus, women are discriminated both in private spaces and public places on the ground of one of their basic bodily functions.

At the same time, the mainstream view that understand menstruation as an issue of sanitising the bodies of women with the help of modern sanitary products has been contested (Joseph, 2015; Lahiri-Dutt, 2015). For instance, Joseph argues that the ongoing discourse on MHM that is centered around access to sanitary napkins and toilets is a misplaced one. According to her, the mainstream discourse does not reflect the reality in India and it does not take into consideration the existing practices of MHM followed by women in India. She further argues that the promotion of sanitary napkins as a solution to MHM-related issues is primarily meant to facilitate companies that produce sanitary napkins to enter into the huge untapped market of India (Joseph, 2015).

2.1.3 Gender-based violence in the sanitation context

Gender-based violence particularly in the context of open-defecation and access to community sanitary complexes or public toilets has been another key concern. Studies, mostly based on anecdotal narratives from urban and peri-urban areas, have highlighted instances of violence against women including sexual violence that could be linked to the lack of sanitation facilities at home or near home (eg JAGORI, 2011; Khanna & Das, 2015). Given the fact that women prefer to go for open-defecation early in the morning or late at night, they become 'prisoners of daylight' (UNICEF, 2010). Sometimes they have to walk long distances to find isolated places such as open areas or vacant lots to defecate. This may increase their vulnerability to verbal and/or sexual harassment, non-physical intimidation, threat of violence or actual assault, abduction and/or theft. The conversion of open spaces leads to the reduction of the availability of places for open-defecation and this may further increase their vulnerability.

Safety and security concerns related to sanitation are discussed more in the context of urban sanitation. Studies on similar concerns in the rural sanitation context are virtually non-existent. Nevertheless, newspapers have reported a number of incidents of sexual violence from rural areas in the context of open-defecation (eg Sharda, 2013). Fieldwork in rural Rajasthan and rural Uttar Pradesh brings out mixed reflections on this issue. Women in some places did not highlight any issue of physical or sexual violence in the context of open-defecation. At the same time, Vanangana, an organisation working with dalit women in the Chitrakoot district of Uttar Pradesh, confirmed that sexual harassment occurs sometimes. A study highlights that a large number of sexual harassment cases including rape cases that are allegedly linked to open-defecation have been reported from rural areas (Koonan & Bhullar, 2014).

Violence against women or the fear of violence against women, most importantly in the context of open-defecation is a concern relevant in the context of several basic human rights of women. Violence or fear of violence while exercising basic biological needs like defecation and urination is incompatible with the idea of fundamental rights as recognised in the Constitution of India.

Violence against women and the risk for women are often discussed in the context of sanitation, particularly in the context of open-defecation. Nevertheless, it is very important to underline that the lack of toilets and the consequent need to go for open-defecation are not probably the most important root causes of violence against women. Rather open-defecation provides yet another 'opportunity' for men to commit violence against women. The issue is more social and cultural than infrastructural. The hierarchical order of the society based on gender (and caste) is probably the most important root cause of gender-based violence. Thus, Naqvi (2014) argues that:

> Public acts of humiliation and subjugation of 'low' castes are the norm in rural India. And the 'low-caste' woman-body, a site of multiple meanings (as unclean and forbidden, yet desired and easy object for upper-caste consumption, and site for vengeance and subjugation), is often the target. What is novel is that more and more of her screams are slipping out from the silenced hinterland, and piercing the urban eardrum.

2.1.4 Lack of sanitation and implications for the right to education and work

Inadequate or lack of sanitation facilities at schools impacts female students and teachers disproportionately. For instance, young girls in rural Uttar Pradesh mentioned that they do not go to the toilets at their school either because they are very dirty or they are locked or there is no adequate water supply. This means they wait until they reach home. This could also mean that they avoid drinking enough water. Lack of toilets has also been cited as a factor impacting the realisation of the right to education of girl students (GoI, 2014). The Supreme Court of India observed in a case concerning the right to education that parents are reluctant to send their daughters to schools where toilets do not exist.[1] Lack of adequate facilities to change sanitary pads or for disposing the used pads may push girl students to stay back home during menstruating days. A document issued by the Union Government has highlighted the positive impact of the availability of sanitation facilities on the attendance of girl students and increased retention of female teachers (GoI, 2014).

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1 *Environment and Consumer Protection Foundation* v *Delhi Administration* Writ Petition (Civil) No 631 of 2004, Judgment of 3 October 2012 (Supreme Court of India).

However, the absence of adequate toilet facilities in schools may not always be the key reason for absenteeism or dropping out of girl students from schools. It could be part of the general cultural responses that seek to impose restrictions on girls when they reach the age of puberty. Empirical studies conducted in other jurisdictions have highlighted that the impact of MHM on the education of girls is an exaggerated claim. The studies argue that the dropping out of girl students when they reach puberty is not primarily due to the absence of the necessary infrastructure for MHM at schools but due to the fear of their parents that the girls may enter into pre-marital sexual relationships (eg Joshi et al, 2015; Oster & Thornton, 2011).

Similarly, the absence of toilet facilities at workplaces and public places is also an issue from women's point of view. It shows the prevailing insensitivity to the sanitation needs of women particularly in public places. This situation affects women disproportionately when compared to men particularly in sectors such as the construction sector where women are more in numbers as employees. For example, the absence of toilet facilities in such places may push women working there either to wait until they reach home or to knock the door of nearby houses (Rajaraman et al, 2011). The problem is probably worse during menstruating days because either they have to suffer the discomfort of not being able to change the absorbents they use or to compromise their income by walking back home to change the absorbents. It is also not uncommon that women skip their work during the days of heavy menstrual flow (ibid).

2.2 EXAMINING THE GENDER SENSITIVITY OF THE LAW AND POLICY FRAMEWORK

As noted in the previous section, women face a number of sanitation-related risks and vulnerabilities. These risks and vulnerabilities negatively affect their dignity, autonomy and well-being and therefore antithetical to several fundamental rights enshrined in the Constitution of India. Broadly, and most importantly, the issue raises questions related to gender equality in the context of sanitation.

Gender equality is one of the basic norms in the Constitution of India. The right to equality as enshrined in the Constitution of India (articles 14 & 15) prohibits different forms of discrimination including discrimination based on sex. The concept of equality as envisaged in the Constitution of India is not limited to formal equality. Equality is to be understood as a goal to be achieved in a society where discrimination, oppression and violence on the basis of caste, class and gender persists. The Constitution of India, therefore, provides for positive discrimination and empowers the State to make special provisions in favour of the oppressed and the marginalised groups of the society including women. This is an enabling provision to ensure that the principle of equality does not hinder the positive discriminatory measures adopted by the State (Jain, 2003: 1060-61). The Constitution of India thus recognises the need to treat the vulnerable and the marginalised groups of the society differently to achieve the goal of equality. In the context of gender equality, the Constitution of India legitimises positive measures in favour of women to achieve the goal of substantive equality. In the gender context, it could also be seen as a moral duty of the State to take special measures to address the concerns and issues of women so that equality means both the formal as well as the substantive equality (Fredman, 2008: Ch 7).

Several legal changes have been introduced in the past to mitigate gender inequality, for instance the law on domestic violence,[2] the amendment of the Hindu Succession Act, 1956 to make Hindu women's inheritance rights in land at par with men[3] and a series of laws to address gender inequality at work (Sankaran & Madhav, 2011). Gender issues in the specific context of sanitation needs to be understood and examined in this broader context. The remaining part of this section, in this background, examines how the law and policy framework has responded to the issue of gender inequality vis-à-vis sanitation. This examination is relevant from two angles. On the one hand, the law and policy framework is expected to mitigate gender inequality and on the other hand the law and policy framework is not supposed to perpetuate inequality and disempowerment by action or inaction.

The statutory framework relating to sanitation is, by and large, gender neutral in its approach. It imposes a generic responsibility on local bodies and other relevant agencies to maintain sanitation.[4] The statutory framework does not particularly highlight or address sanitation-related needs and concerns of women. An exception, although limited in scope, can be seen in some statutes that provide for separate toilets for men and women.[5] In a society that is structurally biased towards men and where status quo means domination of men over women, a gender-neutral approach to sanitation is likely to undermine sanitation needs and concerns of women.

While statutes follow a gender-neutral approach, the policy framework governing sanitation appears to be more progressive in recognising gender-related issues and concerns in the context of sanitation. For instance, one of the main objectives of the first flagship programme on rural sanitation—the Central Rural Sanitation Programme (CRSP)—was to provide privacy to women and to protect their dignity.[6] The recognition of the special needs and concerns of women, more or less, continued in the subsequent programmes as well. The Total Sanitation Campaign (TSC), the programme that replaced the CRSP in 1999, also included explicit provisions addressing the concerns of women. For example, a key factor to decide the place of Community Sanitary Complexes was their acceptability and accessibility for women.[7] In 2012, the TSC was further replaced by the Nirmal Bharat Abhiyan (NBA), which represents a step backwards because while it re-asserts the objectives of the CRSP, it states that the location of community sanitary complexes should be acceptable and accessible to 'all'—thus, removing the previous reference to specific vulnerable groups, including women.[8] The Rural Sanitation and Hygiene Strategy adopted by the Union Government is more explicit in recognising the vulnerability of women and it emphasises the importance of 'addressing inequalities in access with special attention to vulnerable groups such as women...' (GoI, 2011: 2). The ongoing SBM also follows this approach. For instance, the SBM requires that 'requirements and sensitivities related to gender including dignity and safety issues' are to be taken into account at all stages of sanitation programmes from planning to post implementation.[9]

The policy framework in the urban sanitation context are not as explicit and elaborate in highlighting women's sanitation needs and concerns as the rural sanitation policies. While the

2 The Protection of Women from Domestic Violence Act 2005.
3 Hindu Succession (Amendment) Act 2005.
4 eg Kerala Panchayat Raj Act 1994, s 166.
5 eg Right of Children to Free and Compulsory Education Act 2009.
6 See Nirmal Bharat Abhiyan Guidelines 2012, 5.
7 Total Sanitation Campaign Guidelines 2011.
8 Nirmal Bharat Abhiyan Guidelines 2012.
9 Swachh Bharat Mission – Gramin Guidelines 2014, para 5.9.1.

SBM-Urban is generally silent in this regard, the National Urban Sanitation Policy, 2008 considers women as one of the sections more vulnerable due to poor sanitation.[10]

MHM is an issue that has gradually received more attention than many other issues. The policy framework was completely silent on MHM until recently. For instance, the erstwhile framework for rural sanitation, the NBA Guidelines 2012, was silent on MHM. However, the NBA Guidelines was amended in 2013 to add a separate paragraph to recognise the menstruation-related sanitation needs of women and girls.[11] Beyond the explicit recognition, the amendment called for two specific kind of actions. One was to utilise the fund allotted for the awareness-creation activities for raising awareness, information and skills on MHM and the other was to utilize the fund allotted for solid and liquid waste management for the safe disposal of used absorbents. Similar approach has been taken by the SBM-Gramin Guidelines as it underlines women's sanitation needs linked to menstrual cycle and calls for a special attention to MHM.[12]

In 2015, the Government of India took a more expansive approach by adopting a specific document on MHM.[13] It provides a conceptual framework that consists of mainly two aspects. First, it focuses on enhancing a scientific understanding of the biological process of menstruation so that menstruation can be managed without any adverse implication for the health of the concerned woman or girl and by ensuring the quality of the environment. Second, the aspect of facilitating access to necessary infrastructure and products such as separate toilets, affordable and accessible absorbents, water, soap and mechanism for safe disposal of used absorbents.[14] The MHM Guidelines, 2015 underline that it is the duty of the government to ensure these two aspects of safe and hygiene MHM.[15] The issue of MHM is also addressed under the National Rural Health Mission—an initiative by the Ministry of Health and Family Welfare of the Union Government.[16] It also follows the same conceptual framework and mode of interventions, that is the supply of low cost sanitary napkins to adolescent girls in the age group of 10-19 years (a packet of six napkins for rupees six). It promotes door-to-door supply, and supply through the platforms of schools and anganwadis, of low cost sanitary napkins.

MHM is one issue in this regard where the statutory framework is more explicit. The Solid Waste Management Rules, 2016 has included explicit provisions related to MHM.[17] The government, more importantly urban local bodies, is duty bound, under the Rules, to set up mechanisms for collection, transportation, treatment and disposal of municipal solid waste in a safe manner. While this general duty is applicable in the case of safe disposal of the used absorbents, the Rules more directly and explicitly lay down norms on the duties of individuals and companies in the context of MHM. The Rules makes it a duty of the manufacturers of

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10 National Urban Sanitation Policy 2008, para 2.

11 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).

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

13 Menstrual Hygiene Management—National Guidelines 2015 <http://www.mdws.gov.in/sites/default/files/Menstrual%20Hygiene%20Management%20-%20Guidelines_0.pdf>.

14 ibid 6.

15 ibid 2.

16 Scheme for Management of Menstrual Hygiene Among Adolescent Girls in Rural India, Ministry of Health and Family Welfare, DO No M/12015/103/2010-MCH (4 Mach 2016) <http://nrhm.gov.in/images/pdf/programmes/mhs/Guidelines/Revised_Guidelines_for_Menstrual_Hygiene_Scheme.pdf>.

17 Solid Waste Management Rules 2016.

sanitary napkins to 'explore the possibility of using all recyclable materials in their products'.[18] It is also a duty of the manufacturers to provide a pouch or a wrapper for disposing the used napkins.[19] The Rules are also more explicit in laying down the duty of the users of napkins to wrap the used napkins securely in the wrapping material provided by the manufacturer.[20]

The policy developments on MHM including the explicit recognition of MHM as an issue under the policy framework is not completely a development evolved at the domestic level. In fact, the role of international organisations is significant. For instance, the Water Supply and Sanitation Collaborative Council (WSSCC) of the United Nations has been strongly advocating for the explicit recognition of MHM in the policy framework related to sanitation. The specific amendment of the NBA Guidelines in 2013 to include MHM is a direct influence of the WSSCC (WSSCC, 2013). The influence of the WSSCC is further clear from the fact that the conceptual framework followed in the policy documents in India is substantially similar to what the WSSCC has promoted through its publications and training programmes in India (WSSCC, 2013a). The influence of international organisations in this regard has been contested on the ground that it blindly imports a western conception of hygiene and does not reflect the reality and practice in India (Joseph, 2015).

Sanitation issues and concerns of women have been recognized, at least to some extent, in the law and policy framework. While this is a positive development, an even more important concern is the extent to which this official recognition has been translated into actions at the implementation level or the extent to which the official recognition has influenced and informed the implementing agencies. These questions are addressed in the next section in the light of empirical evidence and information.

3. IMPLEMENTATION FRAMEWORK: NEGLECT, OBJECTIFICATION AND GENDER INEQUALITY

The law and policy framework for the realisation of the right to sanitation pays only lip service to the sanitation-related issues and concerns of women. The implementing agencies, by and large, follow a gender-neutral approach to sanitation. This does not mean that the law and policy framework for sanitation is completely a failure. Indeed, in some cases, for instance in planned areas in urban India, toilets may help women (and men) to carry out their basic sanitation needs with dignity and privacy. However, this is an exception when compared to the sanitation experience of a vast majority of women such as women living in rural areas, small towns, urban slums and pavements.

Thus, there is a huge gap between what is stated in the law and policy framework and what actually is happening in the field. At the implementation level, either women's rights and concerns are not addressed at all or they are used in a way that satisfies the existing patriarchal nature of the society. This scenario is incompatible with several rights of women such as the right to equality and the right to sanitation.

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18 ibid r 17(1)(3).

19 ibid r 17(1)(3).

20 ibid r 4(1)(b).

3.1 DISREGARD FOR DIGNITY AND PRIVACY

The law and policy framework for sanitation interventions has been using dignity and privacy of women as rationales for various sanitation interventions. However, these concerns mostly remain at the policy level and they hardly shape the way sanitation interventions are being implemented. Privacy and dignity of women do not seem to have influenced or guided the implementation of sanitation interventions. This is evident from the fact that household toilet coverage is still inadequate in rural and urban areas.[21] Despite the fact that sanitation interventions have been in force over the last few decades, many state governments did not take any initiative to implement them until recently. For instance, rural sanitation interventions were, by and large, dormant in the State of Uttar Pradesh until a couple of years ago. This indicate the fact that privacy and dignity of women have failed to trigger state governments to implement sanitation interventions.

The insensitivity to the issues of privacy and dignity of women is also clear from the way access to toilet is being promoted in rural and urban areas. The policy framework for sanitation follows the perception that the availability of toilet would by itself lead to its use by everyone. This approach is myopic to the social and cultural norms that constrain the way in which women take care of their sanitation needs. Further, women are not consulted while taking decisions both at the panchayat level as well as at the household level. A group of women in Sagrampur village in Uttar Pradesh stated that they were not consulted while building toilets. The exclusion of women may lead to decisions that are gender-neutral and thus the needs and concerns of women may get ignored. For instance, a toilet constructed at the front side of a house makes it difficult for women to use it because this is a space mostly occupied by men and guests (O'Reilly, 2010).

Similarly, in the case of public/community toilets in urban areas, there seems to be an assumption that having an adequate number of separate toilets for women is sufficient to ensure dignity and privacy of women. Factors such as the working time of public toilets and the presence of men in women's toilet complexes are generally overlooked. For instance, the presence of men in the toilet complex and the use of community toilet complexes or public toilets by men and boys for various purposes including for rearing pigeons makes it difficult for women to use them (Khosla & Dhar, 2013). This scenario demonstrates the gender bias where implementation is dominated by men's understanding and perception of sanitation problems and needs of both women and men.

The overlooking of the need for public toilets further reflects the narrow understanding of the privacy and dignity of women by sanitation interventions. The ongoing sanitation interventions primarily and overwhelmingly focus on household toilets and consequently sideline the provision of community toilets and public toilets. The lack of focus on community toilets and public toilets affects women disproportionately particularly working women and homeless women as noted in the previous section. It appears that sanitation interventions have so far focused on dignity and privacy of women while they are at home. Further, the focus has been limited to houses where adequate space is available to build a toilet or to people who can afford to build a toilet in their houses. Overall, it neglects the fact that women go for work and it also neglects the rights of the poor. This is particularly important in a context where a significant number of women in rural and urban areas go for work to earn their livelihood.

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[21] According to Swachhta Status Report 2016, 45.3 per cent of households in rural areas have sanitary toilets. In urban areas, 88.8 per cent of the households have sanitary toilets. See Government of India, Swachhta Status Report 2016 (Government of India 2016).

3.2 MHM: HUGE GAP BETWEEN POLICY RECOGNITION AND PRACTICE

The explicit recognition of MHM as a sanitation issue is indeed a progressive step. However, its contribution to the actual realisation of the right to sanitation and other rights of women depends upon how these concerns are reflected in the implementation of sanitation interventions. Fieldwork conducted in rural Rajasthan and rural Uttar Pradesh shows that MHM is not yet a serious concern for implementing agencies. They almost exclusively focus on the construction of toilets. Implementing agencies at the local level generally hold the view that *other* sanitation concerns including MHM will be taken up after achieving the open-defecation free status. This approach is probably a consequence of the pressure from the top (state level and central level agencies) to eliminate open-defecation as a priority. For instance, implementing agencies at the local level are expected to report periodically the number of toilets that have been built in their jurisdiction. At the same time, similar degree of focus or pressure is absent in the case of concerns and needs related to MHM.

Certain state governments have started modest efforts to address MHM as part of their sanitation interventions. For instance, the National Rural Health Mission's Scheme for Promotion of Menstrual Hygiene among Adolescent Girls in Rural India covers 13 districts in Uttar Pradesh. Additionally, in 2015, the State Government announced the target of 100 per cent menstrual hygiene and sanitary napkin coverage by 2017 for all girls between the age group of 10 and 19 years, studying in Class 6 to Class 12 of government-run schools (Dutta, 2015). As a result, pilot projects have been started in the districts of Barabanki, Mathura and Mahoba where certain women's groups are producing and selling low-cost sanitary napkins. Similar initiatives are also in the pipeline in Kerala. Some of the panchayats have already built girl friendly toilets in public places (eg Chirakkal village in Kannur District) and the idea is being promoted in schools.

However, the major focus of the initiatives in the context of MHM is to make available toilet facilities and sanitary napkins. The disposal of used sanitation napkins is still an unresolved and an unattended issue. A senior official of the Kerala Suchitwa Mission, the agency responsible for implementing sanitation interventions in the State, in a personal interview admitted that the use of sanitation napkins has been increased manifolds and it poses serious challenge from an environment point of view. According to her, burning or burying seems to be the only options available for the users for the time being. Therefore, there is a lot more to be done insofar as MHM is concerned both in terms of conceptual understanding and infrastructure development.

3.3 WOMEN AS 'OBJECTS' AND 'TARGETS'

Sanitation interventions in India pay lip service to the issues and concerns of women. While the implementation of sanitation interventions hardly contributes to the realisation of the right to sanitation and other rights of women, some of the strategies followed by sanitation interventions have adversely affected the rights of women, most importantly the right to gender equality.

The awareness-creation programme (known as triggering programme among implementing agencies and various developmental agencies) is one area where the policy framework liberally uses the idea of dignity and privacy of women. This is problematic to the extent that it uses and reinforces the social and cultural norms that define the inferior status of women. It is an irony

that many of these norms are in fact root causes of the increased sanitation burden of women. For instance, implementation of sanitation interventions in Rajasthan have used women-specific narratives to motivate people to construct and use toilets. The discriminatory and oppressive practices such as the *purdah* system[22] have been used to invoke the male prestige to promote the construction of toilet at houses. One of the major narratives used by implementing agencies in Rajasthan is a question addressing men how they can let others see 'their' women defecating in open while they do not let others see even the face of 'their' women.

Implementing agencies in Uttar Pradesh also have used similar narratives. For instance, a large number of public posters and paintings produced as part of awareness creation programme in the State have projected toilets as an essential infrastructure to ensure the dignity of women. In certain cases, the approach has gone to the extent of depicting a man declaring the need to protect the dignity of women in his house by building private toilets. This reflects an approach that links toilets with the dignity of *only* women and not men. From a rights perspective, dignity and privacy in the context of defecation are relevant for everyone, not just for women. Ideally such posters and paintings must challenge the existing social norms that apply different standards of dignity and privacy to women and men in the context of defecation. However, it does exactly the opposite by reinforcing the existing patriarchal social norms.

The strategies of intimidation and shaming used by implementing agencies to eliminate open-defecation also target women specifically or affect women disproportionately. For instance, the Nigrani Committees (monitoring committee) roam around villages early in the morning to prevent people from going to the field for open-defecation or the members of the Nigrani Committee blow a whistle when they spot someone defecating in the open. While this is not specifically against women, it may turn out to be embarrassing for women in a context when men are predominantly the members of Nigrani Committees. The strategy of intimidation also includes reminding women of the risks of sexual violence while doing open-defecation. For instance, implementing agencies in Uttar Pradesh stated that they show cuttings from newspapers that report instances of sexual harassment or rape of women while carrying out open-defecation.

The narratives and strategies prejudicial to women are not limited to the states of Rajasthan and Uttar Pradesh. Implementing agencies in other states also use similar strategies. For instance, in Madhya Pradesh, the implementation of sanitation interventions in rural areas has been criticised for using humiliation (mostly targeting women) as a method to induce people to stop open-defecation (Poornima, 2013).

These narratives and strategies are justified on the ground that these are the 'tools' that work better and fast. Thus, immediate sanitation results (ie toilet construction) get priority regardless of the fact that these strategies perpetuate the objectification and stigmatisation of women. The narratives and strategies also reflect the element of male domination in the making and implementation of policies because women are made 'the target' and 'the object' of awareness-creation programmes *by* men although there is no data showing that women are predominantly the open defecators. On the contrary, experience from rural Rajasthan and rural Uttar Pradesh shows that men are more reluctant to use toilets than women. This is probably because men

[22] O'Reilly explain the purdah system in the following words: "Regardless of their age, women living in their in-laws' homes practice purdah (literally 'curtain'), which entails remaining inside the family compound, covering their faces (*ghuunghat*), and speaking little or quietly in front of strangers, senior men, and senior women. Unmarried girls who live with their parents do not practice purdah or ghuunghat". See O'Reilly, 2010: 5.

generally understand that toilets are built primarily for women as being promoted by the awareness creation programmes under the policy framework for sanitation.

The narratives mentioned above are not completely a creation of the local level or state level implementing agencies. The role of agencies at the international level is also significant. For instance, the World Bank has played a very important role especially in the state of Rajasthan. The World Bank's Water and Sanitation Programme has provided training to officials of implementing agencies at least in some districts in Rajasthan, for instance Bikaner and Churu (WSP, 2013: 13–14). In the Churu district, Water and Sanitation Programme was instrumental in developing a district level communication strategy (ibid: 39). The involvement of an influential international organisation like the World Bank in training the district level officials probably explains the similarity in the narratives used by implementing agencies in different districts.

3.4 SAFETY AND SECURITY: LIMITATIONS OF CRIMINAL LAW AND SANITATION INTERVENTIONS

Legal responses to the issue of safety of women in the context of sanitation come from two different legal streams. Most importantly legal responses to the issue of gender-based violence come from two different legal streams—criminal justice system and sanitation interventions. Once the violence occurs, the matter falls within the domain of the criminal justice system. It is the duty of the State to prosecute and punish the offender(s) because a crime is seen primarily as an offence against the State. The root causes of offences are not an important concern of the criminal justice system. The criminal justice system arguably creates a deterrent effect by prosecuting and punishing the offenders. However, there are several factors, including social, cultural and economic factors, that diminish the scope of the deterrent effect.

Violence against women, especially sexual violence, is seen primarily as a matter of shame and dishonor for the community rather than a crime. As a result, the community gets involved and tries to 'settle' the case. Although it is a well-established rule that statutory offences such as rape cannot be settled, this is not uncommon in different parts of India particularly in rural areas. The accused may confess his crime and offer to marry the victim or the panchayat may persuade the accused to do so, or the matter may be settled through monetary compensation. In some cases, the victim's family may prefer to follow this approach to 'protect the victim's honour' without seeking the victim's opinion (TNN, 2013 & Karat, 2015). In such cases, filing of criminal cases will happen only when the 'settlement initiatives' under the auspices of the panchayat or the community fail. Courts have also acknowledged the existence of this practice, for instance in an occasion while addressing the question whether delay in lodging a complaint due to this reason can be condoned.[23] At times, courts also encourage and facilitate the 'settlement' of criminal cases involving sexual offences.[24] Further, a number of cases do not get reported due to the social stigma or taboo around sexual violence and as a result, the questions of prosecution and punishment do not even arise.

Even when the crimes get reported, there are several factors that affect the outcome of the case. In a number of cases, the absence of injuries or the failure to raise an alarm by the woman led to an adverse inference that she had, in fact, given her consent for the sexual act. In such

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23 *Shyam Nayak* v *State of Jharkhand* Judgment of 6 November 2007, MANU/JH/0661/2007 (High Court of Jharkhand).

24 eg *V Mohan* v *State* Criminal Appeal No 402 of 2014, Order of 18 June 2015 (High Court of Madras).

situations, the benefit of doubt goes to the accused.[25] A review of cases, however, highlights various situations under which the absence of resistance can happen. Some cases highlight that the fear of reprisal or the threat to kill could be a reason for silence or the lack of resistance by the woman.[26] This may lead to the absence of struggle or resistance (and therefore no injuries on the victim's person) and/or failure to make noise to attract the attention of the people.[27] In some other cases, the perpetrators made death threats to the victims[28] and their families[29] if the victim disclosed the fact of the incident to her family or reported to the police. Other possibilities include where the victim is tied up or drugged and raped.

However, it is to be noted that the existing criminal law disapproves this legal presumption of consent against woman in sexual violence cases. The Indian Penal Code provides that the fact that a woman did not physically resist penetration cannot be regarded as suggesting that she had consented to the sexual activity.[30] Courts have also repeatedly held that the absence of physical injuries does not mean that the woman had consented to the sexual act.[31]

The scope of the criminal justice system in addressing the issue of safety of women in the sanitation context is limited because it addresses the delivery of justice once crimes are committed. It hardly contributes to the prevention of crime except the limited deterrent effect it may create. It is in this context that the role of sanitation interventions becomes important from the point of view of prevention of violence against women in the context of sanitation. Put differently, an important question is whether women are able to exercise their basic bodily functions without the fear of being violated.

Sanitation interventions may not be able to address directly the social and cultural reasons for violence against women. However, it can arguably make some interventions through the provisioning of sanitation facilities, for instance toilets in houses as well as in public places, so that one of the situations that leads to violence against women is minimised or eliminated. Although this step does not challenge the basic issue of patriarchy and gender-based power relations, it has been highlighted as an effective step in reducing at least a particular form of gender-based sexual violence, that is the risk of non-partner sexual violence (Jadhav et al, 2016).

However, there is also a viewpoint that the projection of toilets as a solution to gender-based violence in the context of open-defecation impliedly seeks to restrict the movement of women to 'save' them from violence. It, in effect, denies them one of the very few opportunities they may have to socialise. This is an important issue in a context when the freedom of movement of women are severely restricted particularly in rural areas. In this context, the argument that toilets are to be constructed to 'save' women from sexual violence reinforces the social control

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25 *Deva Anand Singh and Others v State of Bihar* Criminal Appeal No 274 of 1988, Judgment of 7 October 2009, MANU/BH/0435/2009 (High Court of Patna).

26 *Satya Vir* v *State,* Criminal Appeal No 89 of 2004, Judgment of 17 September 2009 (High Court of Uttarakhand); *Satish Kumar Sahu* v *State of Chhattisgarh* Criminal Appeal No 1068 of 2002, Judgment of 16 January 2006, MANU/CG/0014/2006 (High Court of Chhattigarh).

27 In certain cases, the victim's attempt to raise an alarm/cry for help was stopped by a threat to kill her by firearm or at gunpoint. *See Md. Khalil* v *State*, Criminal Appeal (SJ) No 81 of 1995, Judgment of 23 June 2011 (High Court of Patna).

28 eg *Kabhaibhai Deshaibhai Rathod* v *State of Gujarat* Judgment of 24 April 2007, MANU/GJ/7011/2007 (High Court of Gujarat).

29 eg *Satya Vir* (n 26).

30 Indian Penal Code 1860, Proviso to Explanation 2 (inserted by Criminal Law (Amendment) Act 2013).

31 *Kapoor Alias Rajkapoor* v *State of Madhya Pradesh*, Criminal Appeal No 813 of 1990, Judgment of 2 March 2009 (Chhattisgarh).

of women. Thus, sanitation interventions are also used as an instrument of social control. This also points to the cumulative impact of various policy interventions by different sectors like water and sanitation on freedoms and rights of women. Such interventions must not lead to the curtailment of the right to equality and the freedom of women to move around. However, this does not mean that open-defecation is to be promoted to let women realise their freedoms and rights. Instead, sanitation interventions could address this issue in its own capacity by challenging the patriarchy to the maximum extent possible, by not using the existing patriarchal customs to promote the construction of toilets and by ensuring that sanitation interventions are not used as an instrument of social control.

4. CONCLUSION

The law and policy framework for sanitation in India is not completely insensitive to the gender dimensions of sanitation. The norm of separate toilet for woman as enshrined in many statutes,[32] the ongoing sanitation drive to promote the construction and use of toilets in houses and the new initiatives to ensure MHM are some of the important interventions that may contribute to the realisation of several rights of women. These interventions, to some extent, address concerns related to privacy, dignity, lack of information and lack of infrastructure facilities. However, an analysis of sanitation interventions reveals that they are still far from being adequately gender sensitive.

A major critique is that sanitation interventions, by and large, perceive sanitation needs and vulnerabilities of women as technical issues that can be fixed through technical solutions. The exclusive technical approach to gender-related sanitation issues avoids conveniently the structural reasons and undermines its broader implications for gender equality. For instance, sanitation interventions do not consider the fact that the lack of water supply may make sanitation infrastructures such as household toilets an additional burden for women due to the social and cultural norm that makes fetching of water a responsibility of women and girls.

An approach myopic to the structural reasons could also be seen in the way MHM issues have been defined and sought to be addressed. The framework for MHM in India is built upon the premise that girls do not have adequate information on how to carry out MHM or they do not get adequate information from their schools or their parents. Another premise is that the lack of facilities is leading to the issues like school absenteeism (of female students and teachers). These premises, according to some critique, reinforce the patriarchal norms and also highlight the dominant position of international NGOs and intergovernmental organisations in determining the conceptual and operational boundaries of certain issues (Joshi et al, 2015: 54). While the increasing focus on MHM has enhanced the visibility of the issue, the existing law and policy framework, to some extent, is still promoting the idea of dealing with MHM discreetly and silently. The availability of, and accessibility to, infrastructure may be important, but at the same time it is equally important to challenge the cultural and social perceptions that make MHM difficult for women and girls.

While the policy framework does not take sanitation needs and vulnerabilities of women seriously, it proactively uses certain regressive practices and traditional roles of women to promote sanitation goals. The way the awareness-creation activities are being conducted at the

[32] eg Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, s 33 and Contract Labour (Regulation and Abolition) Act 1970, s 18.

local level in the rural sanitation context reveals that they reinforce certain norms and practices that are rooted in the patriarchy. Thus, women become targets and beneficiaries of sanitation interventions. Ideally one would have expected the policy framework for sanitation to treat women primarily as right-holders, not beneficiaries. This brings forth the broader question of the implications of sanitation interventions on the right to gender equality.

The discourse on safety and security of women in the context of sanitation is also equally problematic from a gender equality point of view. The policy framework for sanitation projects toilets as the major sanitation intervention to mitigate the safety related risks of women. The logic seems to be to eliminate the exposure of women to risks. The risk in this context is mainly understood as risks from strangers in public spaces. While sanitation interventions such as toilets at houses and in public places could be justified and promoted on the ground of privacy and dignity, it is doubtful if such interventions could be similarly justified in the context of sanitation-related safety and security concerns.

This is problematic for various reasons. It presumes that private spaces like houses are safer for women. This is highly contestable as the bulk of violence against women occur within the private space of houses. This was, for instance, the reason why a specific law was enacted to address the issue of domestic violence against women.[33] In an overwhelming majority of rape cases, offenders are not strangers, but people known to the victims (National Crime Records Bureau, 2016: 85). Further, the strategy of restricting women in public spaces and confining them to private spaces based on the presumed safety of private spaces is regressive from the point of view of gender equality. It is inappropriate for the policy framework for sanitation to use the safety of women a logic to promote the construction and use of toilet. This amounts to the harassment of the potential victims of a crime or denying them their basic human rights under the garb of protection. Ideally, the safety of women is to be ensured by restricting the violators, not by restricting women.

An important underlying reason for the gender myopia of sanitation interventions is the fact that it tends to work within the existing patriarchal structure of the society. There is little or no participation of women both at the policy framing level as well as at the implementation level. This is, by and large, confirmed during the fieldwork as an overwhelming majority of the officials at the state, district and village levels are men. As a result, the basic nature of the institutional framework, its priorities and its approaches are largely informed by men's understandings. Thus, women are 'targets' and 'objects', but not an equal participant in the process of decision-making and implementation.

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