

Policy Brief

A Case for Transgender Inclusive WASH Practices

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Water Seekers' Fellow 2021





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INTRODUCTION

Social discrimination, stigma, and infrastructural inadequacies make transgender people one of the most marginalised communities in India. The socio-political and economic matrix under which the transgender communities operate encumbers their access to educational infrastructural, safe water, sanitation, and hygiene [WASH] facilities, employment opportunities, and modern health-care (Boyce et al., 2019). This policy analysis maps the current status of WASH practices among the transgender communities in Delhi. It investigates various structural issues that impact safe and equal access to WASH practices and recommends policy measures that would promote equity and inclusion.

The transgender communities' equal and safe access to WASH practices is an area that policymakers have largely ignored. In the last few decades, studies have explored the connection between WASH and gender equality, but it has been mostly limited to women and girls. Most of the transgender community does not find decent accommodation and are forced to live in semi-urban or slums with poor access to toilets and water facilities. Furthermore, the access to resources also depends on intersectional factors such as urban-rural disparity, class, caste, or disability. Similarly, the nature of work many transgender persons are involved in limits their access to WASH resources and puts them at high risk of violence. The International Commission of Jurist (2019), states in its report that "LGBTQ persons, particularly transgender persons and non-binary persons, face or are at risk of facing sexual violence, sexual harassment, physical violence and harassment in toilets, due to gender identity-based discrimination".

METHODOLOGY

Literature and Policy Review

The key documents reviewed were central government policies, supreme court judgement, and guidelines by the Government of National Capital Territory [NCT] of Delhi. These documents were then cross-examined with non-governmental organisations' reports and academic literature. This mixed review of documents assisted in mapping the current status of WASH practices among the transgender groups, identifying the gaps between policy formulation and implementation, and imagining the scope for transgender-inclusive WASH practices.

Figure A: List of Key Documents Reviewed

Supreme Court Judgement(s)
<ul style="list-style-type: none"> National Legal Services Authority [NALSA] v. Union of India and others (2014)
National and State Level Interventions
<ul style="list-style-type: none"> The Transgender Persons (Protection of Rights) Act, (2019) Government of India, Ministry of Drinking Water and Sanitation, Swachh Bharat Mission (2017) 'Guidelines on Gender Issues in Sanitation' New Delhi Government of NCT of Delhi, Department of Social Welfare (Financial Assistance -Transgender Section) (2021) 'Order' New Delhi

Key Informants and Stakeholders' Interviews

The documents review was consequently followed by open-ended interviews with four individuals from the transgender communities in Delhi. Informants were told beforehand about the research objective and verbal consent was obtained. In addition, focus group discussions were conducted with members of two grassroots-level organisations, namely the Community Empowerment Trust [CET] and Pehchaan Initiative. Both organisations are currently collaborating to design a safe public space for the transgender community in Delhi.

Site Visits

Multiple site visits were carried out to investigate the current toilet and sanitation facilities for the transgender community in Delhi. The visits were conducted keeping in mind various guiding questions related to location, cleanliness, and accessibility.

Figure B: List of Sites Visited in Delhi

<ul style="list-style-type: none"> Near the Press Club of India, Windsor Place Rajiv Chowk Metro Station, Rajiv Chowk Nehru Place Metro Station, Nehru Place DLF Promenade, Vasant Kunj

KEY ANALYSIS

Current Policies and Guidelines

(A) The Transgender Persons (Protection of Rights) Act (2019):

The Transgender Persons Act was passed by the Government of India in December 2019. The act aims to prohibit the discrimination and stigma towards the transgender community by recognising the 'right to self-perceived gender identity' (Section 4.2) and directing the appropriate governments to take all necessary steps for transgender inclusion in society (Section 8.1) through welfare schemes and programmes. Chapter VII of the Act also provides for establishing the National Council for Transgender Persons [NCTP], which will consist of five representatives from the transgender community along with other government officials. The council will advise the Central Government over policies and programmes related to transgender communities (Section 17.a) and also seeks to redress the grievances of the community (Section 17.d).

(B) NALSA v. Union of India and others (2014):

In this landmark judgment, the Supreme Court of India stated that the transgender community would now be legally recognised as the third-gender and affirmed that they are equally entitled to all the fundamental rights granted by the Indian constitution. In terms of public space, especially toilets, the judgement states that:

'since there are no separate toilet facilities Hijras/transgender persons, they have to use male toilets where they are prone to sexual assault and harassment. Discrimination on the ground of sexual orientation or gender identity, therefore, impairs equality before law and equal protection of law and violates Article 14 of the Constitution of India' (Para 55).

As a result, the court directed both the central and the state governments to take measures to provide for welfare for transgender and make sure they have safe access to health and sanitation facilities.

(C) Guidelines on Gender Issues in Sanitation, SBM-Gramin (2017):

In these guidelines, the Ministry of Drinking Water and Sanitation, Government of India, focused on gender inclusivity to achieve open defecation free [ODF] status. Stating that transgender people are often ignored in WASH sector, the guidelines direct the officials associated with SBM to make sure the transgender community has equal access to toilets of their choice, whether in a community setting or a public place (Section 7). The guidelines also went beyond infrastructural issues and sought community engagement to break the social stigma surrounding the transgender community.

(D) Department of Social Welfare, Government of NCT of Delhi:

An order numbered 'F41(341)/FAS/DSW/WMTGP/20-21/18299-18411' was issued in February 2021 by the Government of NCT of Delhi. It directed all the officials in the capital territory of Delhi to provide separate public toilet facilities for the transgender community within a period of two years. The government, through its order, further directed that until separate facilities for transgender persons are created, all toilets meant for persons with disabilities [PWDs] can also be utilised by the transgender community along with the choice to use any toilets as per their self-perceived gender identity.

Gaps in Current Policies and Guidelines

(A) Acute Shortage of WASH facilities:

The Census of India (2011) estimates a transgender population of 4,213 in Delhi. To cater to their WASH facilities, the Government of NCT of Delhi directed the construction of separate public toilet facilities for the transgender community within two years, starting from February 2021. However, the fieldwork revealed that only one toilet exclusively catering to the transgender community was built in the last eleven months. The toilet was near the Press Club of India, Windsor Place in Delhi. However, the government also directed that all toilets meant for PWDs are made available for use by the transgender community until a separate facility is built for them.

Sunaina¹, a transgender woman, was invited to the inauguration of the transgender exclusive toilet near the Press Club of India at Windsor Place. However, she complained about the facility's location since the area has barely any presence of transgender groups or persons. During an interaction with the security guards at the toilet, they revealed that only 4 to 5 people used the facilities per week on average. Such instances show the necessity of taking persons from the transgender communities on board when the officials formulate policies for them.

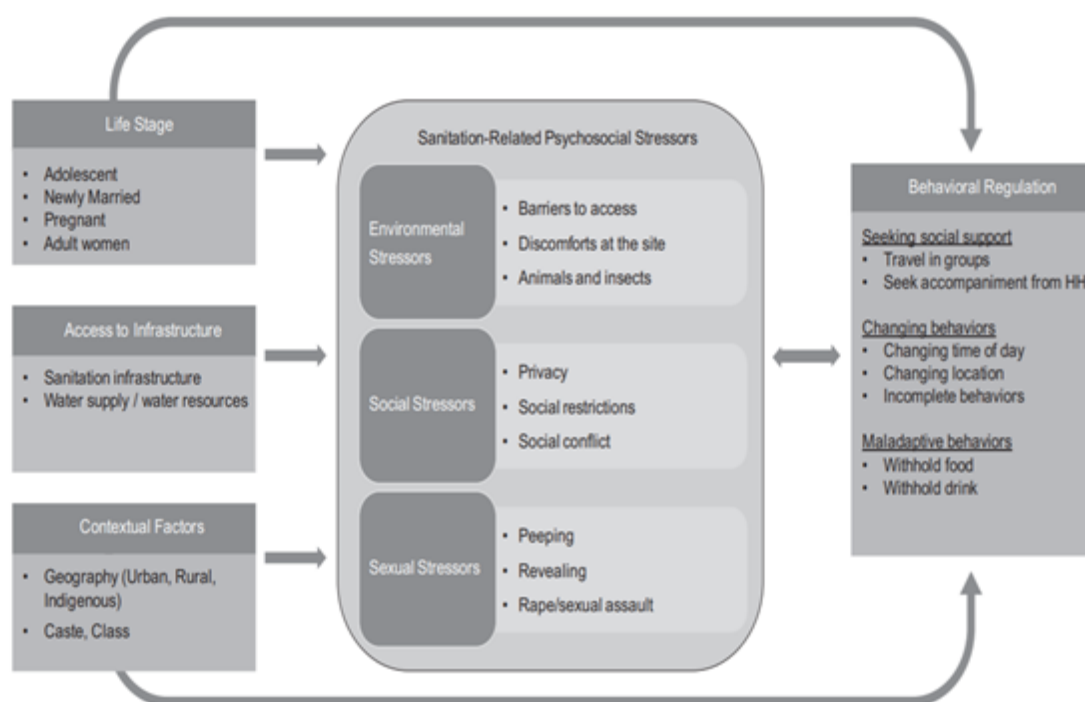
(B) Toilet Design and Infrastructural Inadequacies:

The accessibility to the WASH facilities by the transgender groups can be hindered due to the lack of proper design that suits the person's needs. For example, transmen who have not undergone transition would not be able to use men's urinal stalls or those toilets that lack private stalls. Similarly, transmen who menstruate would require provision for sanitary products as well as means for their disposal. The policies and guidelines mentioned above while directing for transgender facilities are based on the principles that transgender people are a homogenous group, and therefore fails to consider the diversity of identities and experiences and consequent needs.

¹ All interviewee names are changed.

Trisha, who identifies as a hijra, shared that she currently uses toilets (male or female) based on which is less crowded. She said that the security guards at the metro stations let her use the toilet of her choice, however, she occasionally does receive snide remarks and irritated looks when using the women's toilet. If given a choice, she would prefer to use only a women's toilet rather than a men's toilet or a separate toilets facility for transgender people.

Figure C: Conceptual Model exhibiting Sanitation-related Psychosocial Stress using a gendered lens.



Source: Sahoo et al. (2015).

(C) Discrimination and Stigma:

The toilets facilities remain a site of violence for the transgender communities, and there is constant psycho-social stress when using the public toilets. When using toilets for women, transgender people are seen with suspicion, asked to vacate the facility, and often verbally abused. Similarly, when using the men's toilet, their presence is often interpreted as soliciting commercial sex work and therefore subjected to sexual harassment. During a group discussion with CET and Pehchaan Initiative members, they pointed out that toilets emerge as a site of violence quite early in a transgender person's life. It is mostly during the adolescent years that individuals become aware of their gender dysphoria for the first time and a serious conflict when accessing gendered toilets in schools. Similarly, the recently published training manual by National Council of Educational Research and Training's [NCERT] Department of Gender Studies (2021) titled 'Inclusion of Transgender Children in School Education: Concerns and Roadmap' also emphasised that lack of gender-responsive WASH facilities in school leads to both mental and physical harassment of transgender children

as they are subjected to bullying and sexual harassment.

Sakshi, a transwoman with disabilities, recalled how she was called humiliating names, subjected to bullying and inappropriate gestures by the boys when she would use toilets during her school days. However, she continued, this did not change when she went to college. She would receive homophobic remarks and inappropriate stares from students and professors because of her appearance and disability.

(D) Health Hazards:

The acute shortage of WASH facilities for the transgender communities has a detrimental effect on their health. The lack of safe toilet and sanitation facilities force many transgender people to avoid drinking water or not relieve themselves for a long stretch of time. In case of an emergency, they defecate in open and isolated spaces like behind bushes or street corners. This puts them at risk of frequently contracting urinary tract infections [UTIs] which hinders their daily life, and puts an extra financial burden on them to meet the medical expenses.

Ishleen Kaur, a rapporteur at the Consultation on the Contribution of Swachh Bharat Mission [SBM] Towards Achieving Sustainable Development Goals - 6 SDG-6 in India for WSSCC, FANSA, and Global Interfaith WASH Alliance (2019), held at Rishikesh, Uttarakhand, in December 2019, explained that transgender persons with immunosuppressed conditions such as HIV/AIDS need specific requirements for their conditions. She described that transgender people with such conditions avoid using public toilets as poor hygiene conditions increase their chances of catching deadly infections.

STRATEGIES FOR SOCIAL INCLUSION: RECOMMENDATIONS

Policy Designing and Formulation

1. Transgender communities should be recognised as equal stakeholders and consulted by the officials for setting up the WASH facilities, from policy formulation to implementation. This way, suitable areas can be identified, specific requirements of the community taken into account, and alternative solutions devised.
2. Policy designing and legislation need to perceive the transgender communities as heterogeneous groups whose identities and experiences differ vastly. These identities are further complicated by the intersection of vectors such as class, caste, gender, age, disability, etc.

3. The policies should not simply provide a technical solution but aim towards the larger goal of capacity building and empowerment of the community. It should include strategies that combat the issue of discrimination and stigma as well.
4. Any policy formulation directed towards providing WASH facilities may refer to the reach, enter, circulate and use (RECU) principle.

Level of Implementation

1. Emphasis towards Community-Led Total Sanitation [CLTS] programmes where transgender communities are mobilised to take community ownership of the WASH facilities. This means increasing involvement in the design outputs, as well as managing the facilities by themselves.
2. Expanding the scope of public spaces vis-a-vis the WASH facilities to include schools, colleges, workplaces, places of worship, and other such institutions. Functional toilets that cater for the need of transgender communities need to be established at all such locations.
3. Increasing focus to achieve greater awareness and sensitisation of the general public and government officials and sanitation workers towards the needs of the transgender communities to tackle discrimination and violence.
4. Creation of information, education, and communication (IEC) tools that provide innovative ways to understand and disseminate sanitation and hygiene issues among the community. For example, body-mapping tools that use illustrations to explain multiple aspects about people's bodies and lives.
5. Going beyond the technical infrastructures towards other required practices of sanitation. For example, menstrual hygiene facilities for transmen and non-binary people, friendly facilities for transgender people with physical disabilities, needs of transgender children, or issues of privacy.

Policy Monitoring and Evaluation of Interventions

1. Framework for monitoring and evaluation needs to be designed so that personal biases and prejudices that reflect gender-based discrimination can be avoided. It should be comprehensive, data-driven, and transparent.
2. Robust involvement of National Council for Transgender Personal [NCTP] and WASH based NGOs to evaluate the implementation process and provide feedback periodically.

3. Detailed review of the process to figure out other societal and institutional barriers that affect transgender communities' access to safe WASH facilities. For example, a lack of official identification documents such as Aadhar Card results in denial of SBM incentives.

CONCLUSION

From the acute shortage of WASH facilities and infrastructural inadequacies to discrimination and stigma attached to their gender identities, transgender people have been pushed to the margins of society, leading to an unending circle of social-economic exclusion. Therefore, when designing transgender-inclusive WASH facilities, it is important to consider not only the basic requirements but also issues of inclusion, rights, and dignity. Recognising the diversity of their identities and experiences, as well as the subsequent WASH requirements, is an essential part of engaging with the community. Correspondingly, these requirements must be contextualised within the larger discussion about the provision of legal recognition and rights that affirm gender equity.

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