

SANITATION AS A SOCIAL DETERMINANT OF HEALTH

(Based on the judgment of the Bombay High Court in Milun Suryajani and ors. vs. Pune Municipal Commissioner and ors.)
2015 SCC OnLine Bom 6256

A BASIC RIGHT FOR WOMEN IN PUBLIC PLACES

This is the story of a social activist and feminist writer moving the Bombay High Court seeking the enforcement of a fundamental right of women.



Initially the petition was filed only against the Pune Municipal Corporation, but as the case progressed, the court allowed the petitioners to add as respondents all Municipal Corporations within Maharashtra.

In 1989, Vidya Bal founded Milun Suryajani, a magazine focused on women's issues. In 2011, Vidya, along with the magazine through its editor and Nirmay Public Charitable Trust, filed a writ petition as a public interest litigation before the Bombay High Court seeking directions to:

provide and maintain latrines, privies and urinals and other similar conveniences for the women walking on the streets, in appropriate and convenient locations.

And thus began the court's intervention in ensuring the right to public health and sanitation for women.

A STATE-WIDE CALL TO ACTION

Through interim orders on 19 December 2014, the court directed all 14 Municipal Corporations in the state to evolve a scheme in consultation with women's rights organisations and NGOs working in the field. Aspects to be kept in mind were:



Planning toilets



Cleanliness and maintenance



Budgetary provisions for construction and maintenance



Evolving an affordable charge for use



Construction of E-Toilets where possible

All the municipal corporations filed their affidavits with respective schemes. These were taken up by the Court in its judgment of 23 December 2015.

Dissatisfied with the conditions laid out in the affidavits, the court noted that the existing toilets were *“poorly maintained, badly located and hardly used”* and decided to intervene.

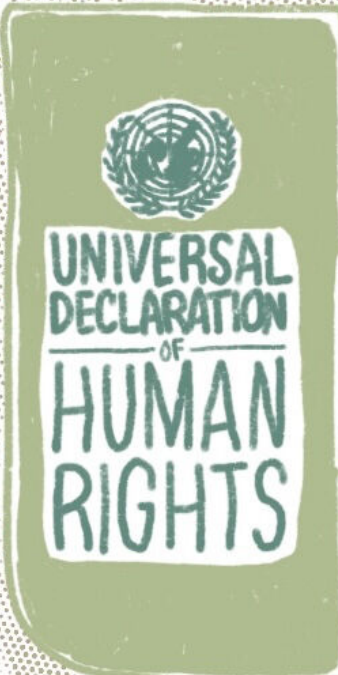
INVOKING THE CONSTITUTION, DOMESTIC LAW AND INTERNATIONAL INSTRUMENTS

The court looked to three sources of law in carving out an obligation on the State:



Section 63 of the Maharashtra Municipal Corporation Act, 1949 and Section 61 of the Municipal Corporation Act, 1888 provide for "Matters to be provided for by the Corporation":

* The court noted that all the municipal corporations in Maharashtra were covered between these two Acts. The two provisions cast an obligation on municipal corporations to carry out construction, maintenance and cleaning of drains, drainage work, public latrines, urinals and similar conveniences.



India's binding commitments under international law:

* The court further noted that Article 25 of the Universal Declaration of Human Rights (UDHR) also guarantees the right to a standard of living adequate for health and wellbeing and that Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to highest attainable standard of physical and mental health as a human right.

Importantly, the court noted the General Comment No. 14 to Article 12 of ICESCR which explicitly states that social determinants of health, in this case, the right to adequate sanitation facilities, is an essential component of the right to health. Social determinants of health include social, economic and political factors and policies which impact people's ability to realize the right to health.



Article 47 of the Constitution: Duty of the State to raise the level of nutrition and standard of living and to improve public health

*Article 47 is a Directive Principle of State Policy (DPSP) and as such is not judicially enforceable per se, even though the central and state governments have the power to base law and policy decisions on them. DPSPs, however, can be judicially enforced by reading them with corresponding fundamental rights. In this case, the obligation to improve public health under Article 47 was read with the fundamental right to health under Article 21.



Article 21 of the Constitution: Right to life

With the obligations of the State clearly set out, the court noted that the Right to Life under Article 21 includes a right to access sanitation facilities, declaring:

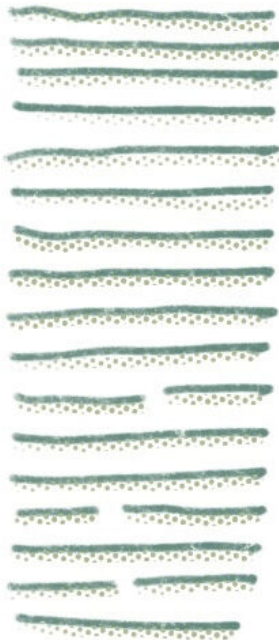
“No human being can live with dignity unless there are facilities to maintain basic hygiene. The right conferred by Article 21 cannot be meaningful if facilities of clean toilets and hygienic toilets are not provided to a woman walking on streets. She needs these facilities at public places like Railway Stations, Bus Stands, Banks, Public Offices like State Government Offices/ Municipal Offices.”

GOING BEYOND THE LAW: WHAT ASPECTS DID THE COURT CONSIDER?

The court took into account various implications of the lack of public toilets for women:

HEALTH IMPLICATIONS

The court took into consideration medical reports and noted that deferring urination could lead to urinary tract infections, problems of distended bladders and a range of urogynecological problems.



GENDER AND SANITATION

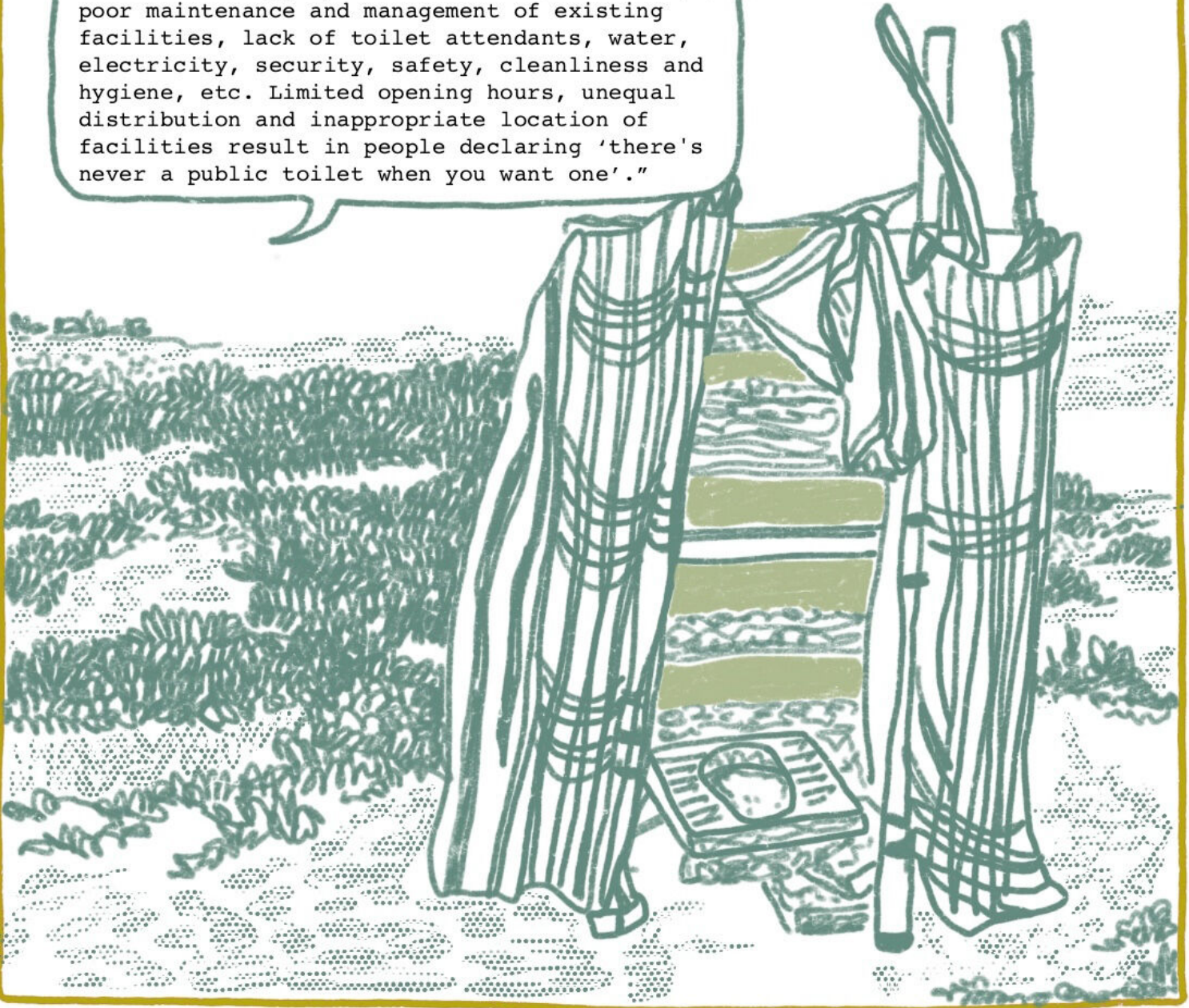
The court noted that city planners and municipal corporations must take into account sexual and reproductive health concerns of women to develop more equitable public sanitation facilities.

It highlighted that women already have less than half of the public services available for men in public spaces. Also, women often combine childcare and home-maker responsibilities, in addition to professional labour, which results in travel needs which are qualitatively different from men's work and travel. Further, women also access public spaces like parks for leisure, thus requiring greater accessibility of public toilets in many locations. The need for improved access to public sanitation facilities is felt even more acutely due to menstrual healthcare needs of women, in addition to the fact that women comprise a large proportion of primary caregivers for the elderly, persons with disabilities and children.



INFRASTRUCTURAL DRAWBACKS

"The toilet problems are further aggravated because of inappropriate locations, bad design, poor maintenance and management of existing facilities, lack of toilet attendants, water, electricity, security, safety, cleanliness and hygiene, etc. Limited opening hours, unequal distribution and inappropriate location of facilities result in people declaring 'there's never a public toilet when you want one'."



THE COURT'S DIRECTIONS

Linking the right to access to public toilets with the right to life and human dignity, the court directed each municipal corporation to constitute a committee which would include concerned Municipal Officers, Officer-in-charge of Women and Child Development, Chairman of the Standing Committee, women representatives of NGOs and female Municipal Councillors. The committee was directed to ensure the following:

A comprehensive scheme identifying spots to construct toilets and their maintenance to be formulated. A private-public partnership may be entered into for the purposes of constructing these toilets.

The scheme may provide for payment of 'user charges' for use and maintenance of the said facilities – however, the charges must not be prohibitively expensive for women.

A survey of possible locations to be carried out which should be around gardens, bus stops, rickshaw/taxi stands, railway stations and other crowded places.

All toilets should have adequate light during the day, electricity and water supply and where possible should be powered by solar panels.

Other essentials of such toilets include:

- Regular cleaning equipment
- Female attendants
- All necessary equipment such as dustbins, soap dispensers, sanitary products
- At least 1 toilet accessible for persons living with disabilities in every facility

Once the toilets are constructed, there should be mechanisms such as surprise checks by members of the committee to ensure upkeep. A grievance redress mechanism must be set up with contact details displayed at each of the public toilets.

Enough publicity as well as signages for the public toilets must be ensured.

POLICY AS LAW: A HUMAN RIGHT TO SANITATION

What we witness in *Milun Suryajani* is an important policy intervention made by the Bombay High Court. However, we have to understand the issue of sanitation and the right to public toilets as an issue that requires synergy between state and non-state actors.

Some important factors to consider are*:



In 2015, the United Nations General Assembly declared sanitation as a universal human right. Sustainable Development Goal target number 6.2 calls for equitable sanitation for all.



As of 2021, India is still not free from the practice of open defecation. A joint monitoring programme on water, sanitation and hygiene of the WHO and the UNICEF revealed that 15% of India's population still defecates in the open.



India introduced the Swachh Bharat Mission in 2014 and the Economic Survey of 2018-2019 showed that over 9.5 crore toilets had been built under this Mission. However, just like the Bombay High Court took a multifaceted approach to this issue, we too must ask some difficult questions:



Intersectionality:

What are the caste, cultural and religious factors that affect access to public toilets?



Infrastructure:

Are we updating our practices and infrastructure such as drainage to ensure complete hygiene?



Health implications:

What are the long-term health impacts of the lack of access to sanitation?



Budget:

How much of our public resources are we dedicating towards a right to sanitation?

(*Source: <https://thewire.in/government/heres-why-india-is-struggling-to-be-truly-open-defecation-free>)

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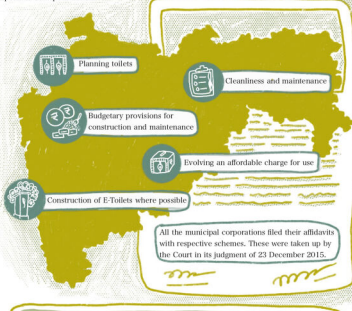
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INVOKING THE CONSTITUTION, DOMESTIC LAW AND INTERNATIONAL INSTRUMENTS

The court looked to three sources of law in carving out an obligation on the State:



Section 61 of the Maharashtra Municipal Corporation Act, 1919 and Section 61 of the Municipal Corporation Act, 1947, provide for "assistance to be provided for by the Corporation".

The court noted that all the municipal corporations in Maharashtra were covered between these two Acts. The two provisions cast an obligation on municipal corporations to carry out construction, maintenance and cleaning of drains, drainage work, public latrines, urinals and similar conveniences.



India's binding commitments under international law.

The court further noted that Article 25 of the Universal Declaration of Human Rights (UDHR) also guarantees the right to a standard of living adequate for health and wellbeing and that Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to the highest attainable standard of physical and mental health as a human right.

Importantly, the court noted the General Comment No. 14 to Article 12 of ICESCR which explicitly states that social determinants of health, in this case, the right to adequate sanitation facilities, is an essential component of the right to health. Social determinants of health include social, economic and political factors and policies which impact people's ability to realise the right to health.

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- As of 2021, India is still not free from the practice of open defecation. A joint monitoring programme on water, sanitation and hygiene of the WHO and the UNICEF revealed that 15% of India's population still defecates in the open.
- India introduced the Swachh Bharat Mission in 2014 and the Economic Survey of 2018-2019 showed that over 13 crore toilets had been built under this Mission. However, just like the Bombay High Court took a multifaceted approach to this issue, we too must ask some difficult questions:
 - Intersectionality:** What are the caste, cultural and religious factors that affect access to public toilets?
 - Infrastructure:** Are we updating our practices and infrastructure such as drainage to ensure complete hygiene?
 - Health implications:** What are the long-term health impacts of the lack of access to sanitation?
 - Budget:** How much of our public resources are we dedicating towards a right to sanitation?

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