

**INTERNATIONAL COMMISSION OF JURISTS’ RESPONSE TO THE QUESTIONNAIRE FOR NON-STATE ACTORS OF THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS TO SAFE DRINKING WATER AND SANITATION IN VIEW OF HIS FORTHCOMING REPORT TO THE 2019 HUMAN RIGHTS COUNCIL ON THE HUMAN RIGHTS TO WATER AND SANITATION IN SPHERES OF LIFE BEYOND THE HOUSEHOLD, IN PARTICULAR IN PUBLIC SPACES**

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**Introduction**

The International Commission of Jurists (ICJ) welcomes the opportunity to respond to the questionnaire for non-State actors on access to water and sanitation in public spaces put forth by Mr. Léo Heller, the United Nations Special Rapporteur on the human rights to water and sanitation (“Special Rapporteur”); the organization hopes that the present response will assist the Special Rapporteur in the preparation of his 2019 Human Rights Council report on the human rights to water and sanitation in spheres of life beyond the households, in particular in public spaces.

The ICJ’s submission focuses on the status and the impact of inadequate access to water and sanitation on lesbian, gay, bisexual, transgender and queer individuals (LGBTQ),[[1]](#footnote-1) and more specifically on transgender persons and non-binary persons,[[2]](#footnote-2) who are among those on whom the UN Special Rapporteur intends to focus in his upcoming report. The submission draws on the ICJ’s ongoing work on the human rights of LGBTQ persons in India.

1. **Please outline your organisation’s purpose, target populations, and methods of achieving your stated aims.**

*Target Populations and Methods*

Between 2015-2017 the ICJ documented civil and political rights violations faced by lesbian, gay, bisexual, transgender, and gender-queer (LGBTQ) persons in India. Such abuses resulted from actions of State actors (including police officials, judges, public prosecutors) and non-State actors (including family and other community members). ICJ’s research in this regard was based on primary data collected from 150 interviews with LGBTQ persons across 9 cities and from responses to ‘Right to Information applications’[[3]](#footnote-3) filed with various state departments relating to arrests, detention, blackmail, extortion, sexual violence and custodial torture faced by LGBTQ persons. This research resulted in the 2017 publication of the ICJ’s report, “‘Unnatural Offences’: Obstacles to Justice in India Based on Sexual Orientation and Gender Identity”.[[4]](#footnote-4) The report was cited by the Indian Supreme Court in *Navtej Singh Johar v. Union of India,*[[5]](#footnote-5) which held that provisions of Indian law criminalizing same-sex intercourse were unconstitutional*.*[[6]](#footnote-6)

In the second phase of this work, from 2017 to date, the ICJ is analyzing the access to and enjoyment of economic, social, and cultural (ESC) rights by LGBTQ persons. This research, which follows the same methodology as the “Unnatural Offences” report, focuses on access to adequate housing, decent work, and public spaces and services including water and sanitation. The goal of the project is to reveal, address, and reduce discriminatory treatment against LBGT persons as a result of discriminatory laws and practices. The project also seeks to highlight the connection between stigma, discrimination, violence and abuse against LGBTQ persons and access to ESC rights.

As part of this research, the ICJ has interviewed 65 LGBTQ individuals about their access to water and sanitation facilities in public spaces.[[7]](#footnote-7) In this context, this submission highlights the status and the impact of inadequate access to water and sanitation on LGBTQ persons in India, with a focus on transgender individuals and non-binary persons.

# **How does your organization define public space and does this differ from how public space is defined in the legislative or policy framework of the country where you operate?**

“Public spaces” are not clearly defined in the Indian legal and policy framework. Nevertheless, the Indian Constitution guarantees to every citizen a fundamental right to access public spaces without discrimination on prohibited grounds. Article 15(2) of the Indian Constitution prohibits discrimination in “access to shops, public restaurants, hotels, and places of public entertainment” or in “the use of wells, tanks, bathing *ghats*,[[8]](#footnote-8) roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public”, on the basis of religion, caste, race, sex, place of birth.[[9]](#footnote-9) The Supreme Court has expanded this list of prohibited categories for discrimination to include gender identity[[10]](#footnote-10) and sexual orientation.[[11]](#footnote-11)

The prohibition of discrimination on listed grounds to a variety of listed public spaces extends to spaces “dedicated to the use of the general public”, regardless of whether they are funded by the state. The ICJ also submits that the list of public spaces provided is non-exhaustive and extends to analogous public spaces, such as sanitation and water facilities, and public transport.

The ICJ has examined access to public spaces that were most frequently cited as sites of violence and discrimination by the interviewees. These include streets and parks that are otherwise open to the public (whether publicly or privately owned and maintained); public transport (such as buses, trains, metro, railways, and airways); gendered spaces within any public spaces (such as toilets, or areas that control access to single sex spaces such as security queues); malls and shopping centres; and places and events of cultural and religious importance.

In this submission, the ICJ will focus on inadequate access to public toilets on the roads, public toilets in public transport, public toilets in places of religious importance, toilets in schools and universities and toilets in workplaces, faced by transgender persons and non-binary persons. The ICJ will also discuss the related status and impact of right to sanitation on right to water.

# **Please describe your involvement in ensuring or improving access to water and sanitation in various public spaces (e.g. streets and squares, markets, bus stations, train stations and airports), including details of any past, current, or future projects in this area.**

Through this project, the ICJ aims, among others, to raise concern about the impact of inadequate access to water and sanitation experienced by LGBTQ persons in light of India’s international legal obligations. The ICJ’s objective through this project is to conduct advocacy with the Indian State and with the United Nations about discriminatory laws and practices faced by LGBTQ persons and to raise awareness about violence and discrimination against LGBTQ persons, as well as the remedies available to LGBTQ persons, through engagement with the judiciary and other legal professionals.[[12]](#footnote-12)

# **Please outline the major difficulties faced by populations needing access to water and sanitation in public spaces.**

ICJ’s research records that transgender persons and non-binary persons express difficulties in accessing sanitation facilities in public spaces, including inability to access toilets (gendered or non-gendered) that correspond to their self-identified gender due to infrastructural deficiencies, and risk of gender-based violence and harassment. Furthermore, some of the problems highlighted by the ICJ’s research will typically also affect cis-het women[[13]](#footnote-13) (such as the risk of sexual violence) and other individuals (such as inadequate access due to poor infrastructure).

The ICJ’s interviews highlights 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. Gender-identity based violence in and around public sanitation facilities is rampant. Several transgender women and non-binary men have informed the ICJ that they are at risk of sexual and physical violence in public toilets reserved for men, particularly, based on the underlying flawed notion that they are sex workers.[[14]](#footnote-14)

Further, men’s toilets in India often have open urinals. Transgender men who have not undergone phalloplasty[[15]](#footnote-15) and are unable to stand and urinate are thus unable to use toilets that only have open urinals. In addition, several men, particularly non-binary men are uncomfortable with using open urinals.

Transgender persons and non-binary persons are also usually unable to access toilets reserved for women, due to hostile and abusive reactions from cis-gendered women, who fear they would expose themselves to the risk of gender-based violence. This is corroborated by Akkai Padmashali, a transwoman and head of Ondede, an NGO focused on awareness creation about sexuality, sexual diversity, and gender identity. She stated that she was yelled at and told that a women’s toilet is not for her by a cis-gendered woman. This incident took place in a toilet inside the building of the State Legislature of Karnataka, while attending a meeting with the law minister.[[16]](#footnote-16) Further, several transwomen told the ICJ that upon entering the public toilet reserved for women, they avoided talking on the phone, as they feared being identified as transgender persons by cis-gendered women, and being the target of harassment and abuse, as a result.

Inaccessibility of toilets compels transgender persons and non-binary persons to avoid drinking water, and to hold their urine for long periods of time. Akkai Padmashali has stated in an interview that she does not drink water before meetings as well as before she goes on long journeys as she is fearful of public toilets.[[17]](#footnote-17) C, a transman, told the ICJ that he was unable to urinate during long bus journeys, as men were expected to stand and urinate on the roadside at most halts. Thus, the inability to access toilets also affects transgender and non-binary persons’ ability to travel, and thereby their freedom of movement as well as their right to work.

Specific examples of such violations of the human right to water and sanitation, drawn directly from the ICJ’s interviews, are provided in response to Q. 6.

# **Please describe the main obstacles faced by people that live or work in public spaces in the country where you operate in accessing water and sanitation in accordance with the normative content of the rights and the principles of equality and non-discrimination, participation, sustainability, progressive realization and access to remedies, and accountability.**

According CESCR’s General Comment on the right to water, sanitation facilities must be available, accessible, affordable, acceptable, and of good quality.[[18]](#footnote-18) Non-discrimination in the right to adequate sanitation is an immediate obligation on states in terms of the rights to water and sanitation.[[19]](#footnote-19)

Transgender persons and non-binary persons fear discrimination and violence in accessing public sanitation facilities such as public toilets.[[20]](#footnote-20) In her 2012 report, the former Special Rapporteur recognized that the use of gender identity segregated public bathrooms:

“has been associated with exclusion, denial of access, verbal harassment, physical abuse and sometimes even the arrest of transgender and intersex individuals. More broadly, they are at risk of exposure, violence and harassment in seeking access to services such as water and sanitation when those are in common areas, or where privacy is unavailable or compromised.”[[21]](#footnote-21)

This built on the Special Rapporteur’s 2011 report on her mission to the USA in which she acknowledged that:

“[the] evacuation of the bowels and bladder is a necessary biological function and … denial of opportunities to do so in a lawful and dignified manner can both compromise human dignity and cause suffering, such denial could, in some cases (e.g., where it results from deliberate actions or clear neglect) amount to cruel, inhumane or degrading treatment. Individuals are sometimes compelled to go to extraordinary lengths to prevent such suffering”.[[22]](#footnote-22)

The Yogyakarta Principles[[23]](#footnote-23) call upon states to ensure safe and dignified access to adequate sanitation facilities for all persons without SOGIESC based discrimination.[[24]](#footnote-24) Moreover, as has been indicated, non-discriminatory access to a wide range of public spaces as such is also a right in terms of the Indian Constitution.[[25]](#footnote-25)

The human right to water and sanitation has also been highlighted in the Sustainable Development Goals. Goal 6 calls for clean water and sanitation for all persons. Target 6.3 seeks to “achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations” by 2030.

Transgender persons and non-binary individuals inability to access public toilets in India stems in part from the State’s failure to take legislative and other measures, within its maximum available resources to realize the rights to water and sanitation. Such failures include failures to build gender neutral toilets and to combat societal stigma.[[26]](#footnote-26)

Moreover, in addition to directly violating the access component of the right to water and sanitation, the lack of adequate sanitation further restricts the right of LGBTQ persons to access public spaces, such as streets, transportation facilities (particularly for long distance travel), hotels and parks. Access to such public spaces has been recognized as a vital precondition for the effective and equal enjoyment of all human rights under various international legal instruments.[[27]](#footnote-27) The Supreme Court of India has also held that inaccessibility of LGBT persons to public spaces, specifically to transport and to adequate sanitation facilities, violates fundamental rights guaranteed under the Indian Constitution.[[28]](#footnote-28)

# **Please describe your organization’s assessment of access to water and sanitation in public spaces in the country where you operate, providing both positive and negative examples, including costs for use, availability of the services, safety of users during access, quality of facilities and other human rights concerns. Please outline any research or assessment that have been done in this regard.**

This discusses the impediments to LGBTQ persons’ access to water and sanitation in public spaces as revealed by the ICJ’s research, and then the policy initiatives undertaken by the state to enable non-binary persons access to toilets.

The following are examples of major impediments to LGBTQ persons’ access to water and sanitation in public spaces revealed by the ICJ’s research.

*Infrastructural deficiencies*

Transgender persons may be unable to access gendered toilets which are not designed to suit their needs. For instance, transmen who have not undergone phalloplasty are unable to access men’s toilets that lack private stalls. Transgender persons may also be unwilling to use toilets specifically marked for transgender persons, for fear of revealing their gender identity and exposing themselves to stigma, harassment, discrimination, violence and other abuse. Their inability to access such facilities impacts on their freedom of movement, including their mobility in accessing employment opportunities.

* **C, a transman**, told the ICJ that he avoids going on long bus journeys, as most halts either do not have adequate private stalls in men’s washrooms, or men are expected to stand and urinate in the open – something that he is unable to do. He said that sometimes when he is in the bus and has to use the washroom, then he instead just urinates on the seat. He sees no other option for himself, and thinks that he may have to start using adult diapers.
* **S, a transman**, told the ICJ that he looks for a unisex toilet whenever he has to use a public toilet, so that he is not suspected of being transgender person.

Transgender persons also face difficulties in accessing gendered toilets in public spaces, such as schools and universities, which, in turn, detrimentally impacts on their right to education. Two such examples are stated below:

* **J, a transman**, said that he was unable to use toilets in school as the boys’ toilets only had urinals, and did not have any private stalls. He was unable to use the boy’s toilet since he had not undergone phalloplasty. He avoided using the girl’s toilet as well, since he did not want to be identified as a transgender person. J continued to face difficulties in accessing toilets while pursuing higher education. When he eventually began working, security guards would prevent him from using the women’s toilet at the workplace.
* **T, a transwoman**, said that she was deprived of a healthy learning environment as the University where she was studying did not have any gender-neutral toilets. When a few transgender students raised this issue, the authorities marked one of the toilets on the University campus for use by transgender persons only.

*Verbal, physical, and sexual harassment and violence*

Toilets were highlighted as sites of sexual violence by some of the interviewees. Some transgender persons also pointed out that their presence in women’s toilets leads to suspicion of breach of privacy, and often results in verbal and physical violence and harassment against them. As a result, these violations of their rights to water and sanitation also have a detrimental impact on their freedom and security of person and may also negatively impact on their ability to participate in cultural and religious practices.

* **J, a transman**, shared that he and another transman friend of his were subject to harassment and assault for using the women’s bathroom to change clothes. They had gone to a place of worship on a river-bank. When they went to change clothes in the women’s bathroom, a security guard shouted at him for entering the washroom, and assaulted them with a stick.
* **S, a transman**, had gone to a place of worship, and wanted to use the toilet. At the time, he hadn’t undergone breast removal surgery, but was undergoing hormone therapy. As soon as he entered the women’s toilet, everyone present there started questioning him, shouting at him, and asking him to leave. His sister had to negotiate with them, and assert that he was a woman in order to diffuse the tense situation.
* **U, a transwoman**, said that she avoided using the toilet at her place of work, because she had experienced sexual assault inside a toilet in her previous workplace. To avoid going to the washroom, she did not drink water, and would hold her urine for long hours. This resulted in stomach pain, and consequently, poor performance at work.

Policy initiatives taken to enable non-binary persons access to toilets:

The Central and state governments in India have taken some policy measures to enable transgender and non-binary persons access to toilets. These include the following:

* The Ministry of Drinking Water and Sanitation is the nodal Ministry for the overall policy, planning, funding and coordination of two programs of the Central government:the National Rural Drinking Water Programme[[29]](#footnote-29) (NRDWP) (for rural drinking water supply) and the Swachh Bharat Mission[[30]](#footnote-30) (for sanitation in the country). In April 2017, the Ministry also issued guidelines stating that members of the “third-gender community”[[31]](#footnote-31) should be allowed to use public toilets of their choice (including toilets typically reserved for either men or women).[[32]](#footnote-32)
* The state of Karnataka requires the Transport Department and Urban Development Department to ensure that public toilets for transgender persons are made available in places such as bus, stands, shopping places, cinema halls, hospitals, railway stations, etc.[[33]](#footnote-33) The policy, however, does not specify whether this should be done by constructing gender-neutral toilets, or toilets specifically for transgender persons, or by allowing transgender persons to use the toilet of their choice.
* Municipalities in some districts of Tamil Nadu, Karnataka[[34]](#footnote-34) and Madhya Pradesh[[35]](#footnote-35) have taken steps to construct separate toilets for transgender persons, or unisex toilets open to all.[[36]](#footnote-36)

In the absence of additional positive steps by the state to combat stigma against transgender and non-binary persons, as well as the lack of concerted and collaborative efforts by the various ministries of the government, broad policy statements have effectively remained a dead letter and, by themselves alone, have not enabled access to adequate sanitation facilities. Transgender individuals and non-binary persons are often insufficiently consulted in these policy development processes.

Moreover, formal government policies are often unknown to state officials ultimately responsible for ensuring access to sanitation (such as local officials, police, and security personnel outside sanitation facilities). Written policies therefore go largely unimplemented and contrast significantly with the continued lived reality against which the vast majority of transgender and non-binary individuals continue to struggle to achieve basic access to water and sanitation throughout India.

# **Please specify how access to water and sanitation in public space is regulated and monitored, and whether this monitoring and regulatory framework is effective.**

# This submission is limited to the issue of discrimination faced by transgender persons and non-binary individuals in access to sanitation facilities, based on the findings of ICJ’s research in India. It does not deal with monitoring and evaluation of access to water and sanitation within government structures.

# **Please give details of any relevant judicial or quasi-judicial action at both domestic or international level you have been involved in, or are aware of, that concerns access to water and sanitation in public spaces, and which applies a rights-based approach.**

The ICJ has not been involved in judicial or quasi-judicial action at the Indian domestic level that concerns water and sanitation in public spaces. The ICJ has nonetheless discussed judicial decisions at the domestic level which apply a rights based approach to access to water and sanitation in public spaces, and which require the State to construct sanitation facilities for transgender persons. A brief summary of such decisions is provided.

* In **Milun Suryajani v. Pune Municipal Corporation**, the High Court of Bombay[[37]](#footnote-37) directed the Pune Municipal Corporation to construct and maintain toilets for women in public areas, noting that they were essential for leading a life of dignity; the Court read together Article 21[[38]](#footnote-38) and Article 47[[39]](#footnote-39) (directive principle on improving public sanitation and health), to recognize and reiterate the positive obligation of the state to make available public toilets.
* In ***National Legal Services Authority v. Union of India*,** the Supreme Court of India recognized the challenges faced by transgender persons in accessing toilets. In this case, the Court directed the Central and State governments to “take proper measures to provide medical care to [transgender persons] in the hospitals and also provide, them separate public toilets and other facilities”.[[40]](#footnote-40) Following this case, a public interest litigation (PIL) case was filed before the Madras High Court to bring to its attention the lack of toilets for transgender persons, especially in areas where they live in large numbers.[[41]](#footnote-41) This case is currently pending before the High Court.
* In[***Vincent Panikulangara* v. *Union of India***](https://indiankanoon.org/doc/1305721/) the Supreme Court held the State is obligated to create and sustain conditions congenial to good health of all as a component of the right to life.[[42]](#footnote-42) The unavailability and inaccessibility of public toilets clearly deprives individuals of their right to health.

In ***Navtej Singh Johar v. Union of India****,* Supreme Court of India, ruled that the criminalization of consensual same-sex relationships under s.377 of the Indian Penal Code violates the Indian Constitution, and is in breach of India’s obligations under international law.[[43]](#footnote-43) In so doing it clearly acknowledged that the prohibition of non-discrimination in the Indian Constitution extends to LGBTQ persons including transgender persons and non-binary persons. In coming to this conclusion the Court also found that s. 377 perpetuated stereotypes and homophobic attitudes “making it almost impossible for victims of abuse to access justice”[[44]](#footnote-44). It therefore concluded that:

“ the social effects of such a provision … is to sanction verbal harassment, familial fear, *restricted access to public spaces and the lack of safe spaces* [against LGBTQ persons]. This results in a denial of the self. Identities are obliterated, denying the entitlement to equal participation and dignity under the Constitution. Section 377 deprives them of an equal citizenship.”[[45]](#footnote-45)

1. The term “LGBTQ” refers to any individual who identifies with a non-normative sexual orientation or gender identity. It includes individuals who identify as lesbian, gay, bisexual, transgender, intersex and gender-queer, and also encompasses persons who may not fit into any of these identity categories. “Queer” should be read to include other people who face human rights violations on the basis of their actual or perceived sexual orientation, gender identity and/or expression and sex characteristics, including those who may identify with terms other than “queer”. [↑](#footnote-ref-1)
2. “Non-binary persons”, sometimes also referred to as gender non-conforming individuals, are people who have a gender identity or gender expression that does not subscribe to the binary male or female gender. [↑](#footnote-ref-2)
3. Section 6, Right to Information Act, 2005. [↑](#footnote-ref-3)
4. International Commission of Jurists, *“Unnatural Offences” Obstacles to Justice in India Based on Sexual Orientation and Gender Identity* (2017). <https://www.icj.org/wp-content/uploads/2017/02/India-SOGI-report-Publications-Reports-Thematic-report-2017-ENG.pdf> (Accessed on 26 February 2019). [↑](#footnote-ref-4)
5. *Navtej Singh Johar v. Union of India*, Supreme Court of India, (2018)10SCC1, (Navtej Johar) paras 109 to 111. The Supreme Court ruled that the criminalization of consensual same-sex relationships under Section 377 violates the Indian Constitution, and is in breach of India’s obligations under international law. [↑](#footnote-ref-5)
6. Indian Penal Code, 1860, section. 377 reads, “Unnatural offences.—Whoever voluntarily has carnal inter­course against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with impris­onment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.” [↑](#footnote-ref-6)
7. This research drawn on in this submission is based on 65 qualitative interviews conducted with LGBTQ persons, activists, and lawyers from six states: Delhi, Gujarat, Manipur, Tamil Nadu, Kerala and Karnataka, as well as 67 Right to Information applications filed with various state departments to obtain information relating to: a) implementation of state level schemes formulated for the welfare of transgender persons, b) reservations for transgender persons in public institutions, c) government-run shelter homes for transgender persons, d) availability and accessibility of toilets for transgender persons in public transport, and e) legal gender recognition for transgender persons. The ICJ has also relied on secondary research and literature focused on these and other states. In this submission, the names of the interviewees have been withheld to maintain confidentiality. The research findings outlined in this submission will be published by the ICJ later in 2019. [↑](#footnote-ref-7)
8. “*Ghat*” refers to a series of steps leading down to a body of water. Bathing *ghats* are common areas used for bathing. [↑](#footnote-ref-8)
9. Constitution of India, 1950, article 15(2) states, “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.” Supreme Court of India, *Indian Medical Association v. Union of India*, (2011)7SCC179, para 113, states that public spaces that are privately owned but are intended to be open for use by the general public “ought not to be conducting their affairs in a manner which promote existing discriminations and disadvantages.” [↑](#footnote-ref-9)
10. *National Legal Services Authority v. Union of India*, Supreme Court of India (2014), 5 SCC 438, (NALSA) para 66 states, “Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex' Under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity.” [↑](#footnote-ref-10)
11. *Navtej Johar*, para 393 states, “A provision challenged as being ultra vires the prohibition of discrimination on the grounds only of sex Under Article 15(1) is to be assessed not by the objects of the state in enacting it, but by the effect that the provision has on affected individuals and on their fundamental rights. Any ground of discrimination, direct or indirect, which is founded on a particular understanding of the role of the sex, would not be distinguishable from the discrimination which is prohibited by Article 15 on the grounds only of sex;” *K.S. Puttaswamy v. Union of India,* Supreme Court of India*,* (2017)10SCC1, para 126 states, “…Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. Equality demands that the sexual orientation of each individual in society must be protected on an even platform. The right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution.” [↑](#footnote-ref-11)
12. International Commission of Jurists, *Adjudicating Economic, Social and Cultural Rights at National Level: A Practitioner’s Guide* (2014), chapter 2(a)(v) and (viii), available at https://www.icj.org/wp-content/uploads/2015/07/Universal-ESCR-PG-no-8-Publications-Practitioners-guide-2014-eng.pdf (Accessed on 26 February 2019). [↑](#footnote-ref-12)
13. “Cis-het” is a term used to refer to cis-gendered and heterosexual persons. [↑](#footnote-ref-13)
14. *See* Mrinalika Roy, “India's transgender community still waiting for toilets it was promised” Reuters (8 August 2016) available at <https://in.reuters.com/article/india-transgender-toilets-idINKCN10J0VL> (Accessed 26 February, 2019). [↑](#footnote-ref-14)
15. “Phalloplasty” refers to the construction or re-construction of the penis. [↑](#footnote-ref-15)
16. Prabhu Mallikarjunan, “For Almost 5 Lakh Indians, Using A Public Toilet Means Abuse And Harassment”, available at <https://www.youthkiawaaz.com/2016/11/no-public-toilets-for-transgender-people/(Accessed> 26 February, 2019) [↑](#footnote-ref-16)
17. *Id*. [↑](#footnote-ref-17)
18. UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 15: The Right to Water, E/C.12/2002/11, 20 January 2003. [↑](#footnote-ref-18)
19. UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009. [↑](#footnote-ref-19)
20. Please see response to Question no. 6. [↑](#footnote-ref-20)
21. UN Human Rights Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, A/HRC/21/42, 2 July 2012, para 40; UN Human Rights Council, The human rights to safe drinking water and sanitation: resolution / adopted by the Human Rights Council on 29 September 2016, A/HRC/RES/33/10, 5 October 2016. [↑](#footnote-ref-21)
22. UN Human Rights Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, A/HRC/18/33/Add.4, 2 August 2011, para 58. [↑](#footnote-ref-22)
23. Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, March 2007, <http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf> (Accessed on 26 February 2019). [↑](#footnote-ref-23)
24. Additional Principles And State Obligations On The Application Of International Human Rights Law In Relation To Sexual Orientation, Gender Identity, Gender Expression And Sex Characteristics To Complement The Yogyakarta Principles, Principle 35 states, “Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, including on the basis of sexual orientation, gender identity, gender expression or sex characteristics.” [↑](#footnote-ref-24)
25. Constitution of India, 1950, Art. 15(2). [↑](#footnote-ref-25)
26. UN Human Rights Council, Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, A/HRC/21/42, 2 July 2012, para 57 states, “Article 17 of the International Covenant on Civil and Political Rights goes on to guarantee that ―everyone has the right to the protection of the law against such interference or attacks‖, thus including an explicit guarantee of protection against interference by private parties. This results in a positive obligation of States parties to protect privacy against interference and attacks by others, which has been found to be of particular relevance, for instance, in relation to persons deprived of personal liberty, older persons, persons with disabilities or transgendered persons. This provision is of enormous significance in the context of combatting stigma. It clearly demonstrates that States‘ obligations reach into the private sphere. They cannot dismiss stigma as a social phenomenon over which States have no influence. Instead, they have positive obligations that extend into this realm, requiring States, for instance, to take measures that enable women and girls to manage their menstrual hygiene needs in a manner that protects their privacy and dignity.” [↑](#footnote-ref-26)
27. Convention on the Rights of Persons with Disabilities (CRPD), Arts. 3 and 9 state that accessibility on an equal basis as others of the physical environment, transportation, and of facilities open to and provided to the public, is essential for leading an independent life and to enable full participation in all aspects of life. International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Art. 5(f) prohibits discrimination in access to “any place or service intended for use by the general public;” Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), preamble and Art. 7 states that all women should have non-discriminatory access to participate in public life. [↑](#footnote-ref-27)
28. *Rajive Raturi vs. Union of India*, Supreme Court of India,(2018)2SCC413; NALSA, para 55 states, “Further, access to public toilets is also a serious problem they face quite often. Since, there are no separate toilet facilities for 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.” [↑](#footnote-ref-28)
29. India. 2013. *National Rural Drinking Water Programme: Movement towards ensuring people’s Drinking*

    *Water Security in Rural India Guidelines – 2013*. Ministry of Drinking Water and Sanitation. <https://mdws.gov.in/sites/default/files/NRDWP_Guidelines_2013_0.pdf> (Accessed on 26 February 2019). [↑](#footnote-ref-29)
30. India. 2017. *Guidelines for Swachh Bharat Mission (Gramin).* Ministry of Drinking Water and Sanitation. <https://mdws.gov.in/sites/default/files/Complete%20set%20guidelines_1.pdf> (Accessed on 26 February 2019). [↑](#footnote-ref-30)
31. ‘Third-gender’ is a term used to refer to transgender persons. [↑](#footnote-ref-31)
32. India. 2017. *Guidelines on gender issues in sanitation*. Ministry of Drinking Water and Sanitation. <https://mdws.gov.in/sites/default/files/Guidelines%20on%20Gender%20issues%20in%20Sanitation.pdf> (Accessed on 26 February, 2019). [↑](#footnote-ref-32)
33. Karnataka, India. 2017. *State Policy on Transgenders*. Government of Karnataka. Page 15, para 9.7. <http://www.khpt.org/wp-content/uploads/2018/01/TG-policy-1.pdf> (Accessed on 26 February 2019). [↑](#footnote-ref-33)
34. Shubhadeep Choudhry, *India’s first toilet for transgenders in Mysore*, The Tribune (20 November 2015). <http://www.tribuneindia.com/news/nation/india-s-first-toilet-for-transgenders-in-mysore/160491.html> (Accessed on 26 February 2019). [↑](#footnote-ref-34)
35. Jamal Ayub, *“*Country’s first: Bhopal to have separate public toilets for transgender community”, The Times of India (6 September 2016). https://timesofindia.indiatimes.com/city/bhopal/Countrys-first-Bhopal-to-have-separate-public-toilets-for-transgender-community/articleshow/54034223.cms (Accessed on 26 February 2019). [↑](#footnote-ref-35)
36. Mrinalika Roy, “India's transgender community still waiting for toilets it was promised”, Reuters (8 August 2016). <https://in.reuters.com/article/india-transgender-toilets/indias-transgender-community-still-waiting-for-toilets-it-was-promised-idINKCN10J0VL> (Accessed on 26 February 2019). [↑](#footnote-ref-36)
37. *Milun Suryajani v. Pune Municipal Corporation*, High Court of Bombay, 2016(2)ABR105. [↑](#footnote-ref-37)
38. Constitution of India, 1950, art. 21 states, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” [↑](#footnote-ref-38)
39. Constitution of India, 1950, art. 47 states, “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.” [↑](#footnote-ref-39)
40. *NALSA*, para 129(6) states “The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide, them separate public toilets and other facilities.” [↑](#footnote-ref-40)
41. “Madras HC directs Tamil Nadu govet to build public toilets for transgenders”, Hindustan Times (4 April 2017). <https://www.hindustantimes.com/india-news/madras-hc-directs-tamil-nadu-govt-to-build-public-toilets-for-transgenders/story-eVlLHoEpkF5RiHwhEF05iL.html> (Accessed on 26 February 2019). [↑](#footnote-ref-41)
42. *Vincent Panikurlangara v. Union of India*, Supreme Court of India, AIR1987SC990;, *Virender Gaur v. State of Haryana,* Supreme Court of India (1995)2 SCC 577, para 7 states, “…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.” [↑](#footnote-ref-42)
43. *Navtej Johar*, para 456. [↑](#footnote-ref-43)
44. *Id*, para 113. [↑](#footnote-ref-44)
45. *Id*, para 51. [↑](#footnote-ref-45)