



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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SWACCH BHARAT MISSION (URBAN) AND THE LEGAL FRAMEWORK FOR GENDER-SENSITIVE PUBLIC SANITATION IN INDIAN CITIES

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ABSTRACT

This article analyses Swachh Bharat Mission (Urban) through India's legal framework for gender-sensitive public sanitation. Drawing on Article 21 jurisprudence and Bombay HC precedents, it argues that constitutional dignity requires enforceable standards beyond mere construction. Implementation gaps in maintenance and accessibility persist, undermining women's urban rights.

INTRODUCTION

Sanitation in urban India is not merely an issue of municipal service delivery; it is closely tied to constitutional values, public health, and the right to live with dignity¹. The Swachh Bharat Mission (Urban) represents one of the most visible policy interventions in this area. Its stated aim of improving urban sanitation is undeniably important, yet the real test of such a mission lies not in numerical expansion alone, but in whether sanitation facilities are actually usable, inclusive, and responsive to the needs of different users. For women, this means access to toilets that are safe, well-lit, clean, properly located, and equipped with the basic facilities necessary for privacy and hygiene². A purely infrastructural understanding of sanitation is therefore insufficient. This article examines the Swachh Bharat Mission (Urban) through the legal framework governing gender-sensitive public sanitation in Indian cities. It argues that public

¹ India Const. art. 21.

²Ministry of Housing and Urban Affairs, *Swachh Bharat Mission – Urban 2.0 Operational Guidelines* (Gov't of India 2021), <https://sbmurban.org/storage/app/media/pdf/swachh-bharat-2.pdf>

sanitation must be understood as a rights-based obligation shaped by constitutional principles, judicial reasoning, and municipal responsibility.

MEANING AND IMPORTANCE OF GENDER-SENSITIVE PUBLIC SANITATION

Gender-sensitive public sanitation should be understood not simply as a matter of providing separate toilet facilities for women, but as a legal and institutional requirement to ensure that public sanitation is accessible, safe, hygienic, and responsive to women's specific needs. In this sense, sanitation cannot be reduced to physical infrastructure alone. Its legal significance lies in whether public authorities have created conditions in which women are able to use public sanitation facilities with dignity, privacy, and security. The issue therefore concerns not only service delivery, but also the nature of the State's obligation in relation to equality and basic urban citizenship³.

Such measures, while important, do not fully address whether a toilet is functional, safe, or actually usable by women in daily urban life. A toilet without water, lighting, menstrual hygiene facilities, or secure access may satisfy administrative reporting requirements, yet fail to meet the constitutional values of dignity and equal access that should guide public services. From a legal perspective, the existence of infrastructure cannot by itself be treated as evidence of meaningful compliance⁴.

The importance of gender-sensitive sanitation becomes sharper when viewed through the constitutional framework. The right to life under Article 21 has been interpreted broadly to include conditions necessary for living with dignity, and courts have linked sanitation, hygiene, and public health to this broader constitutional protection. In the context of women's public access to toilets, the Bombay High Court expressly recognised that clean and safe toilets at convenient places are integral to dignity and meaningful access to public space⁵. The Court also connected this obligation to Article 47, which places a duty on the State to improve public health, thereby reinforcing the idea that sanitation is not merely an administrative preference but a public duty with constitutional force.

³ India Const. art. 21; India Const. art. 14.

⁴ Centre for Budget and Governance Accountability, *Guidelines on Gender Issues in Sanitation* 12–15 (2017), <https://www.cbgaindia.org/wpcontent/uploads/2017/04/Guidelines-on-Gender-issues-in-Sanitation.pdf>

⁵ Dr. Kalpana Mehta v. Municipal Corporation of Greater Mumbai, Writ Petition No. 1927 of 2014 (Bombay H.C. 2015) (India).

When toilets are planned without attention to women's mobility, menstruation-related needs, safety concerns, or caregiving responsibilities, the resulting infrastructure privileges a narrow and assumed user while excluding others in practice. This is why legal analysis becomes necessary. The problem is not only that facilities may be inadequate, but that urban governance often treats exclusion as incidental rather than as evidence of a deeper failure in planning and implementation⁶.

It requires the State and municipal bodies to move beyond formal provision and toward effective access. Within the context of the Swachh Bharat Mission (Urban), this means that the success of sanitation policy must be judged not only by construction and coverage, but also by whether public sanitation systems satisfy the legal standards of dignity, safety, hygiene, and inclusiveness that constitutional governance demands.

SWACHH BHARAT MISSION (URBAN): POLICY FRAMEWORK AND LEGAL SIGNIFICANCE

The Swachh Bharat Mission (Urban) was introduced as a major national effort to improve sanitation in Indian cities and to address long-standing gaps in waste management, toilet access, and urban cleanliness. From a legal perspective, however, the mission is significant not only because it expands infrastructure, but because it reflects the State's broader responsibility to create conditions that support public health, dignity, and equal access to basic urban services. Its importance lies in the fact that sanitation is not a discretionary civic feature. It is closely connected to governance obligations that urban authorities are expected to discharge effectively⁷.

At the policy level, SBM-U places emphasis on the construction and maintenance of public and community toilets, elimination of open defecation, and improvement of sanitation systems across urban areas. In its later phase, SBM-U 2.0, the mission framework became more explicit about the need for inclusive sanitation, including facilities that are gender-responsive, childfriendly, and accessible to persons with disabilities. This shift is important because it shows an increasing recognition that sanitation policy cannot be value neutral. Different users

⁶SOPPECOM, *Right to Sanitation: A Gender Perspective* (2015), <https://www.soppecom.org/pdf/right-to-sanitation-gender-perspective.pdf>.

⁷ Ministry of Housing and Urban Affairs, *supra* note 2.

experience public spaces differently, and public facilities must therefore be designed with those differences in mind.

The legal significance of SBM-U lies in the way it translates constitutional ideals into municipal action. The mission does not create rights in isolation, but it operates within a wider framework in which sanitation is linked to the right to life, public health, dignity, and equality. The real question is whether local governments are ensuring that these facilities are usable, safe, and maintained in a manner consistent with the State's obligations⁸. If a toilet is built but remains unhygienic, inaccessible, or unsafe, then the formal presence of infrastructure does little to satisfy the underlying public duty.

This point is especially relevant in the context of gender-sensitive sanitation. A mission that counts toilets without examining how women actually use them risks reducing a rights-based concern to an administrative metric. In practice, this can lead to facilities that exist in official records but fail to serve women in a meaningful way. Poor location, lack of lighting, inadequate water supply, absence of sanitary disposal systems, and weak maintenance are not minor operational flaws. They can amount to a failure of governance because they undermine the purpose for which the sanitation system was created.

The policy framework of SBM-U therefore needs to be read alongside its legal implications. In substance, it should also be understood as part of the State's effort to meet constitutional standards of dignity, inclusion, and public health. For that reason, the mission's effectiveness must be judged not only by coverage or construction, but by whether it enables safe and equal access to sanitation for all urban residents, particularly women.

LEGAL FRAMEWORK FOR PUBLIC SANITATION AND GENDER SENSITIVITY

The legal foundation for public sanitation in India rests on constitutional principles, judicial interpretation, and the division of governmental responsibilities. Sanitation itself falls under the State List of the Seventh Schedule as a matter of public health and municipal administration⁹. However, its importance as a rights issue has been established through the judiciary's expansive reading of the Constitution.

⁸ India Const. art. 21; *Dr. Kalpana Mehta v. Municipal Corporation of Greater Mumbai*, *supra* note 5.

⁹ India Const. sched. VII, list II, entry 6.

The cornerstone of this legal framework is Article 21 of the Constitution, which guarantees the right to life and personal liberty. Courts have consistently held that this right extends beyond physical survival to include the conditions necessary for living with human dignity¹⁰. Clean and adequate sanitation has been recognised as integral to this right because poor sanitation affects health, privacy, and personal security. In particular, the judiciary has linked the availability of public toilets to dignity and equal access to public space. For example, the Bombay High Court has expressly stated that women have a fundamental right to safe and clean toilets at convenient locations in public places. The Court directed municipal corporations to provide such facilities, reinforcing that sanitation is a public duty that cannot be ignored or left to chance.

This judicial reasoning has also drawn on Article 14, which guarantees equality before the law, and Article 47, which directs the State to improve public health as a primary responsibility. Taken together, these provisions create a substantive obligation for urban local bodies to ensure that public sanitation does not discriminate or disadvantage women through poor design or maintenance. A public toilet that is unsafe, unhygienic, or inaccessible effectively denies women equal enjoyment of public space, thereby violating principles of equality and dignity.

Municipal governance adds another layer to this framework. Urban local bodies, empowered under the 74th Constitutional Amendment, bear direct responsibility for public health and sanitation services¹¹. This means that while national missions like SBM-U provide policy direction and funding, the actual delivery and maintenance of public toilets is a local government duty. The legal framework also extends to specific standards for gender sensitivity. Guidelines issued under SBM-U require public toilets to include features such as separate entrances for women, adequate lighting, water supply, sanitary napkin disposal, and trained attendants¹². These are not mere suggestions, but operational requirements that align with the judicial emphasis on usable and dignified facilities. Yet, the gap between legal standards and ground reality remains a critical concern. When municipal bodies fail to enforce these standards, the result is not only policy failure, but also a legal shortfall in meeting constitutional obligations.

¹⁰ Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608 (India); Chameli Singh v. State of Uttar Pradesh, (1996) 2 SCC 549 (India).

¹¹ India Const. art. 243W; The Constitution (Seventy-Fourth Amendment) Act, 1992, No. 74, Acts of Parliament, 1992 (India).

¹² National Institute of Urban Affairs & Ministry of Housing and Urban Affairs, *SBM-U Gender Responsive Guidelines* (2024), <https://scbp.niua.org/sites/all/themes/zap/knowledge/SBM-U%20Gender%20Responsive%20Guidelines.pdf>

In summary, the legal framework for gender-sensitive public sanitation demands more than infrastructure. It requires public authorities to treat sanitation as a rights-based service that upholds dignity, equality, and public health. Courts have made this obligation clear, and municipal bodies must now translate it into effective practice.

GENDER-SENSITIVE STANDARDS FOR PUBLIC TOILETS UNDER SBM-U

The Swachh Bharat Mission (Urban) has established specific standards for public toilets that aim to address gender sensitivity, but their effectiveness depends on whether these standards are enforceable as part of the legal obligations discussed earlier. These guidelines, particularly the SBM-U Gender Responsive Guidelines, outline practical requirements for design, location, operation, and maintenance.

Key standards include separate and secure entrances for women, adequate lighting around the facility, and 24-hour access with trained female attendants present. Facilities must also provide clean water supply, functional sanitary napkin disposal bins, and sufficient numbers of women's seats relative to usage patterns, often at a ratio that prioritises higher demand from female users. Child-friendly features such as baby-changing stations and provisions for breastfeeding further extend this approach to include women's caregiving responsibilities. These elements are not optional additions but minimum requirements intended to ensure usability and safety in public spaces.

From a legal standpoint, these standards gain force because they align directly with judicial directives on sanitation as a component of Article 21. Courts have emphasised that toilets must be conveniently located, hygienic, and safe, particularly for women who face heightened vulnerability in isolated or poorly maintained facilities. The guidelines thus serve as a bridge between broad constitutional rights and specific municipal duties under the 74th Amendment¹³. When urban local bodies adopt these standards in toilet construction or retrofitting, they fulfill not only policy goals but also legal accountability for providing dignified public services.

However, the standards reveal a critical limitation in their current form: they lack strong mechanisms for enforcement or penalties for non-compliance. While SBM-U rankings and audits provide some oversight, there is no clear legal recourse for citizens when facilities fall

¹³ India Const. art. 243W; The Constitution (Seventy-Fourth Amendment) Act, 1992, No. 74, Acts of Parliament, 1992 (India).

short of these specifications. This gap undermines the rights-based framework, as municipal authorities can claim policy adherence through construction data while neglecting operational realities such as broken lights, absent attendants, or overflowing bins. A truly effective system would integrate these standards into municipal bylaws with measurable compliance criteria tied to funding or leadership accountability.

In practice, exemplary models like well-maintained community toilets in cities such as Indore or Surat demonstrate that adherence to these standards is possible and yields measurable benefits in women's access and city cleanliness rankings¹⁴. Yet, widespread deviations highlight an implementation deficit that legal analysis must address. Gender-sensitive standards under SBM-U hold promise, but they require stronger judicial oversight and municipal commitment to move from guidelines to enforceable rights.

IMPLEMENTATION GAPS AND CHALLENGES IN GENDER-SENSITIVE SANITATION

Despite the clear standards set under the Swachh Bharat Mission (Urban), significant gaps persist between policy expectations and ground realities in gender-sensitive public sanitation. These shortcomings are not merely operational oversights but reflect deeper issues of legal accountability, municipal capacity, and prioritisation that undermine the constitutional framework discussed earlier. When public toilets fail to meet basic usability criteria, women bear the brunt through restricted mobility, health risks, and diminished dignity in public spaces.

A primary challenge lies in maintenance and operational sustainability. Many public toilets suffer from irregular cleaning, inconsistent water supply, and broken infrastructure such as non-functional lights or locks. These conditions directly contradict judicial mandates for safe and hygienic facilities, rendering toilets unusable despite their physical presence¹⁵. Urban local bodies often cite funding shortages for upkeep, yet this explanation overlooks the legal duty to allocate resources for ongoing operations, not just initial construction. The result is facilities that exist on paper but fail women in practice, exposing a disconnect between SBM-U targets and enforceable service delivery.

¹⁴Ministry of Housing and Urban Affairs, *MoHUA launches 10th Swachh Survekshan*, Press Information Bureau (Nov. 19, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2207000®=3&lang=2>

¹⁵ Central Public Health and Environmental Engineering Organisation, *Advisory on Public and Community Toilets* (2018)

Location and accessibility further compound these issues. Toilets are frequently placed in isolated areas without adequate lighting or surveillance, heightening safety concerns for women, especially during evening hours or in densely populated slums. This violates both SBM-U guidelines and court directives that emphasise convenient, secure placement near markets, bus stops, and workplaces. Moreover, the promised ratio of women's seats to men's often goes unmet, ignoring women's longer usage times due to menstruation or childcare. Such design flaws treat gender sensitivity as an afterthought rather than a core legal requirement.

Monitoring and enforcement mechanisms remain weak, with municipal audits focusing more on construction numbers than user experience or compliance with gender standards. Without citizen feedback loops, third-party audits, or penalties for persistent failures, accountability stays elusive. This implementation gap transforms what should be a rights-based service into a discretionary municipal favour, contrary to the principles of Article 21 and the 74th Amendment¹⁶.

Successful cases in cities like Indore show that prioritised maintenance, community involvement, and regular inspections can bridge these gaps. However, scaling such models requires stronger legal mandates, such as incorporating SBM-U standards into municipal bylaws with measurable penalties. Until urban authorities treat these challenges as legal imperatives rather than administrative hurdles, gender-sensitive sanitation will remain aspirational rather than actual.

CONCLUSION AND RECOMMENDATIONS

The Swachh Bharat Mission (Urban) has undoubtedly advanced urban sanitation infrastructure, yet its promise of gender-sensitive public sanitation remains unfulfilled without stronger alignment to legal obligations and municipal accountability. This article has shown that while policy standards and judicial precedents establish a clear rights-based framework under Articles 21, 14, and 47, persistent implementation gaps reveal a critical shortfall in translating constitutional duties into everyday urban reality¹⁷. Women continue to face unsafe, unusable toilets that limit their access to public life, underscoring that sanitation is not a neutral service but a measure of governance effectiveness and equality.

¹⁶ India Const. art. 21; India Const. art. 243W.

¹⁷ India Const. art. 21; India Const. art. 14; India Const. art. 47.

To bridge these gaps, urban local bodies must integrate SBM-U gender standards into enforceable municipal bylaws, with mandatory compliance criteria linked to funding releases and leadership evaluations. Regular gender audits of public toilets, conducted by independent agencies with citizen input, would provide measurable accountability beyond construction metrics. Courts should build on precedents like the Bombay High Court ruling by directing systematic monitoring and penalties for repeated failures, ensuring that sanitation duties carry real legal weight¹⁸.

Additionally, dedicated operation and maintenance budgets should form at least 60 percent of municipal sanitation allocations, prioritising women's safety features such as lighting, attendants, and menstrual hygiene facilities. Women's participation in planning and oversight committees, mandated at the ward level, would embed user perspectives into decision-making, fostering ownership and responsiveness.

Finally, national rankings under SBM-U should incorporate gender usability scores, incentivising cities to treat inclusive sanitation as a core governance priority. Only through such legal, fiscal, and participatory reforms can Indian cities realise sanitation that upholds dignity for all, particularly women, and fully honours the constitutional vision of equitable urban citizenship.

¹⁸ Dr. Kalpana Mehta v. Municipal Corporation of Greater Mumbai, *supra* note 5.