

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL
STUDIES, KOCHI**



DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENT FOR AWARD OF DEGREE OF MASTER OF
LAWS (2019-20)

ON THE TOPIC

**MANUAL SCAVENGING: A DISQUIETING IMPEDIMENT ON THE RIGHT TO
SANITATION-CONTRADICTIONS, REALITY, AND CHALLENGES**

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DECLARATION

I Declare that this Dissertation Titled, “**Manual Scavenging: A Disquieting Impediment on Right to Sanitation-Contradictions, Reality and Challenges**” researched and submitted by me to the National University of Advanced Legal Studies in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law, under the guidance and supervision of **Dr. SHEEBA S. DHAR** is an original, bona-fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

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ACKNOWLEDGEMENT

I have taken sincere efforts and hard work to complete this Dissertation within time. However, it would not have been possible without the kind support and guidance from certain people. My Dissertation, “**Manual Scavenging: A Disquieting Impediment on Right to Sanitation-Contradictions, Reality and Challenges**” will not be complete if I don’t acknowledge those who helped me to complete it within time. I would like to extend my sincere thanks to all of them.

I take this opportunity to express my profound respect and deep sense of gratitude to **Dr. Sheeba S. Dhar** for her support, guidance and encouragement throughout the course of research work.

I would like to extend my gratitude to the Vice-Chancellor Prof. (Dr.) K.C Sunny for his constant encouragement and support.

I convey my thanks to **Mrs. Jeeja V.**, Assistant librarian, **Mr. Anil Kumar C.** and **Mr. Unnikrishnan K.K.**, Library Assistants for their timely assistance to carry out the work.

I Also thank **Dr A. Sasi Kumar** , Health Officer Municipal Corporation Thiruvananthapuram, and **Mr Thomas Joshy HS**, Health Officer, Corporation Of Kochi for giving me the required information and co-operating with me.

Mr. M.B Muraleedharan, Ward councillor, Vennala for co-operating with me and giving me the required data to pursue my empirical study.

Words fall short of expressing love, appreciation and gratitude to my loving parents, family members and friends for their constant encouragement.

With genuine humility, I am thankful to The Almighty for all his uncountable bounties and blessings.

ANUSHKA VIJAYAKUMAR

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LIST OF ABBREVIATIONS

CEDAW	-Convention On Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CJ -	Chief Justice
CRC	Convention on the Rights of the Child
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
NCSK	National Commission for Safai Karamcharis
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNO	United Nations Organization
NSLRS	National Scheme of Liberation and Rehabilitation of Scavengers
WP	Writ Petition
TSC	Total Sanitation Campaign
NSKFDC	National Safai Karamcharis Finance and Development Corporation
Mad	Madras
SCR	Supreme Court Report
SCC	Supreme Court Cases
UK	United Kingdom
Vol	Volume

INTRODUCTION

1.1 INTRODUCTION

India is the world's largest democracy where the rights of everyone are valued and their dignity is preserved. It has a progressive and protective constitution aimed at the development of every individual to the fullest extent possible. Social justice and social progress have the utmost importance. When it comes to social progress it is often a well-acclaimed criticism that our eyes are turned not upon positives and possibilities, but rather upon impossibilities and negatives. The merit of such criticism can't be questioned in so far as there is a growing hiatus between the expectations and the reality, enactments, and implementations. If the net difference is too high it results in despair, helplessness, and alienation. The manual scavengers are victims of such a situation. Manual scavenging is the inhuman practice of removal of human excrements from dry toilets, sewers, manholes, etc.

The practice of manual scavenging in India dates back to ancient times. According to the contents of sacred scriptures and other literature, scavenging by some specific caste of India exist since the beginning of civilization. One of the fifteen duties of the slaves enumerated in Naradiya Samhita was of manual scavenging.

It is a practice that is most prevalent among the lowest strata of society. This is an issue with various dimensions. Manual scavenging is one of the most prominent forms of racial discrimination. In India, it is predominant among two communities – the 'Valmiki' (Hindus) and the 'Haila' (Muslims). While the Hailas come under the OBC category, the Valmiki belong to the scheduled caste and both are placed in the lowest rung of the Indian society, and therefore – untouchable within the untouchable. It also violates the right to live with human dignity. The right sanitation remains unrealised in their cases. Hence this is a huge disgrace to human society. In India laws for ensuring social transformation lack social conscience and cohesion. The inhuman practice of removing the night soil is not only diabolic but also disgrace to a technologically advanced country. Even after seventy-three years of independence, they have not completely managed to escape from the evils of social exclusion, untouchability, poor sanitation, gender discrimination, and an array of other human rights violations.

Manual scavengers work in inhuman and deplorable conditions. In India laws for ensuring social transformation lack social conscience and cohesion. The inhuman practice of removing the night soil is not only diabolic but also disgrace to a technologically advanced country. The advancement in technology and the rapid modernisation several forms of removing human waste have also arisen. The Legislations have been formulated in such a sense that if a person uses protective equipment at the time of cleaning the waste then he or she will not be considered as a scavenger. This requires to be amended. In keeping pace with the modern systems and taking into account the fact that the Supreme Court has declared the right to sanitation as a fundamental right and sufficient measures must be taken the executives and the concerned authorities to bring within the word manual scavenging all those people who are engaged in cleaning of hazardous nature. The Right to sanitation which has been which forms a fundamental right and basic Human right which has found its place in several International Instruments.

1.2. STATEMENT OF PROBLEM

Manual scavenging cannot be considered as employment but constitutes bondage resulting in oppression and injustice. It is a modern form of slavery. Most of them are trapped in a vicious cycle of poverty. There is a social stigma arising from the type of physical work they are engaged in and their caste status. This is the worst surviving symbol of untouchability in India. Life of Manual Scavenger is always at peril taking into account the health repercussions faced by them. With no escape routes, it is passed down as a dubious legacy from generation to generation. They fall victims to discrimination, humiliation, atrocities and marginalisation. It denies chances for education, social mobility and dignity to them. The Indian Railway is the major employer of manual scavengers, and manages some of the longest rows of open latrines. However, data pertaining to persons engaged and consequent deaths are not provided by them. A census report published in 2011 states the total number of manual scavengers to be 794,000. The plight of people engaged in manual scavenging is a reminder about the harsh realities of the society. The eradication of manual scavenging in all forms is necessary at the earliest for the realisation of the Right to sanitation of all those engaged in unclean occupations.

1.3. SCOPE OF STUDY

The existing laws have provisioned for closure of dry latrines but there are various forms of manual scavenging practices that are not exposed in the Acts as occupationally hazardous, hence the legislations abolishing the practice could not be converted to social and economic justice for manual scavengers. The present status of the eradication of manual scavenging is in the stage of utter failure even with many "visionary policies and schemes" being formed for the same. The various efforts of the NHRC to tackle the problem have not been able to tackle the issue in a comprehensive manner. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was a toothless law which failed to tackle the issue. The Prohibition of Employment as Manual Scavenger and Their Rehabilitation Act 2013 also failed to eradicate the practice. The various guidelines issued in the case of Safai Karamchari Andolan V. Union of India have not been implemented in its soul and spirit. The census report of 2011 also points to the existence of this practice in India.

This study focuses on the practical difficulties faced by the manual scavengers due to the ineffectiveness of constitutional guarantees to safeguard their rights. This study focuses on the link between manual scavengers and their discrimination based on caste. This study focuses on the health risk of manual scavengers due to non-realisation of right to sanitation. This study also focusses on how the government has very conveniently left out of the purview of manual scavenging those people who uses protective equipment or take help of other machines. What needs to be focussed here is that using any type of protective equipment or other form of devices in order to clean gutters, sewers, septage or soak pits do not add any extra dignity to their profession. Any form of dangerous cleaning is an evolved form of manual scavenging in today's society and must be adequately addressed. It is very important to save the life of those people who help us in living our life by making it clean and safe. This is also needed for the realisation of their fundamental human right of dignity and giving essence to the Right of Sanitation.

1.4. RESEARCH QUESTIONS

1. What were the factors that forced people of lower class and caste to do cleaning work and
2. what led to the formation of the vicious cycle?

3. What were the factors which resulted in the formation of a cleaning class and the stigma of caste being associated to it?
4. Whether the constitutional provisions have improved the life of manual scavengers?
5. Whether the international Covenants, protocols and instruments have had a positive role in improvement of access to sanitation in India?
6. Whether the legislations have succeeded in curbing the menace of manual scavenging?
7. Whether mechanisation alone can eradicate manual scavenging and all forms of hazardous cleaning?
8. Whether judicial decisions succeeded in curbing the menace of manual scavenging?
9. Whether Right to Sanitation is being equally enjoyed by all people?
10. Whether the Government appointed committees and commissions have been successful in addressing the issue of manual scavenging?
11. Whether the legislative schemes have brought improvements in the conditions of life of manual scavengers?
12. Whether adequate measures have been taken for the rehabilitation and social integration of the manual scavengers?
- 1.3 Whether manual scavenging forms a violation of the right to sanitation?

1.5. OBJECTIVES:

1. To trace out the conceptual framework of manual scavenging in India
2. To examine the problems faced by manual scavengers
3. To examine the Right to health and sanitation of manual scavengers
4. To examine the gender-based issues involved in manual scavenging
5. To examine the reasons for continuance of the practice of manual scavenging
6. To examine the role of caste in manual scavenging
7. To examine the human right violations faced by manual scavengers.
8. To examine constitutional safeguards in relation to manual scavenging.
9. To evaluate the efficacy of schemes and policies for manual scavengers.
10. To analyse the legislations made for manual scavenging in India
11. To understand the scope of the right to sanitation in a scenario where there are rampant deaths of sanitation workers.

1.6. HYPOTHESIS

The pernicious practice of manual scavenging goes unaddressed through law even in an era of technological advancement.

1.7. RESEARCH METHODOLOGY

This study includes doctrinal and non-doctrinal approach. The doctrinal part involves the analysis of authoritative judgments of the Supreme Court and various High Courts, Statutes, books, online resources, newspapers, etc. Different books exclusively on the topic of sanitation and manual scavenging have been referred to. Other books of relevance to the topic have also been perused to recognize the topic's scope and analyse the comprehensive dimensions of the topic. All the statutes of significance have been perused and reliance is placed on the judicial decisions to show the flagrant violation and suppression of facts by the authorities.

The non-doctrinal part involves personal interviews with officers concerned such as the health officers of various districts, ward councillors, other personnel at health department, doctors, NGO'S etc. Attempt has also been made to collect data by giving RTI to various health departments. Further information was collected through telephonic interviews and emails from different parts of India.

The first chapter is an introduction to the whole study. It contains a brief introduction to the topic, statement of problem, scope of study of the topic, research questions, objectives of the study, of the study hypothesis and methodology adopted for the study.

The second chapter titled "Concept and Nature of Manual scavenging" tries to trace the origin of the concept of cleaning. It is an attempt to find answer to several crucial questions such as whether the cleaning community was from the very beginning indulged in such activities or was it the social ostracism which forced them to take up this work. It tries to analyse whether the practice of making our surroundings clean was from the beginning assigned to certain community of people who were considered as the lowest and despicable in all social phenomena or if it was their job which made the society to shun them. It tries to analyse the various classes and the caste of people who from the very beginning were indulged in practices of cleaning of septage, sewers, pits, dry latrines, manholes etc. An attempt has been made to trace out how the rest of the society treated the sanitation workers and the problems that they faced in their social life and the matter of socialisation with the other sectors of the society. It tries to explain the type and nature of work that these class of people were expected to do or forced into doing. This chapter further tries to find out how these class of people evolved over time and what was the difference in the nature of work that they were expected to do taking into account the advancement in the area of technology and the demands of the people. It tries to bring out the various problems faced by the sanitation workers which deprive them of leading a normal life. It is also an effort to analyse the various factors that force these people to hold on to this activity despite their dislike towards it and aspiration for a decent and normal livelihood. This chapter also illustrates the various forms in which these workers are employed not only by the private contractors and individuals by also by the government to engage in unscientific and unhealthy cleaning process.

The third chapter titled "The International and constitutional framework relating to manual scavenging and sanitation" aims to analyse various measures taken by the International community as well as various provisions in our constitution to improve the life of sanitation workers .It tries to Systematically trace out how the matter of sanitation which was earlier considered as ancillary to various rights over the years acquired so importance so as to be considered as an individual and self – standing human right and fundamental right. The chapter tries to Highlight the sequence of concerns which led to the inclusion of provisions relating to

sanitation in various international instruments and how it tried to provide impetus to various member states to incorporate it into their jurisdictions. It analyses how the Indian constitution gives importance to a healthy environment thereby laying thrust on the concept of sanitation and how it got the shape of a distinct fundamental right. It also examines whether the provisions relating to sanitation are complied with in actual practice and attempts to highlight the significance of the concept of sanitation for ensuring the safety of all particularly the sanitation workers. It focusses on highlighting the special provisions in sanitation provisions relating to cleaning of human waste, sewers, manholes, latrines, drainage, Faecal sludge and septage management etc. Hence this chapter tries to bring about the irony of how despite there being several measures to strengthen the right to sanitation the persistence of different forms of manual scavenging as well as unsafe forms of cleaning septage and drainage all leads the right of sanitation merely being present on the paper and not in reality.

The fourth Chapter titled 'The legislative framework relating to manual scavenging and sanitation' is an attempt to critically analyse various measures of the committees appointed by the Government, Several state Governments as well as the central Government. The Pernicious practice of manually cleaning the sewers is something that existed from the ancient time. The Founding fathers of our constitution had very well recognised it as the gravest existing symbol of untouchability. This chapter attempts to highlight how the recommendations given by various committees over many years were not complied with thereby resulting in the plight of this section for many years. An attempt has been made to ascertain the reasons for non-compliance of several provisions. Further the chapter tries to investigate the pitfalls in implementation and the difficulties of the sanitation's workers. It further analyses the scope of right to sanitation and further analyses how pernicious practices such as manual scavenging, sewer cleaning etc acts as stumbling block on the realisation of such rights.

The fifth chapter titled 'Plight of Sanitation Workers during Covid-19 pandemic' intends to analyse the risky position in which the sanitation workers are placed due to inadequate measures taken for them during such a dangerous situation. From the inception of the virus on the battle front are our health workers and sanitation workers. The chapter tries to illustrate how entire focus of the Government is placed solely on the health workers i.e. the doctors, the nurses etc without the least of the importance being placed on the sanitation workers. It attempts to put light on the apathies faced by the sanitation workers due to the highly dangerous environment in which they have to work. It further examines the guidelines of the WHO and ILO in this regard and highlights how none of them have been complied with in India.

The Sixth Chapter is based on the empirical study conducted by the researcher where an attempt has been made to collect relevant data and demonstrate the actual scenario regarding sanitation and conditions of workers. It tries to show the contradictions in statistics released by the government and statements made by them. It tries to throw light on the reality of modern India where despite commendable technological advancements a large section of the society are still suffering and how their voices are left unheard.

The Sixth Chapter deals with conclusions, findings and suggestions drawn by the researcher.

CHAPTER TWO

CONCEPT AND NATURE OF MANUAL SCAVENGING

2.1 INTRODUCTION

In different parts of the country, both in rural as well as urban areas, there are numerous numbers of people engaged in the practice of manual scavenging. India is the only country in the entire world where a specific section of the society is traditionally employed for keeping the habitation clean by removing the waste products of the society including human excreta. This is a disgrace to the country. Who are these folks? Why are they compelled to do this kind of degrading and inhumane work and how long have these ignored sections of society been under this kind of bondage? These questions need to be addressed. The problems faced by them are diverse in magnitude which compels them to continue in the same practice despite facing innumerable problems. Their socio-economic conditions force them in entering into this activity and as such they get entrapped in a vicious cycle of poverty, disgrace, and apathy.

Manual scavenging still continues in India, despite being unacceptable to the human conscience and being a hazardous method of disposal of human excrement. Despite achieving the zenith of scientific and technological advancement on various fronts that have saved manual labour, and despite the low-cost alternatives being available which can eradicate the multiple problems related to manual scavenging and safe disposal of human excrements. It passes on from generation to generation. Due to the age-old social exclusion and oppression faced at the hands of the upper class and subconscious culture of acceptance prevails among them. This deprives them of their basic rights.

2.2 DEFINITIONS ON MANUAL SCAVENGING

In the English language, the word 'scavenge' has historically meant cleansing and 'savagery' included street cleaning. 'Manual scavenging' requires gathering, cleaning, transporting, disposing, or treating human excrement from toilets, latrines, sewers, and other areas, as distinguished from the dictionary sense.¹ E.M. Forster called it "a hideous nightmare".² As per the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and The National Commission for Safai Karmchari's Act "manual scavenger" or "safai karmachari" means a person engaged in or employed for manually carrying human excreta.³

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 gives the following definition to a manual scavenger:

“Manual scavenger” means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta

¹ REV THOMAS DAVIDSON, CHAMBERS'S TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE 850-851. (W & R Chambers Ltd, London, 1903)

² M. FORSTER, Preface to MULK RAJ ANAND, UNTOUCHABLE vi (1935).

³ Section 2(j) of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and sec 2(e) of National Commission for Safai Karama Charis Act, 1993

in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify before the excreta fully decomposes in such manner as may be prescribed, and the expression “manual scavenging” shall be construed accordingly.⁴

Encyclopaedia Britannica, 1978 defines scavenger as “A person employed to clean the street, seeks and collects discarded stems is an animal, a beetle, feeding on carrion refuse, etc.”

Manual scavenging in simple terms can be defined as an inhumane and degrading practice of manually cleaning human waste. It includes cleaning night soil (dry excreta). It also includes the removal of various contaminated matters and dead animals, sewerage sweeping, and carrying night soil in basket/bucket or on the head. The scavengers crawl into the deadly latrines and collect the human excreta with bare hands, or local tools carry it as head-load in a container to dispose of it.

It is the daily work of manual scavengers to manually clean and renders excreta from dry latrines, non-flush lavatories in most parts of India. These workers of which a large section constitutes women are also referred to as ‘night soil workers’, a nineteenth-century Victorian euphemism that hides the repugnance of the ‘excrement’ that people truly mean. Manual scavenging is a caste-based an occupation and is perpetually carried out by Dalits. These manual scavengers are under different caste names in different parts of the country, such as Bhangis in Gujarat, Punjab, and Sakkaliars in Tamil Nadu.

The International Labour Organization (ILO) has identified three forms of manual scavenging⁵:-

- 1) removal of human excrement from public streets and dry latrines;
- 2) cleaning septic tanks, and
- 3) cleaning gutters and sewers.

The concept of manual scavenging has been recognized both at the national and the international level.

The ILO has come out with a broader concept of scavenging by including within its ambit sewer workers as well. While the definitions in the legislation do not give a clear idea on the various categories of persons who can be termed as manual scavengers the ILO by giving a comprehensive definition included within its ambit all categories which did not find a place in the traditional concept.

The practice of manual scavenging has become all the more pervasive despite wide opposition due to two main reasons. The first is the practical necessity because adequate sewage lines and sanitation systems are lacking in much of the country, manual removal of human excreta is needed." Indeed, 600 million people (or 55 percent of the population of the country) do not

⁴ Section 2(1)(g) of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

⁵ Gita Ramaswamy, *India Stinking: Manual Scavengers in Andhra Pradesh and their work* (Delhi: Navayana Publishing, 2005), p. 3.

have water-based flush toilets.⁶ Lack of proper and developed sanitation infrastructure eventually requires someone to clean the remains from the place where it is deposited. The need for elimination is inextricably connected with the second cause for manual scavenging: a tradition of discrimination deeply ingrained in the caste system of India.⁷ It divided society on the basis of status, power and identity in the society.⁸

2.3 HISTORICAL PERSPECTIVES OF MANUAL SCAVENGING

Scavenging is as old as the growth of urban civilization and was known in ancient India since the times of Indus Valley Civilization. During this period there is evidence of elaborately planned town and urban planning. There existed developed sewerage disposal and drainage system, village water was discharged through well-covered street drains made out of kiln burnt bricks at intervals. These were provided with manholes for clearance. Evidence suggests cleaning of these be done by particular categories of persons. MacGy has called them as municipal workers. Not much is known about their economic background or the exact nature of their employment.⁹ Men and women belonging to classes falling lowest in the caste echelon were engaged in this activity and had to collect, clean, transfer, and dispose of human excrement from both private and public toilets, open drains, sewers, gutters, and other sites. In general, men were involved in more physically exhausting tasks, such as sewer and septic tank cleaning, while women preferred to clean dry toilets in both public and private households.¹⁰

2.3.1 ORIGIN OF MANUAL SCAVENGING

There is a reference in the Kautilya's Arthashastra that defecation in an open space in the towns was forbidden during the Mauryan period, but there is no mention of scavengers disposing of night soil. The old scriptures, however, throw some light on the system of scavenging. Dr. Bindeshwar Pathak writes in his 'Road to Freedom' that "according to the contents of sacred scripture and various literary works, scavenging, in particular the disposal of night-soil by a specific caste or castes of Indian society has been in existence since the commencement of civilization. One of the fifteen duties for slaves enumerated in the Naradiya Samhita was to dispose of human excreta. In Vajasaneyi Samhita the Chandals and Paulkasa have been referred to as slaves for the disposal of night soil". It is alleged that only after the advent of the Muslims

⁶ The World's Toilet Crisis, CURRENT (June 10, 2010), http://current.com/shows/vanguard/92482205_the-worlds-toilet-crisis.htm. This problem is not confined to India. Id. Indeed, it is a global public health crisis. Id. 2.5 billion people (38% of the world's population) still lack access to improved sanitation, including 1.2 billion who have no facilities at all. The progress is particularly poor in Sub-Saharan Africa and Southern Asia (including India). Progress on Drinking Water and Sanitation: Special Focus on Sanitation, INDIA SANITATION PORTAL (WORLD HEALTH ORGANIZATION), <http://www.indiasanitationportal.org/79> (last visited Feb. 24, 2011); see also GEORGE, supra note 7

⁷ MARTIN MACWAN, NATIONAL HUMAN RIGHTS COMMISSION (India), DALIT RIGHTS 7 (2(X)6). The caste system is so complex that no satisfactory definition is possible, and there is no unanimity among scholars on the subject. One scholar, Emile Senart, has defined caste as: [A] close corporation, exclusive and, in theory at any rate, rigorously hereditary ... bound together by common occupation ... ruling its members by the exercise of jurisdiction, the extent of which varies, but which succeeds by the sanction of certain penalties and, above all, by the power of final or revocable exclusion from the group in making the authority of the community effectively felt. Ekta Singh, Caste System in India : A Historical Perspective 108 (2009)

⁸ Vidya Subrahmaniam, Throwing Off the Yoke of Manual Scavenging, HINDU, Oct. 27, 2010, <http://www.thehindu.com/opinion/lead/article850934.ece>

⁹ BASAH SINGH, UNSEEN – THE TRUTH ABOUT INDIA'S MANUAL SCAVENGERS, 81 (1st ed 2014)

¹⁰ Human Rights watch, "Cleaning Human Waste" Manual Scavenging, Caste, and Discrimination in India, <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india> Assessed on aug 25 2019 at 3PM

in India that sweeping and scavenging took the form of a formal profession. It is said that the system of bucket privies was designed and constructed by Muslims for their women in pardah. The people who were taken as captives were made to clean latrines. They were made to dispose of the night soil at distant places. They were traditionally associated with the practice of manual scavenging. These hostages of destiny when freed were not accepted by the society and they formed a separate caste and continued the practice of scavenging¹¹ Hence the social exclusion and the societal condemnation associated with the manual scavengers finds its roots in the ancient times.

2.3.2 DALITS AND THE UNCLEAN OCCUPATION

The traditional varna system did not recognise the Dalits as belonging to any class. They were considered to be outcastes and did not fall in any of the four identified varnas. They were made to do occupations that were least desirable and defiling. They were assigned the tasks of cleaning and leather processing.¹² This involved sweeping streets, cleaning the drainage and sewerage system, removal of humans and the animal excreta, and the like.¹³ The latrines in most of the villages did not have any flush system as a result of which manual cleaning of the same was mandated. The scavengers used to carry these human feces in baskets and disposed of it in less habituated areas. All these tasks were considered to be befouled by the so-called clean castes. The lowest rung in society, the 'Valmiki's' or 'balmikis' carried out these activities. The Dalits were relegated to the lowest rung of society. Dalits' pollution was attributed to the unclean nature of their work. The Dalits were not only made to do the tedious work but were also paid less for the same.¹⁴

The names of various scavenging castes suggest that they are a functional community recruited from many different racial and social groups. It is very likely that people belonging to the lowest strata were compelled to take on this profession especially in the urban areas due to economic necessity. The distress of poverty forces them to be imbued with this stagnant practice. Abject poverty makes it grim for them to escape from this trap.¹⁵

Among these lowest scavenging sections which remove night soil, there is still a distinction; those who serve in private houses consider themselves higher than those who clean public latrines. Work of this nature is done in the urban environment and in villages where the women are not permitted to leave the house, even where it is for a call of nature. Each of these sub-sections has its own rules and regulations as to what work is permissible and where it has to be

¹¹ B.N. SRIVASTAVA, MANUAL SCAVENGING IN INDIA- A DISGRACE TO THE COUNTRY, 18 (1ST ED 2000)

¹² vol. 29 Clifford Bob, "'Dalit Rights are Human Rights': Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue," Human Rights Quarterly,), 167,173 (2007).

¹³ In India, the poverty rate for Dalits (65.8%) is almost twice the rate for the rest of the population (33.3%). This is a result of limitations on access to types of jobs, wage gaps when compared to other population groups, and distinctions between castes in educational attainment. International Labor Organization, Equality at work: The continuing challenge (Geneva: ILO, 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_166583.pdf (accessed August 3, 2014) paras. 24, 25, 170.

¹⁴ Ghanshyam Shah, "Introduction: Caste and Democratic Politics," in Shah, ed. Caste and Democratic Politics in India (Delhi: Permanent Black, 2002), p. 5, and Navsarjan Trust and The Robert F. Kennedy Center for Justice and Human Rights, "Understanding Untouchability: A Comprehensive Study of Practices and Conditions in 1589 Villages,"

¹⁵ SUKHADEO THORAT, CASTE, SOCIAL EXCLUSION, & POVERTY, 6-7 (2nd ed 2013)

restricted. Some do not touch nightsoil but do all other scavenging work in the villages, including the removal of dead animals and garbage.¹⁶

The scavenger occupies an isolated position in ceremonial life. Although they follow the customs and rituals of the members of higher castes, they worship gods and goddesses separately in their own houses or locality. Similarly, they do not join the members of the higher castes in any ritual. As traditional workers for all higher castes, they receive food and other domestic things at important festivals, such as Holi, Diwali, etc, but they do not celebrate these festivals on equal terms with the members of other higher castes. Culturally, they are outside the Hindu Sanskritic Great Tradition and are part of the pre-literate local Little Tradition.¹⁷

Some features of the Indian caste system were characterised as follows:¹⁸

- (i) Hierarchy
- (ii) Endogamy and Hypergamy
- (iii) Occupational association
- (iv) Restriction on food, drink, and smoking.
- (v) Distinction in custom, dress, and speech.
- (vi) Pollution (by sight or touch)
- (vii) Ritual and other privileges and disabilities. Caste group which gives them separate identities. Different caste names are given to different classes.
- (viii) caste organization

Hierarchy is mainly associated with being born in a particular caste. Different names are given to them. People belonging to different classes enjoy the different social status and are characterized by different functions assigned to them. Endogamy and Hypergamy relate to the practice of marrying within the same caste and not outside. The concept of occupational association identifies a particular profession or occupation with a particular sect. The most intellectual works were performed by the higher class. The works which were regarded as not so prestigious were assigned to the lower strata. High-quality food was the right of the upper class. The nutritious food went to them. The lower class was always undernourished. Since the Dalits or the much weakest section of the society were engaged in the degrading practice of cleaning human waste and other activities considered as socially unacceptable, there was this conception that even the sight of these classes of people can make the higher class polluted. As stated earlier they were also regarded as untouchables and faced extreme forms of exclusion in society. They were treated in a highly inhuman manner and as agents of pollutants. Even their sight and touch were regarded as polluting.¹⁹ There were caste organisations in the form of panchayats and sabhas which further made the life of these people

¹⁶ Diane Coffey and Dean Spears, *Where India Goes: Abandoned Toilets, Stunted Development and the Costs of Caste*, Harper Collins, 74-79(2017)

¹⁷ BINDHEDHESWAR PHATAK, ROAD TO FREEDOM A SOCIOLOGICAL STUDY ON THE ABOLITION OF MANUAL SCAVENGING IN INDIA, 1991, 52

¹⁸ PROF. M.N SRINIVAS, INDIA: SOCIAL STRUCTURE 67(1st ed 1969)

¹⁹ Sabiha Rahman, *Manual Scavengers And Their Unending Conflict With Law*, International Journal Of Legal Developments And Allied Issues, 12, 15 2018

2.3.3 BUDDHA PERIOD :

In Naradiya Samhita one gets the first reference about a category of persons who deal with the disposal of human excreta. In fact, scavenging was one of the 15 duties of slaves enumerated in the above names like Chandals and Paulkasa, who were the slaves involved in night soil disposal. These two names were also used for the scavengers during the Buddhist period. These particular names are perhaps the first reference to castes and their association with scavenging.

2.3.4 MAURYAN PERIOD:

In the Mauryan period, there is direct evidence to scavengers and sweepers, connected with cleaning the city and disposing of night soil. During this period, the city major or the Nagrak, as the head of civic affairs, was considered responsible for the cleanliness of the city. The scavengers and sweepers cleaned the city and the specified places for defecation, Chanakya, writing about the civic administration of Mauryans had suggested that one who defecated in the open except for the sick and disabled must be fined.²⁰

2.3.5 GUPTA PERIOD:

The Gupta period bears evidence not only to the condition of scavengers. But also to their places of residence. The system of scavengers further got patronized during the Muslim rule. More and more scavengers were pressed into scavenging; often those made captives were forced to clean the latrine. Later this group was named Mehtars by Emperor Akbar and till today this name is used to denote scavengers in some parts of the community. The tradition got a boost with rapid urbanization in the colonial period. This period did not see much change in the patterns of scavenging. However, the technology of the septic tank was introduced during the period, but it remained confined to a few urban elite's.

2.3.6 POST-INDEPENDENCE PERIOD :

The post-independence period rapid urbanization has forced the growth of two technologies of human waste-septic tanks and sewerage systems. However, the growth of these technologies was limited in comparison to the rate of urbanization, migration, the growth of urban slums and general poverty have been caused in the perpetuation and proliferation of dry latrines

2.3.7 BRITISH PERIOD:

The antiquity of the past 200 years is witness to the fact that with the expansion of cities there has been an increase in the manual scavenging practice. During the British rule, it was given a statutory institutional form. Posts were specially created for manual scavengers in army cantonments and municipalities. But this doesn't mean that the British created the system of manual scavenging. Instead of eradicating this practice they institutionalized it and spread it to every corner of the country²¹

2.4 INDIAN SOCIAL ORDER OF THE CLEANERS OF LATRINES: THE BHANGI CASTE

The night soil removers and the latrine cleaners from the very early ages belonged to a well-defined social order in India. A whopping majority of them belong to the caste of Bhangis This

²⁰ India's Toilet Tradition, *Urban Water and Excreta Management in Indian Cities*, 45-56 (2018)

²¹ VOL 8, William.H Allen, *Sanitation and social progress*, The American Journal Of Sociology 631, 643 (2013)

particular class or category of people is known by different nomenclature in different places of India. These occupational groups are known by the name of '*Hela*'²² in South India. The literal meaning of this word is crying and the reason for this is that they had to cry out to show their identity while using public places. As per another theory of thought, the name was derived from the term '*Hilna*' which means to be domesticated yet another meaning attached to the same is derived from the words '*hel*' or '*hili*' which means basket loaded with filth mud. In Gujarat, they are known by the name of '*Halalkhor*' – This euphemistic term which means 'one who eats lawful or whose earnings are legitimate' was coined by Emperor Akbar. Another word that was interchangeably used was '*Khakrob*'²³ which is a Persian word in which *khak* carries the meaning earth and *rob* to denote the people who sweep. In Punjab, the Bhangis are called '*Chura*'²⁴ to denote people who collect and seep up the scrap. The terms '*Ghare*'²⁵ and Bhangi ' were used in Bombay. In West Bengal, the common name used is '*Hari*' is believed to have derived from the word had meaning bone. The Haris were the people who collected bones and other sorts of waste and were common in Calcutta's quaint destination of Harry-wench. In the state of Rajasthan, they are known by the name of '*Mehtar*'²⁶ which has got the Persian meaning 'prince'. This was derision applied to the low caste people. The Bhangis might have adopted gratifying appellations as prefixes to their caste name. Hence in Uttar Pradesh, They are called by the name '*Valmiki*' or '*Dhanuk*' who are followers of Valmiki Rishi, The author of Ramayana and the first poet in the language of Sanskrit. In Delhi also they are known by the name '*Valmiki*'.²⁷ In Tamil Nadu, they are known as '*Thoti*'. In Karnataka²⁸ and the state of Kerala,²⁹ they are mainly known as '*Madigas*'. Though they are known by different names the sweeper community of all states has common stock of traditions and somewhat similar social status, i.e. the lowest among the lowest. They are considered as the designated caste to clean.

2.5 VARIOUS TENETS ASSOCIATED WITH THE ORIGIN OF BHANGIS AND THEIR ETHNIC RELATIONSHIP

How were these people assigned the common term Bhangis and made to clean? One of many questions that might come to everyone's mind is whether they were first outcasted by the society and forced to do the filthy work or whether they were from the very beginning doing this work and were subsequently declared as the lowest rung by the society. The answer is probably they were not engaged in this degrading work from the very beginning and to justify this there are several possible suggestions that have been put forth.

2.5.1 Mythological tenet

There is no comprehensive theory that can conclusively prove how the Bhangis started to indulge in the practice of cleaning. The initial references with regard to this work were present in Hindu Dharma Shastras. The most pertinent and regularly cited story of the origin of the

²² Vol 1 ,Crook W *The Tribes And Caste of N.W.P And Oudh – A study of culture contact* ,260(2nd ed 1960)

²³ Marwar Census Report 1894

²⁴Vol 4, Russel R.V., *The Tribes And The Castes of Central Provinces of India* ,215 (1916)

²⁵ R.L. GUNARTHI , *RAJASTHANI JATIO KI KHOJ* , 278 (1ST ED1950)

²⁶ Id at 30

²⁷ See Ram Ratan , *The Changing Religion of Bhangis of Rajasthan: A case Study Of Sanskritisation* , in *aspects of Religion in Indian Society*, 179 (1st ed1960)

²⁸ ISHWARAN K , *TRADITION AND ECONOMY IN VILLAGE OF INDIA*, 70 (1ST ED 1966)

²⁹ DASS BHAGWAN, *VALMIKI JAYANTI AUR BHANGHI JATI*, 23 (1ST ED1969)

Bhangi caste in Dharma Shastras as well as the Smritis is referred to as 'Chandala'. According to Manu: "Chandala is avowed to be born from Brahman mother and Sudra father, whose profession was the transportation of corpses and job of acting as Public Executioner".³⁰ Other reports give him a reduced amount of repute and pedigree, for he is said also to be the offspring of Musalia father (Sudra who pounds the Brahman called Musalia) by woman fisherman, whose work was cleaning the street every morning and evening, removing the night soil, and receiving the corpses.³¹ Further, he is thought to be the son of Dom, one of the most scorned of the groups having Nisad father and Sudra mother.³² According to Osnash Smriti, he is considered to be the offspring of Chandala father and Vaishya mother.³³ It is impossible to arrive at any conclusion from these statements of Dharma Shastras. It is patently clear that these sacred books do not contain any uniform or consistent account of the origin of the castes but, on the contrary, they present the greatest variety of speculation on this subject.³⁴

2.5.2 Historical Tenet

Another question of significance is whether the words Chandala and Bhangi denote the same caste which carries the social meaning scavengers who forms the lowest in the caste hierarchy. In other words, are they just different names for the people of the same class? Dharma Shastras are silent this question. An analysis of the account provided by the Chinese travelers who visited India and placed on record what they observed in the manners of the Indians. Fah-Hein who visited India In A.D. 400 at the time of the reign of Chandra Gupta II noted very little about the untouchables in India. However, whatever remarks he made about the social life of people spreads some light. He noted that in the entire country no people kill animals or drink wine or eat garlic and onion except for the Chandalas. They were considered as the evil men and lived apart from the others. If these people entered the markets or town people belonging to the other classes deliberately maintained a distance from them. Chandalas didn't grow cattle's nor did they have shops in the markets. The only activities in which they engaged were hunting and selling fish.³⁵ Hence there was untouchability which was prevalent in the society but the term Bhangi was not in use. Yuan Chwang the next Chinese traveler came to India in A.D 629 and stayed in India for almost 16 years and left an accurate record of his journey in which he mentioned the customs and manners of people. In inhabited cities and towns, the quadrangular walls (or according to one text, of the various regions) were wide and high, while the thoroughfares were narrow convoluted passages. The shops were on the highways and booths, or (inns) were present lining the roads. Butchers, fishermen, executioners, public performers, and scavengers had their dwellings marked with a distinctive sign. They were forced to reside outside the city and when they walked about in the hamlets they had to sneak along to the left.³⁶

Thus, when Yuan Chwang came to India untouchable groups and untouchability had emerged. Dr. Ambedkar arrived at the conclusion that while untouchability did not exist in 200 A.D., it had emerged by 600 A.D. Races and invasions, institutions, and governments of different

³⁰ Supra note 22 at 261

³¹ Supra note 25 at p275

³² Id at 274

³³ id

³⁴ PRASAD N, *THE MYTH OF THE CASTE SYSTEM*, 18 (2ND ED 1957)

³⁵ Atal et al, *The Changing Frontier Of Caste*, 43, (1st ed 1968)

³⁶ B.S.Cohen , *The Changing Status Of a Depressed Class In Village India* , 56 (1st ed 1955)

periods in the history of India have left their imprint on the lower caste. Bhangis are predominantly 'Non-Aryan or Dravidian in character'³⁷ They were from the earlier times restrained to servitude and did the vilest functions of the Aryans. Hence they did the work of the scavengers which is the filthiest of the filthiest.

2.5.3 Invasion Tenet

From the early Indian history subjugation of one tribe after others have been a habitual phenomenon in India. The subjugation occurred over wide areas. Indian history fully illustrates this fact and we can find the rising and falling of tribes and castes under repeated foreign and local waves of conquest. Class struggle always determined the status of a class or in its ossified form, caste.³⁸ The people of Bengal who, after the collapse of the Hindu rule, did not embrace either Brahmanism or Islam but stuck to their old worship style, have become today's untouchables. History is not without these examples. The Bhangi is essentially a recent result of urban life, first created as an occupation by Muslims and later turned into a hereditary caste by British rule.³⁹

2.6 SOCIAL STRATIFICATION OF BHANGIS

Even though the Bhangi community is made up of socially and racially heterogeneous classes they do have several dis-privileges and disabilities which has always been a boon to the entire community. They form a wider social system with internal hierarchy and variations. It is as follows:

2.6.1 HINDU BHANGIS

2.6.1.1 Dholio- ke-Bhangis⁴⁰

Dholio- ke-Bhangis form a separate group that is small in number. They live at a separate location in Siwanchi Gate. Their forefathers had migrated from Agra. The name Dholio-ke-Bhangis emerged because they exclusively cleaned Dholi and Dhobi caste latrines, while other Bhangis remove the night soil from both higher and lower castes except those of Dholi and Dhobi castes since they were considered as lowest even by Bhangis. Oral traditions present among the Dholio-ke Bhangis and Bhangis show that 4 or 5 decades ago two families led by late Kalu and Roshan migrated to Jodhpur. The elderly Bhangi informants say the Dholis and Dhobis of Jodhpur State lodged a complaint against the Bhangis 40-50 years ago to the then His Highness of Jodhpur Darbar Shri Umaid Singh Ji Maharaj, as they did not remove their night soil. His Highness had ordered the Bhangis to remove the Dolis and Dhobis night soil. To counter this, the Jodhpur Bhangis went on strike and declared that they would not remove the Dholis and Dhobis night soil. The Bhangis were ultimately excused from the work which they had perceived as degrading. Consequently, for Dholis and Dhobis, those two families were brought from Agra. The Bhangis and Dholio-ke-Bhangis have generally adopted the law of endogamy at Jodhpur without much intercourse in society. There were no inter-dinning and

³⁷ Shrinivas M.N ,*Social Chance In Modern India*, 31 (1st ed 1966)

³⁸ Vol 18, Moorthy O.K , *Development of Scheduled Caste: An Appraisal, Journal of Social Researches*, (1975)

³⁹ Dube et.al , *Demography and population studies*, 73 (1972)

⁴⁰ SINGH BUTA , *HOUSING PROBLEMS OF SAFAI MAZDOORS*, 19 (1976)

inter-marriages between these two groups. Among all kinds of Bhangis Dholio-ke-Bhangis had the smallest number.⁴¹

The Dholio-ke-Bhangis were forced to enter the municipality because of their inferior and vulnerable socio-economic position in the Bhangi community. They said they're no longer Dholio ke-Bhangis but just Bhangis and recruited more workers because of outsiders, they didn't understand the social system's intricacies. According to one of the Dholio-ke-Bhangis, they were not aware of the numerous problems of Dholis and Dhobi castes removing night soil, respectively. Therefore, their arrival here did not help other Bhangis to improve their socio-economic life. In fact, the removal of night soil by these castes only reduced them from Bhangi's status to Dholio-ke-Bhangis. They experienced difficulty in adapting to their new position in the changed situation and sometimes felt anger. Their living standards were low, and their earnings depend on the income of Dholis and Dhobis families who are generally on the poverty line themselves are uncertain and meager for subsistence.⁴²

2.6.1.2 Ghancha Bhangis

A considerable number of Gancha Bhangis, along with other Bhangis, are also doing the scavenging work in several districts. The Ghancha is made up of a caste group namely Gancha who converted into the Bhangis and entered the so-called lowest caste Bhangis. However, the converted Ganchas retained their name and were known as Gancha Bhangis after conversion. Their social status and rankings changed dramatically. In the municipality, both men and women are employed, their main job is scavenging. In addition, the work of the roads and drains and lifters sweeper and cleaner, as well as garbage carriage from residential areas, are assigned. The scavenging work is primarily given to the female employees, and the municipality assigns other jobs to male employees. The Ghancha Bhangis are either not found in many cities, or very few are found in some cities. But according to the 1971 census report the total population of Gancha Bhangis is around 2076 in Ajmer, Pushkar, Didwana, Nagaur, Sikar, and Pali. The Ghancha Bhangis and the members of their family are regarded by the Hindu caste as untouchable Bhangis. They're not permitted to dine or mix with a clean caste or community of occupations. Except for the job site, the Gancha Bhangis have no social interaction with their counterparts in Bhangi. They were not permitted to participate in marriage, festivals, funerals, etc. Their socio-economic and educational conditions were miserable. They had no social relations with other castes not even with ordinary Bhangis

2.6.1.3 Cheluvadia and Madiga (Bhangis)

This is a stratification of Bhangis that is usually seen in Mysore. They were mainly found in the village of Sivapuram. The two main bifurcations of Bhangis here were the Cheluvadia and the Madiga. They were further classified as local (eduru) and immigrant (para varu) Madigas. The immigrant Madigas are inferior to the Cheluvadia. The Madigas eat flesh of dead animals by skinning them and is regarded as lowest and untouchable even by other bhangis. The Cheluvadias considered eating flesh of dead animals as sinful.⁴³

2.6.2 MUSLIM BHANGIS

⁴¹ SHYAM LAL, FROM HIGHER CASTE TO LOWER CASTE: THE PROCESS OF ASPRASHYEEKARANAND MYTH OF SANSKRITIZATION' 56 (1997)

⁴² VENKATARAYAPPA, SLUMS: A STUDY IN URBAN PROBLEMS, 67 (1972)

⁴³ ZINKIN, TAYA, CASTE TODAY, 13 (2ND ED 1973)

2.6.2.1 Muslim Sweepers

A large number of Muslim Bhangis, along with Hindu Bhangis and Chura Bhangis, also did the scavenging work in the region. The lines of Saiyeds, Sheikhs, Pathans, Maliks and Mirzas, all claiming foreign breads, are among the Muslims Ashraf group. The categories of Ashraf or Aslof are indigenous occupational classes who converted to Islam, which included the so-called backward class of Muslims who did the work of cleaning. Afzal's name was given to the converted untouchables and there was no improvement in their social status and ranking after they embraced Islam.⁴⁴ The scavengers are also included in the category of Afzal, and are generally called Mehtar or Halalkhor in the Muslim community. Such Muslim scavengers can consist of either local Bhangis who have been converted to Islam or those Mehtars or Halalkhors who have migrated from other places. The other names among Muslims for this unclean occupation community are Lalbegi, Mehtar, Halalkhor and Sheik Mehtar. In Bihar the Muslim scavengers are often referred to as Mehtar or Halalkhor like other places in Bihar and Uttar Pradesh. The Mehtar title was generally used for Mughal Emperor Humayun's (mid-sixteenth-century) household servants. Halalkhor is also a Persian word meaning 'one who eats food that is halal or honestly made.' The use of this word for the Bhangis is certainly an index of the respect and appreciation of their job and it is only they who are called Halalkhor, although the bread may and is won by many clean and unclean occupational group honestly. The Muslim Bhangis or scavengers, both men and women, are employed in municipalities alongside Hindu Bhangis whose main occupation is scavenging. Besides this, the work of sweeping and cleaning of roads and drains and lifters as well as garbage carriers from residential areas were assigned. The municipality allocated the other jobs to the male employees.⁴⁵

2.6.2.2 Hella Bhangis

Similarly, in Udaipur city, the Hella Bhangis live away from the general population of the Bhangi Bustee.⁴⁶ Traditionally, Hellas are associated with Muslim religion. In order to solicit a higher status for their group, the Hellas were motivated to model their social life on the Muslim pattern. By tradition, Hellas do remove the night soil of higher castes. Hellas do not eat from the hands of the Bhangis, but Bhangis eat from their hands. Likewise, Hellas too have not developed any socially recognised commensal relation with Bhangis. A large number of Hellas are employed in Udaipur Municipality. Being backward, they suffer from social disabilities and are prone to economic exploitation. Their living levels are low. They face a very difficult time in making both ends meet. They find it hard to provide adequate education to their children and feel frustrated that they are deprived of the various benefits from the State.⁴⁷

2.6.3 SIKH BHANGIS

2.6.3.1 Chura Bhangis

⁴⁴ ANSARI G, MUSLIM CASTE IN UTTAR PRADESH, 34 (1ST ED 1960)

⁴⁵ BETEILLE, ANDRA, CASTES : OLD AND NEW, 27 (1ST ED 1969)

⁴⁶ id

⁴⁷ DUMONT, LOWIS, HOMO HIERARCHIOUS: THE CASTE SYSTEM AND ITS IMPLICATIONS, 45 (1ST ED 1970)

A caste of sweepers and scavengers, the churas are allied to the Bhangis and claim similar social status in the caste hierarchy. With the course of time they have almost given up their traditional occupation. According to 1961 census there were 10,859 Churas in Rajasthan constituting 0.32 percent of the total Scheduled Caste population. Of the total Churas in the State 51.47 prefers the Sikh religion. The bulk of the community live in the rural areas of the State and are engaged in cultivation and work as agricultural labourers, at household industry and in sundry occupation. The participation of their women folk in economic activities is remarkably low. In the urban areas they are mostly engaged in manufacturing other than household industry. Literacy is low in the community specially among the females, while only 5.5 percent of males are literate.⁴⁸

2.7 SOCIAL STATUS OF MANUAL SCAVENGERS

Scavengers constitute an underprivileged social group treated as “Impute” and consequently ritually avoided. They are treated as inferior and often regarded as less than human. They live on the fringe of society, often excluded from social contact, although their services are accepted as highly valuable.⁴⁹ They are socially ostracised because of their ritual impurity and for certain peculiar objectionable habits and ritual polluting profession.⁵⁰ They are backward, and often oppressed not because of their alleged racial, social and cultural inferiority, but simply because they have been assigned the lowest of the low status in social hierarchy. As outcasts and rejects of the Indian society, scavengers have suffered human indignities throughout the ages.⁵¹ They have been treated like dreaded contagious disease calling for a disdainful distance and the most minimal social contact. Because of their social degradation, scavengers have been compelled to live as socially disadvantaged persons condemned to accepting their social degradation, discrimination and disadvantaged position as part of their fate. Besides social backwardness, scavengers are economically backwards too. Most scavenger families, therefore, live in abject poverty due to structural factors as low family income on account of being engaged in low paying occupations, and personal factors as their large family size and male members’ indulgence in smoking, drinking and gambling and the like activities.⁵² Most scavengers are illiterate and thus educationally backward. In spite of the facilities for their free education, children are not sent to schools. In most cases, and female education is not considered to be an important issue. The economic and educational backwardness has deprived many scavenger families from taking advantage of the privileges meant for the welfare of the people.⁵³

2.8 TYPES OF MANUAL SCAVENGING PREVALENT TODAY

Manual scavenging prevalent in India today would broadly comprise five types:

⁴⁸ id

⁴⁹ Sesha Kethineni & Gail Diane Humiston, *Dalits, The "Oppressed People" of India: How are their Social, Economic, and Human Rights Addressed?*, WAR CRIMES, GENOCIDE, & CRIMES AGAINST HUMAN. 99, 101 (2010).

⁵⁰ Supra note 4 at 9

⁵¹ RATNA G. REVANKAR, THE INDIAN CONSTITUTION: A CASE STUDY OF BACKWARD CLASSES 113 (1971)

⁵² Smita Narula, *Equal by Law, Unequal by Caste: The "Untouchable" Condition in Critical Race Perspective*, 26 WIS. INT'L L.J. 255, 272 (2008).

⁵³ JITENDRA RATHORE, MANUAL SCAVENGING: A BLOT ON INDIA’S GOVERNANCE, JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH, 45 (2ND ED 2003)

1) Those involved in cleaning dry latrines that continue to exist (with a large number of women employed). Even so many years since the law, as the govt's own Census reports⁵⁴, and as the SKA's survey reveals, dry latrines and manual scavenging continue to exist.

2) Septic tanks cleaning: in the period since the 1993 law banning manual scavenging, urbanization has advanced across the country, and that has also meant septic tanks, as the most prevalent means of sanitation. Owing to defective septic tank design and construction, these need to be cleaned manually. Although mechanical de-sludging is prevalent in different parts of the country, there is prevalence of manual scavenging even in areas where such mechanical de-sludging facilities were available. It is through manual means that the bulk of the septic tanks are cleaned. And as newspapers have reported over the last few years, many of the deaths of manual scavengers has been in septic tanks.

3) Sewer cleaning: Although the Supreme Court ruled in 2014 that workers entering sewers are also to be regarded as manual scavengers and thus ordered the end of the practice, it continues to exist. Such workers are also dying regularly. The workers get inside stormwater drains and sewer lines to clean them, and mostly without any safety gear.

4) The Census 2011 reports found that are latrines connected to open drains. Besides, defective septic tanks also discharge excreta into drains. These drains are to be cleaned by the municipal sanitary workers. As surveys and reports have revealed, such workers rarely use protective gear and equipment.

5) The Indian Railways must be the largest employer of manual scavengers in the world. Although it has been stated in parliament by the minister concerned that manual scavenging does not exist in the Railways, we have personally seen it happening, in Chennai in 2017. Such workers are not directly employed by the Railways, they are under contractors. Although such contractors have to be approved by the Govt of India's Labour Ministry, the existence of a law banning manual scavenging is not taken into account while approving contractors who employ principally women, to clean excreta from the rail-tracks in the station.⁵⁵

2.9 MODERN SCENARIO AND EVOLVED FORMS OF SCAVENGING

Flush toilets have become symbol of modern urban life in India as it has in the rest of the world. More than 80% of the urban population in India has access to a toilet, either single-family or multi-household. Many of the toilets today, at least in the urban areas are pour-flush and are connected to soak pit or septic tank rather than to a sewer system. This was proved by the census of 2011.⁵⁶ Only 32.7 percent of the urban households and institutions in India is serviced by sewers, which implies that majority of the residents use some form of on-site sanitation (or OSS) for their sanitation systems.⁵⁷ The construction boom in big cities and small towns and the much slower expansion of their sewage systems are likely to continue unless better technologies are found and installed in all households.⁵⁸ Where no sewers exist, faecal waste must be disposed of by non-waterborne ways of transport from pits and reservoirs. The cleaning of these septic tanks and pits where initially done manually by workers who had to do

⁵⁴ CENSUS REPORT OF 2011

⁵⁵Vol 5 Schmidt, W.C. *E Junk explosion. Environment Health Perspectives* 188- 194(2002)

⁵⁶ GoI, Census of India <https://censusindia.gov.in/> assessed on,(Aug. 22,2020, 3.32 PM)

⁵⁷ Id, World Bank 2017

⁵⁸ Vol. 1,Narain, S. & Srinivasan, R. *Excreta Matters: How Urban India is Soaking Up Water, Polluting Rivers and Drowning in its Own Waste*,. Centre for Science and Environment, New Delhi, India. 56(2012)

the same in highly unclean conditions and without any protective equipment. The continuous deaths of workers in sanitation, the degrading essence of dignity in their profession and the huge outbursts from social activists forced the government to pass the MS Act of 2013.⁵⁹

The Act set the basis for using non-manual means to clear pits, i.e. trucks equipped with vacuum pumps and suction hoses. Waste can now be mechanically emptied and transported away from residential areas by trucks, euphemistically called 'honey-suckers.' However, sanitation work is still dangerous. More than twenty-two thousand sanitation workers die every year doing their jobs of cleaning septic tanks, sewage treatment plants and numerous numbers of sewers. Many more deaths remain unreported and it becomes impossible to calculate the exact number because of the irresponsible nature of the authorities who denies their accountability in this matter.⁶⁰ Most of the sewage and nearly all the septage produced is disposed in the untreated form to open drains by the urban and peri-urban areas despite many of them having specific treatment plants for the same. This would not only require the further cleaning of these sites in unhygienic conditions having an adverse toll on the health and life of the sanitation workers but would also have serious repercussions on the life of all people who come in proximity to it.⁶¹ In urban India, around 70 per cent of sewage and nearly all septage are currently unsafely managed.⁶² When septic tanks and pits fill up, homeowners either dig a new one constructed, or get current one cleaned. If owners get a new pit dug if they have large yards and sufficient financial capacity. A new pit can cost almost two to ten times more than cleaning and emptying the current one. Hence most of the institutions as well as the individual households go for cleaning of the existing ones. The two options for cleaning in such situations remain calling people for cleaning manually or using suction pump methods and then transporting the waste. The second option is resorted to if the truck can get to the house, or get nearby to run its suction hose into the pit. Both of these are prevalently being used. City-run trucks use more advanced technology than small private operators can, but they often clean sewers and government buildings and can take time to respond to individual calls.⁶³ Most of the truck operators and the workers who clean the tank are Dalits barring a few exceptions.⁶⁴ Homeowners provide the sanitation workers with a couple of buckets of water but usually do not provide them with soap and protective equipment's. All the work of digging the trenches, locating the opening, opening the slab, mixing of water, insertion of hose or suction pumps etc., are carried out without protective clothing.⁶⁵ For private truck operators, dumping the waste collected is a source of stress. Because normally there is no designated place to dump the sludge, truck operators are looking for places that do not attract unnecessary attention. Spots are best without a lot of foot traffic. They work quickly, dumping a 4,000-liter load of sludge for 7–10 minutes.⁶⁶ The trucks and its activities are transparent and noticed by all -the public and the government. The operators, in fact, make every effort to be visible

⁵⁹ Prohibition of Employment as Manual Scavengers and their Rehabilitation Act in 2013

⁶⁰ Tyagi, A. J. 2017 *Predicament of sanitation workers in Swachh Bharat*, Tehelka Magazine.

⁶¹ David M. Berendes *Safely Managed Sanitation for All Means Faecal Sludge Management for At Least 1.8 Billion People in Low- and Middle-Income Countries* <https://pubs.acs.org/doi/10.1021/acs.est.6b06019> assessed on (June. 16, 2020).

⁶² id

⁶³ C. S. Sharada Prasad, When the pits fill up: (In)visible flows of waste in urban India,

⁶⁴ Doron, A. & Jeffrey, R. Waste of A Nation: Garbage and Growth in India ,67(2018)

⁶⁵ Vol. 1, Narain, S. & Srinivasan, R. Excreta Matters: How Urban India is Soaking Up Water, Polluting Rivers and Drowning in its Own Waste., 2012

⁶⁶ Vol , 9C.S.Shradaha Prasad, Isha Ray , When Pits Fill Up, Invisible Forms Of Waste In urban India, 13, 24 (2019)

(except when they are offloading the faecal matter). Why is that these trucks and the work not appear in India's draft of Sanitation and FSM policy guidelines? Various Literature give reasons-based philosophy and anthropology of how and why the everyday and obviously visible becomes invisible.⁶⁷ Those involve self-imposed blindness when seeing painful disgust with what is considered repellent – like bad smells and the things that produce them, and contempt for the social classes associated with repellent things.⁶⁸ It has been, and remains, historically difficult for any society to confront and discuss its own waste, particularly faecal waste, openly. But understanding the social position of disgust and contempt, particularly in the light of India's caste system in which the lowest orders were consigned to the realms of ritual degradation and 'the disgusting' – helps to analyse why it has always been difficult for India to make effective policies and measures for the sanitation workers.⁶⁹ None of the measures so far taken has been properly implemented nor provided for a permanent solution.

2.10 NATURE OF WORK AND ASSOCIATED RISK

The job is inhumane and demeaning. A typical scavenger gathers human faeces without any protective equipment from dry toilets. The stench is hard to bear. They use bare hands or a shovel to gather the waste and carry the load in tin or wicker baskets filled with hay on their backs. In the monsoons, water percolates through the hay, and the baskets leak, spraying excreta on their heads and faces. Water percolates through the hay in the monsoons and leaks in the containers, spraying excreta on their heads and hands. Human faeces and urine are carriers of hepatitis A, pinworms, rotavirus, and E. coli which expose workers to cholera, hepatitis, typhoid, tuberculosis, and a host of other diseases. Many are addicted to tobacco and alcohol as an effort to somewhat relieve their profession's repugnant disposition and their lives 'general disillusionment. Apart from just collection and removal, scavengers are also involved in the cleaning of septic tanks, sewers, and railway tracks.⁷⁰“That a section of humanity should be condemned to such degrading condition is a slur on our culture and a disgrace to our society”.⁷¹

There are several problems associated with the task of cleaning human excreta. this can be classified into the following groups

i) Hours of Work:

The majority of female sweepers are very young. They spend majority time taking care of their own household tasks, including washing laundry, preparing meals, picking wood for cooking meals, etc., and several hours of work outside the home. Their monthly income is very limited. Thus, the average working hours for them ranged from 11-15 hours a day. Due to the nature of work and their belonging to lower classes, the majority of them have no position in society. The scavengers who work in the informal sector work in a bad environment that offers low standards of sanitation, privacy, ventilation and, amid all these adverse working conditions,

⁶⁷ Mcfarlane, C. & Rutherford, J. Political infrastructures: governing and experiencing the fabric of the city. *International Journal of Urban and Regional Research* 32 (2), 363–374, 2008

⁶⁸ Nussbaum, M. C , 'Secret sewers of vice': Disgust, bodies, and the law. In: *The Passions of Law*,(1999)

⁶⁹ Strande, L., Ronteltap, M. & Brdjanovic, D, *Faecal Sludge Management: Systems Approach for Implementation and Operation* 155 (2012)

⁷⁰ *Manual Scavenging in India A National Scourge*, terra green, volume 11, issue 11, january 2019

⁷¹ Bhagirath Poddar, *The Untouchables in Modern India*, Sarup Sons, New Delhi, 2001, pp.62-63.

their hours of work are stretched by the fear of losing work at any time. Women employed in informal sectors demonstrate that there are no fixed salaries and working hours for such jobs.⁷²

ii) Indigenous method of cleaning

For over a century, their working standards have remained largely unchanged. The sanitary workforce clear fecal matter from public and private latrines into buckets or other containers by using only a stick broom and a small tin plate, which they then bear on their heads to grounds and disposal sites. A few, however, are issued by the municipal authorities with wheelbarrows or carts. Apart from the social atrocities and discrimination that these workers face, they are exposed to several health problems by virtue of their occupation. These sanitary workers are made to literally go down the drains every day without safety precautions and supervision and without any emergency medical support.⁷³

Even in cases where they use safety devices many have lost their lives owing to faulty functioning of the same and due to suffocation.

iii) Lack of Political Will:

State Governments often deny the existence of practice of manual scavenging. Activists claim that even though the resources including government funds exist for rehabilitation of scavengers, the lacunae is the political will to do so. The Indian government has spent Rs 6 crores in "liberating" and "rehabilitating" the manual scavengers ever since the mid-1990s. According to a survey, almost 94 per cent of village latrines in Madhya Pradesh are dry. The Madhya Pradesh government declared in 2003 that it would connect all dry latrines to a drainage system. However, no concrete step has been taken so far. Even government offices and buildings run dry toilets. And despite an active people's movement against the practice, municipal offices recruit only Dalits to keep these lavatories clean. The condition of most of the northern states are the same. This scourging practice is also prevalent in many southern countries and other parts of India.

iv) Abuse & Rape:

Within the scavenger's community, women constitute the majority of those who engage in the scavenging. They are also into domestic sweepers in cities and are highly vulnerable; allegations that their own employers sexually harass them are omnipresent. Most women scavengers are victims of regular rapes and violence that are barely noticed even as they earn a meagre fifty to one hundred rupees per month. Overall, owing to the stigma associated with their caste and occupational status, Dalit scavengers are rarely able to take up other occupations. In order to live, they are paid less than minimum wages and are often forced to borrow money from

⁷² A 2013 survey of 480 women from manual scavenging communities in nine districts in the Indian states of Bihar, Uttar Pradesh, and Madhya Pradesh, undertaken by Jan Sahas Social Development Society with the support of UN Women, found that 70% of respondents across all three states became involved in manual scavenging after marriage while 30% entered the practice before marriage. By state, 60% of respondents in Bihar, 77% of respondents in Uttar Pradesh, and 76% of respondents in Madhya Pradesh started manual scavenging after marriage. Jan Sahas Social Development Society, "Socio Economic Status of Women Manual Scavengers: Baseline Study Report, 2014,"

⁷³ Human Rights Watch, *Cleaning Human Waste: "Manual Scavenging", Caste and Discrimination in India*, Washington D.C., 2014.

upper caste neighbours. This finally upholds the status quo and retains the slavery vicious circle. Following the lack of alternative livelihood options, scavengers are unable to break free of religiously sanctioned deep-seated systems of exclusion and injustice from these age-old shackles.

v) Denial to Public Utility:

In Kerala, the scavenger class used to tie a broom behind them to sweep away their polluting footprints and carry a cup in front of them so they did not spit on the ground. Their names were expected to be self-ridiculing such as 'animal dung'. Often, they are forbidden to use the same water sources as higher caste families or they are obliged to collect water after other castes

vi) Untouchability:

The practise of untouchability is very severe in that the manual scavengers are not treated on par with others in public places like teashops, grocery shops, roads, buses and so on. Separate cups are kept for their use in hotels and tea shops and also barbers and other professionals deny service to them

vii) Private Manual Scavengers:

The private manual scavengers were presumably not taken into account in the official calculation. According to an estimate of 72.05 lakh of dry latrines in the country in 1989, this figure increased to 96 lakhs by 31 January 2000. The scavengers belonging to the Scheduled Castes are still manually cleaning them. Between 1980 and 31 October 2005, 2,078 million toilets were contained within the Low-Cost Sanitation Project of the Ministry of Urban Employment and Poverty Alleviation and only 45,447 manual scavengers liberated.⁷⁴

viii) As Outcastes:

In the main town or village, scavengers were not permitted to live and had to live in huts that bore a resemblance to monstrous mounds of earth falling beyond the city limits. For fear of losing his religious purity and divinity, no person from a higher caste used to have even the most distant contact with a scavenger. When approaching a town or village, they were forced to strike a wooden clapper to give early warning of their "polluting" character and had to eat the remains of the food of their owner, wear his discarded clothing, and use his broken chattels. The scavenger was refused entry to temples and he was not even permitted to read or chant the holy texts of the Hindus, barred from religious ceremonies. In our modern world, these complex ways of social exclusion are still prevalent.⁷⁵

ix) The dangerous vicious cycle:

When both the parents are engaged in manual scavenging, they are not in a state to care for their children. The children of the manual scavengers in the youth ages are pulled by the sanitary officers and contractors to engage in manual scavenging. Generation after generation the scheduled castes engaged in manual scavenging are forced to do the intolerable manual scavenging to keep the area clean for others but their life is in a dismal state. UN experts published a 9-point presentation for achieving the world's Millennium Development Goal

⁷⁴ Studies by water Aid India 2009

⁷⁵ BINDESHWAR PATHAK, TECHNOLOGIES FOR HUMAN DIGNITY :THE SULABH SANITATION AND SOCIAL REFORM MOVEMENT, 67(2ND ED2009)

(MDG) for sanitation by 2015, in which they disclosed that for more people in India have access to a cell phones than to a toilet and improved sanitation. Though Rehabilitation programmes are initiated by the government the manual scavengers would not have a dignified life until the total eradication of the manual scavenging in any form is done

x) Atrocities on Children:

Case studies pertaining to atrocities against children of manual scavengers in schools have been published by the Centre for Human Rights and Social Justice.⁷⁶ "The Centre claims through evidence-based studies that" Dalit children are required to constantly clean classrooms, offices, toilets, and urinals. Such children are systematically discriminated against by their teachers and fellow students in curricular, co-curricular and cultural activities. In some cases, children are engaged in the disposal of dead animals, or must accompany their parents to work or have to beg to get food. These factors have forced these children to leave school or to stay away from school education."⁷⁷

Lack of education and prevalence of social apathy and indifference are also greatly responsible for the problem. Indifference is essentially an evil and like all other evils it is also contagious.⁷⁸

xi) Educational Status:

Right to education is a myth as far as the scavengers are considered. They are denied their basic education. Those engaged in this sector often find it a herculean task to earn a bare minimum for their living and sending their children to school is something which is unimaginable for them. Hence these children are denied the basic fundamental freedom of education thereby denying a dignified life to them.

xii) Contract Workers:

The government has abolished Safai Karamchari posts ("cleaning and sweeping") since 1996 and has replaced it with a contractual recruitment system. Scavengers are discriminated in all walks of life and excluded from social, political and religious gatherings. This discriminatory practice reaches their families as their children are overtly discriminated in schools. Workers at the municipality level do not get uniforms and safety equipment even though their work is unhealthy and extremely hazardous for sewage and septic tank workers. Again, very recently the Supreme Court ordered entities employing sewage workers to provide them with adequate safety gear. Lack of medical aid to workers is also an issue

xii) Infection:

Manual scavengers are exposed to most virulent types of viral and bacterial infections affecting their skin, eyes, arms, respiratory and gastrointestinal systems. According to the study, tuberculosis is prevalent among the population.⁷⁹

⁷⁶ Center For Human Rights And Social Justice Reports, 2010

⁷⁷ United Nations Development Programme and UN Solution Exchange (Gender Community of Practice), Report of National Round Table Discussion on Social Inclusion of Manual Scavengers, New Delhi, December, 2012

⁷⁸ Palkhiwala N.A., Our Constitution defaced and defiled, Macmillan Publication

⁷⁹ A 2002 report prepared by the International Dalit Solidarity Network - which includes the Human Rights Watch (United States), Navsarjan, (Ahmedabad, Gujarat), and the National Campaign on Dalit Human Rights says that the government estimates that there are one million Dalit manual scavengers in India

xiii)Skin Problems:

Another problem of prime concern is wellbeing. Manual contact with excreta exposes several diseases to manual scavengers; skin infection, finger and limb rot, tuberculosis and nausea are common. Due to exposure to excreta, many complain of inability to take food. Tuberculosis, Campylobacter infection, cryptosporidiosis, giardiasis, hand and mouth diseases, hepatitis A, (viral) meningitis, rotavirus infection, salmonella infection, shigella infection, thrush, gastroenteritis virus, larvae, and yersiniosis are some of these diseases. The International Labour Organization (ILO) corroborates such claims by pointing out that persistent dust inhalation during street sweeping contributes to deterioration of lung function and can trigger symptoms of respiratory health. An alarming ninety percent of them are not provided by any sort of protective gears.⁸⁰

xiv)Harassment:

Health officials harassed the permanent sanitary workers, who were also threatened with not disclosing their occupation, Samuel points out. The SKA has urged the State Water Supply Agency, Local Administration and State Secretary to take immediate action against those officers. Removal of dry latrines will terminate the practice and conversion of these toilets into water flush ones is the solution to the issue. (Ravichandran, 2008).

In 1970 manual scavenging was outlawed at Karnataka and in 1995 across India. But a people's union for civil liberty study says 8000 manual scavengers are still living in Karnataka by clearing human waste today. Besides government apathy, they are often considered socially untouchable and have no hope of having other jobs. (The Indian Express, 2011)

The National Commission for Safai Karamcharis, a statutory body, has pointed to the use of dry latrines and the continued use of manual scavengers in its report.

xv) occupation induced alcoholism

Most Dalits engaged in 'special occupations' explore alternatives to cope with their working conditions. Lifestyle habits such as tobacco chewing, paan chewing and consumption of alcohol are encouraged, developed and continued. Perhaps these habits help them overcome the stench and foul smell which form an integral part of their jobs and prepare them mentally to carry the night soil on their heads and lower themselves into manholes which emanate gases that not only have bad odours but are injurious to health too. The use of alcohol in heavy doses becomes a necessary part of their working conditions and thus for livelihood. Carrying night soil and cleaning toilets/ latrines every day is not a healthy job. It carries certain infectious diseases such tuberculosis, malaria and skin disease through exposure to filthy working conditions.

Many women who are into the practice of manual scavenging tend to get addicted to tobacco (Gutka) and men are found to get addicted to liquor in their attempt to diminish the degrading nature of their work and beat back their state hopelessness.

⁸⁰ 2007 Report on Safety conducted by the Tata Institute of Social Sciences (TISS).

Xvi) Exposure to harmful Gases:

The threats include exposure to toxic gases such as methane and hydrogen sulphide contributing to immediate death and/or cardiovascular degeneration, musculoskeletal conditions such as shifts in osteoarthritis and herniation of the intervertebral disc, hepatitis, leptospirosis and helicobacter infections, skin issues, problems with the respiratory system and altered parameters of pulmonary function. Routinely exposed to human and animal excreta, without protection of masks, gloves, shoes, uniforms etc, these scavengers are vulnerable to different kinds of health diseases.⁸¹ Even after the enactment of 1993 Act, the working conditions of these workers have hardly changed and they are exposed to harmful gases like methane, hydrogen sulfide, leading to infections like hepatitis, skin problems, anaemia, diarrhoea, vomiting, jaundice and respiratory-related problems that mostly go untreated and is left to their further stigmatization. Cases of death as well, due to carbon dioxide poisoning are not unheard of.

2.12 CONCLUSION

In the Indian society, the manual scavengers are forced to engage to clean the human excreta, clean the sewages, clean the railway tracks, clean the septic tanks, etc. The communities in the lowest strata of the social order are often pushed into the manual scavenging occupation, the society treats that that lowered castes engaged in manual scavenging are born for doing such practice. The Government of India often claims that there is no manual scavenging practices but in reality it exists in various parts of Country. They are subjected to an array of problems and gross discrimination in the society which makes the life all the more difficult for them. The array of problems faced by these class of people have diverse manifestations in the form of health repercussions, downtrodden poverty, inadequate access to health. Official failure to eradicate the undesirous practice of manual scavenging. It is the most degrading surviving practice of the untouchability prevailing in the country. This involves mostly women in rural areas, men and also children gathering human excreta from individual or community dry toilets by bare hands or using brooms or metal scrapers or other tools into wicker baskets and buckets and then carrying this on their heads, shoulders or against their hips into dumping sites or water bodies which is normally far away from the residences. Many Others are also employed to clear, carry and dispose of excrements from sewers, septic tanks, drains into which excreta flows and railway lines. As such these constitute great human right violation of these deprived class of the society.

⁸¹ Rashtriya Garima Abhiyan, "Violence Against Manual Scavengers: Dalit Women in India," Report Submitted to UN Special Rapporteur on Violence Against Women during her visit to India between April 22-May 1 2013, <http://www.dalits.nl/pdf/violenceagainstmanualscavengers.pdf> (accessed August 3, 2014), p. 3.

CHAPTER THREE

INTERNATIONAL AND CONSTITUTIONAL FRAMEWORK RELATING TO SANITATION AND MANUAL SCAVENGING

3.1 INTRODUCTION

The sanitation situation has always been problematic in India. There has been too much silence about sanitation and for too long. Progressive recognition of this right in the international arena has acted as a prompt for states to place sanitation squarely on their Agenda. At the global level India's pioneering steps in the field of sanitation have been lauded by several bilateral, multilateral, and plurilateral bodies including recently concluded 74th UNGA during 17-30 September, 2019 in New York. The national and the International Law frameworks always influence each other. Hence it is important to address their interface. At the International level Sanitation has been recognized as an implicit component of right to adequate standard of living and to health. Several treaties and soft law instruments recognize right to sanitation along with the right to water. However, this right got progressively articulated as a distinct right.

3.2 THE SANITATION CRISIS

The current sanitation crisis has dire implications on lives and livelihoods of billions of people around the globe; yet it's unfortunate that it remains one of the most neglected issues at the international and national levels. The WHO/UNICEF Joint monitoring Programme Report estimated the sanitation coverage in 2015 was 68 per cent, meaning that the remaining 32 per cent of the world's population either shares a toilet, has access to other types of unimproved sanitation or even practices of open defecation. Since 1990 almost 2.1 billion people have gained access to improved sanitation facilities. The world however missed the Millennium Development goals (MDG'S) sanitation target by almost 700 million people.⁸² The almost 700 million people who would have been served if the health target of the MDG had been reached was equal to the number of people in sub-Saharan Africa who have been unserved.

By 2015, there were 2.4 billion people who still did not use an improved sanitation facility, Of these, 638 million used public or shared sanitation facilities, Even though open defecation rates have been decreasing steadily since 1990, it is estimated that almost 946 million still practice open defecation worldwide, and two-thirds of them live in Southern Asia. The overwhelming majority (90 per cent) of those practicing open defecation live in rural areas. Between 1990 and 2015, open defecation in all regions declined, with the most drastic declines seen in the least developed countries (from 45% in 1990 to 20% in 2015), marking a significant first step on the sanitation ladder.⁸³ When it comes to meeting self-imposed national sanitation targets (as opposed to the globally agreed MDG target), most countries reported in 2011 that they were falling short: 83 per cent of countries reported falling significantly behind the trends required to meet national access targets for sanitation.⁸⁴

⁸² The WHO / UNICEF Joint monitoring Programme for Water Supply and Sanitation , Progress on sanitation and drinking water : 2015 update and MDG Assessment (UNICEF and World Health Organisation, 2015),5.

⁸³ WHO/UNICEF JMP (n 1), 12-13.

⁸⁴ World Health Organization and UN-Water, UN Water Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS) 2012 Report: The Challenge of Extending and Sustaining Services (World Health Organization, 2012), 11.

It is undisputed today that lack of access to sanitation affects human dignity, and is at the origin of the non-realisation of basic human rights; yet sanitation remains severely underfunded, politically under-prioritized, and neglected at all levels. One of the greatest barriers is the stigma around sanitation. Majority of the people consider sanitation as a highly private topic and an unpleasant subject for public discussion. The absence of effective national policies, complex and divided roles for sanitation across government departments, and a general nonexistence of awareness of the beneficial benefits of investing in sanitation, as a result of the failure to prioritise sanitation. It is essential to bring this problem to the forefront and confront the taboo surrounding it. Only then the sense of right to dignity of millions of people can be restored.

3.3 WHAT IS SANITATION?

Even though there are numerous definitions of sanitation, they often do not adequately capture all the relevant human rights dimensions and principles. For example, the definition established for monitoring access to sanitation, particularly in the context of the MDGs, used the term 'improved sanitation,' referring to technology types and service levels that are likely to be sanitary than unimproved technologies. It considered excreta disposal systems as 'adequate as long as they are private, and separate human excreta from human contact.

Hence, in 2009, the then United Nations Independent Expert on the human rights obligations related to access to safe drinking water and sanitation (Independent Expert) proposed a definition of sanitation which is drawn from elements related to sanitation as given in international human rights law. Sanitation was described as: a system for the collection, transport, treatment and disposal or re-use of human excrement and hygiene associated with it. Without discrimination, states must ensure that everyone has physical and economic access to sanitation that is secure, hygienic, secure, socially and culturally appropriate, guarantees privacy and maintains equality in all spheres of life⁸⁵

The United Nations Committee on Economic, Social and Cultural Rights (CESCR) later endorsed this definition in a statement on the Human Right to Sanitation issued in November 2010. The said statement asserts:

In accordance with the definition of sanitation put forward by the Independent Expert on water and sanitation as *'a system for the collection, transport, treatment and disposal or use of human excreta and associated hygiene States must ensure that everyone. Without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygiene, secure, socially and culturally acceptable, provides privacy and ensures dignity. The Committee of the view that the right to sanitation requires full recognition by States parties in compliance with the human rights principles related to non-discrimination, gender equality, participation and accountability'*.⁸⁶ This definition and the consideration of sanitation as a human right entail other types of implications. It also poses added challenges since human rights set the bar at a higher level than the existing development language and concepts.

⁸⁵ UN Human Rights Council, Report of the Independent Expert on the issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque, 1 July 2009. UN Doc. A/HRC/12/24

⁸⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), Statement on the Right to Sanitation, 2010, UN Doc. E/C/12/2010/1.

3.4 INTERCONNECTION BETWEEN SANITATION AND OTHER HUMAN RIGHTS

Recognizing sanitation as an important element for the realisation of other human rights , including the rights adequate housing, education, to an adequate standard of living, health, water, employment, life, physical protection, the prohibition of inhuman or degraded rights, began the process of addressing sanitation as a separate human rights at national level and also at United Nations level.

3.4.1 The Right to an Adequate Standard of Living

Considering the profound impact that lack of sanitation has on the quality of life of an individual, sanitation was throughout time frequently understood to be indispensable for achieving an adequate standard of living. For eg Article 14, paragraph 2(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), addressing the detailed condition of rural women provides that states parties shall take all essential actions to guarantee to women 'the right ... to enjoy adequate living conditions, particularly in relation to ... sanitation.'⁸⁷ Article 11(1) of (ICESCR) ⁸⁸provides for the right of everyone to an adequate standard of living, including adequate food , clothing and accommodation, for themselves and for their families and for the continuous improvement of living condition.⁸⁹ There is no explicit mention of sanitation here, however CESCR, the treaty body responsible for monitoring state compliance with the ICESCR, clarified in 2002 that the use of the word 'including' suggests that this set of rights was not meant to be exhaustive.⁹⁰ Additionally, the CESCR included sanitation in its General Comment⁹¹ No. 19 (2008) on the right to social security in an expanded list of elements of the right to adequate living standards.⁹²

3.4.2 The Right to Health

The link between access to sanitation and health are well documented. The WHO estimates that 88 per cent of diarrhoeal disease is caused by unsafe water and sanitation, leading to the death of about 1.8 million people annually, of whom 90 per cent are children under five mostly in developing countries.⁹³ When people have no access to sanitation or restricted access, they may also experience kidney and liver problems, constipation, and psychological trauma. The relation between sanitation and the right to health is clearly recognized by international treaties too. Article 12 of the ICESCR, for instance acknowledges of everyone's right to the highest attainable quality of physical and mental health- means that states can take action to improve all aspects of environmental and industrial hygiene.

⁸⁷ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), New York, 18 December 1979, UN General Assembly Resolution 34/180, UN Doc. /RES/34/180.

⁸⁸ International Covenant on Economic, Social and Cultural Rights

⁸⁹ International Covenant on Economic, Social and Cultural Rights (CESCR), New York, 19 December 1966, 993 UNTS 14531

⁹⁰ CESCR. General Comment No. 15: The Right to Water (Arts II and 12 of the Covenant), 2002, UN Doc. E/C.12/2002/11, para 3.

⁹¹ General comments are authoritative interpretation of the ICESCR They clarify the content of rights, and are used in the monitoring of states parties compliance.

⁹² See CESCR, General Comment No. 19: The Right to Social Security Arr. 9 of the Covenant), 2008, UN Doc. E/C.12/GC/19, para 18.

⁹³ World Health Organization, *Water Sanitation and Hygiene Links to Health: Facts and Figures* (World Health Organization, 2004).

Moreover, in its General Comment No 14 (2000) on the right to the highest attainable level of health, the CESCR clarified that the right to health is a comprehensive right which concerns not only the timely and adequate treatment of health, but also the fundamental determinants of health, such as access to clean, safe and portable drinking water and adequate sanitation. The Special Rapporteur on the right to the highest attainable level of physical and mental health reaffirmed that water and sanitation are the fundamental determinants of health, and issued strategic guidelines on their implications for the realisation of the right to health.

Article 24 of the (CRC) specifically refers to sanitation, requiring States to take adequate steps to ensure that all segments of society, in particular parents and children, are educated, have access to education and are assisted by the use of basic information in the areas of child health, nutritional hygiene and environmental sanitation. In its general remarks, the Committee on the Rights of the Child also included sanitation under the right to health, in its general comments and concluding observations to states periodic reports.⁹⁴ In 2010, the CESCR unequivocally stated that the right to sanitation is integrally related to the right to health as laid down in Art 12 paragraphs 1 and 2 (a) (b) and (c) of the ICESCR.

3.4.3 The Right to Life

Given the potentially fatal effect of inadequate sanitation on the health of people It can be seen as integrally related to the right to life, The Human Rights Committee therefore stated in its General Comment No. 6 (1982) on the right to life that the right to life should not be interpreted in a restrictive manner, and found that if the Committee believes that it would be beneficial for States parties to take all practicable steps to reduce infant mortality and to increase life expectancy, to ultimately eradicate epidemics.⁹⁵

3.4.4 The Right to Physical Security

When women and girls walk a long way to reach sanitation facilities or are forced to defecate in the open, they are particularly vulnerable to attack. Moreover, in order to maintain privacy women without access to sanitation frequently defecate under the cover of darkness but this poses a substantial risk to their physical security.

Protection of physical integrity is at the heart of human rights and, when discussing sanitation, must also be taken into account. The ICCPR guarantees every person's⁹⁶ right to security, and the Committee on the Elimination of Discrimination against Women claims that, in the absence of due diligence on the part of the State, violence against women constitutes a form of sex-oriented discrimination and is therefore a violation of human rights, including violence committed by private actors.⁹⁷ The CRC also allows states to safeguard children against all forms of abuse.⁹⁸ It was stated in the World Report on Violence against Children that "in areas

⁹⁴ UN Committee on the Rights of the Child. General Comment No. 11: Indigenous Children and Their Right under the Convention (on the Rights of the Child), 2009, UN Doc. CRC/C/GC/11, para 25 and UN Committee on the Rights of the Child, General Comment No. 7 Implementing para 25, Child Right in Early Childhood, 2006, UN Doc. CRC/C/GC/7/Rev. 1, para 25

⁹⁵ UN Human Rights Committee, General Comment No. 6. Article 6 Right to Life, 1982, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 176, para 5.

⁹⁶ International Covenant on Civil and Political Rights, New York, 16 December 1966, 999 UNTS 171. Art. 9.

⁹⁷ UN Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendations No. 19 and 20, adopted at the Eleventh Session, UN Doc. A47/38(SUPP) (1992).

⁹⁸ Convention on the Rights of the Child (n 18). Art. 19

such as shanty towns and refugee camps, special focus must be put on establishing safe routes to collect community water and bathing and toilet facilities."⁹⁹

3.4.5 Prohibition of Inhuman or Degrading Treatment

In some situations, particularly in the sense of incarceration, the lack of access to sanitation may also be equal to cruel or degrading treatment. The International Committee of the Red Cross emphasized in its 2005 study on water, sanitation, hygiene and prison habitats that waste water and waste management is sometimes the most intractable issue of sanitation outside of detention. A significant proportion of the diseases reported among the inmates of such facilities are transmitted by the faecal-oral route.¹⁰⁰ Concerns regarding unsatisfactory conditions of detention, including inadequate sanitation, have been frequently raised by both Human Rights Committee as well as Committee against Torture in their concluding comments on state reports. As with the Arbitrary Detention Working Group, the Special Rapporteur on torture has expressed concern about sanitation in his country's missions.¹⁰¹

Furthermore, paragraph 15 of the 1955 Standard Minimum Rules for the Treatment of Prisoners provides that 'prisoners shall be obliged to keep their persons clean and to this end water and toiletries as required for hygiene and cleanliness shall be provided to them.'¹⁰² The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, 1990 also apply to sanitary installations', stating that they should be so located and of a appropriate standard to allow every juvenile to comply, as necessary, with their physical needs in privacy and in a clean and decent manner.¹⁰³

3.5 RECOGNITION OF SELF STANDING RIGHT TO SANITATION UNDER THE INTERNATIONAL HUMAN RIGHTS LAW

Both the UDHR¹⁰⁴ and the ICESCR¹⁰⁵ adopted by the United Nations General Assembly and 1966, respectively did not explicitly include the right to sanitation. They provide, however, for the right of everyone to an adequate standard of living¹⁰⁶ which explicitly includes food, clothing and housing. This omission has to be understood in the context of the world of that time, where the values those suffering from lack of access to sanitation were not represented at the negotiating table, and the situation was not as extreme as it is today. As the sanitation crisis became more pronounced in the second half of the twentieth century, with its attendant health and economic consequences, the human rights who community took account of sanitation growing importance.

⁹⁹ Paulo Sergio Pinheiro, World Report on Violence against Children (United Nations Secretary General's Report on Violence against Children, (2006)324

¹⁰⁰ International Committee of the Red Cross, Water, Sanitation, Hygiene and Habitat in Prisons (ICRC, 2005), 58

¹⁰¹ 40 UN Human Rights Council, Report of the Working Group on Arbitrary Detention: Addendum: Mission to Equatorial Guinea, 2008, UN Doc.A/HRC/7/4/Add.3. para 83.

¹⁰² Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Geneva, 1955 and approved by United Nations Economic and Social Council Resolution 663 C (XXIV). 31 July 1957.

¹⁰³ UN General Assembly Resolution, Rules for the protection of Juveniles Deprived of their Liberty ,14 December 1990,UN Doc.A/RES/45/113 para 34

¹⁰⁴ The Universal Declaration of Human Rights ,1948

¹⁰⁵ International Covenant on Economic, Social and Cultural Rights,1966

¹⁰⁶ ICESCR (n). Art11(1) ; The Universal Declaration of Human Rights (UDHR), New York, 10 December 1948, Art 25

International humanitarian law, namely the Geneva Convention (III) relative to the Treatment of Prisoners of War and the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 1949, particularly refer to access to sanitation.¹⁰⁷ Article 29 of the Geneva Convention (III) refers to the duty of detaining power to ensure that prisoners of war have, day and night, facilities for their use that comply with the laws of hygiene and are kept in a constant state of cleanliness. They shall be provided with separate convenience in any camps where women prisoners of war are accommodated. The Geneva Convention IV uses a similar terminology when referring to the circumstances pertaining to places of internment.

Furthermore, the past decade has witnessed remarkable development in international human rights law with respect to water and sanitation. General Comment No. 15 of the CESCR found that the right to water is an implicit but essential component of the right to an adequate standard of living and the right to the highest achievable standard of health, enshrined in Articles 11 and 12 of the ICESCR, respectively. Even though sanitation was left out from the scope of General Comment No. 15, when the mandate of the Independent Expert was established, it comprised both sanitation and water, clearly indicating that the former is a human rights concern.

The United Nations General Assembly's declaration of 2008 as the International Year of Sanitation has placed sanitation in the spotlight at the international level. The Human Rights Council developed the Independent Expert's mandate in the same year on the issue of human rights obligations concerning access to safe drinking water and sanitation. The Independent Expert gave priority attention to sanitation, and her first report to the Human Rights Council, in March 2009, was dedicated to the human rights obligations related to sanitation.¹⁰⁸ In that report she not only advanced a definition of sanitation that takes into account human rights, but also affirmed that sanitation should be recognized as a self-standing human right.

On 28 July 2010, the United Nations General Assembly called for a vote on a draft resolution on 'the Human Right to Water and Sanitation' introduced by Bolivia, and co-sponsored by 42 states,¹⁰⁹ which in its paragraph one recognizes 'the right to safe and clean drinking water. Sanitation was recognised as a human right that is essential for the full enjoyment of life and all human rights. This resolution was voted upon, at the request of the United States, but was adopted with a significant number of abstentions (41)¹¹⁰, leaving 122 votes in favour¹¹¹ and no

¹⁰⁷ Geneva Convention Relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, 75 UNTS 135; Geneva Convention Relative to the Protection of Civilian Personnel in Time of War. Geneva, 12 August 1949, 75 UNTS 287

¹⁰⁸ Report of the Independent Expert (n 4). See also UN Human Rights Council, Report of the Independent Expert on the issue of Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque, 2009, UN Doc. A/HRC/10/6.

¹⁰⁹ Angola Antigua and Barbuda, Azerbaijan, Bahrain, Bangladesh, Benin, the Plurinational State of Bolivia, Burkina Faso, Burundi, the Central African Republic, Congo, Cuba, Dominica, the Dominican Republic, Ecuador, El Salvador, Eritrea, Fiji, Georgia, Guinea, Haiti, Madagascar, Maldives, Mali, Mauritius, Nicaragua, Nigeria, Paraguay, Saint Vincent and the Grenadines, Samoa, Saint Lucia, Saudi Arabia, Serbia, Seychelles, Solomon Islands, Sri Lanka, Timor-Leste, Tuvalu, Uruguay, Vanuatu, the Bolivarian Republic of Venezuela, and Yemen.

¹¹⁰ The states abstaining were: Armenia, Australia, Austria, Bosnia and Herzegovina, Botswana, Bulgaria, Canada, Croatia, Cyprus, Czech Republic Denmark, Estonia Ethiopia, Greece, Guyana, Iceland, Ireland, Israel, Japan, Kazakhstan Kenya, Latvia, Lesotho, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Republic of Korea, Republic of Moldova, Romania, Slovakia, Sweden, Trinidad and Tobago, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, and Zambia.

¹¹¹ Voted in favour of the resolution: Afghanistan, Algeria, Andorra, Angola Antigua and Barbuda Argentina, Azerbaijan Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Benin, Bhutan, the Plurinational State

votes against it. Nevertheless, when analysing the interventions made by the representatives of many of the abstaining states, one can conclude that the most often invoked reason to justify their abstention (rather than a vote in favour) was the lack of transparency and inclusiveness in the negotiations of the resolution, rather than the resolution's specific recognition of the human right to water and sanitation.¹¹² In the same year, another important event and a positive development materialized that led to the further reaffirmation of the human right to water and sanitation. On 30 September 2010, the United Nations Human Rights Council adopted, by consensus, Resolution 15/9, in which it not only recalled General Assembly resolution 64/292 of 28 July 2010, It also held that the human right to clean drinking water and sanitation originates from the right to an adequate standard of living and is inextricably linked to the right to the highest achievable standard of physical and mental health, as well as to the right to life and to human dignity. The Human Rights Council, the principal organ of the United Nations, is therefore responsible for fostering universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any sort and in a fair and equal manner¹¹³, reaffirmed the human right to water and sanitation that had been recognized by the General Assembly two months prior, but this time by consensus without a vote. This was a significant, positive development in terms of the unequivocal recognition of the right to water and sanitation at the political level.

However, before the adoption of the Council resolution, some states made statements explaining their official position on the resolution before the vote. The representative of the United Kingdom (UK) stated that his country 'dissociates from consensus', while allowing the text to be adopted without a vote. The UK representative also affirmed his country's support for the human right to water, but underlined the lack of clarity regarding a human right to sanitation, as well as the absence of an internationally agreed definition of a right to sanitation.¹¹⁴ In a statement issued shortly after the resolution adoption, the Special Rapporteur Ms Catarina de Albuquerque furthermore declared that “ the right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable. Hence from today onwards we have an even greater responsibility to concentrate all our efforts in the implementation and full realisation of this essential right.”¹¹⁵ Moreover, in a statement

of Bolivia, Brazil, Brunei Darussalam, Burkina Faso Burundi Cambodia, Cape Verde, the Central African Republic, Chile, China, Colombia, Comoros Congo Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of the Congo, Djibouti Dominica, the Dominican Republic, Ecuador, Egypt, El Salvador Equatorial Guinea, Eritrea, Finland, France, Gabon, Georgia, Germany Ghana Grenada, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Jordan, Kuwait Kyrgyzstan Lao People's Democratic Republic, Lebanon, Liberia Libyan Arab Jamahiriya Liechtenstein, Madagascar, Malaysia, Maldives, Mali, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Myanmar, Nepal, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Portugal, Qatar, Russian Federation, Saint Lucia Saint Vincent and the Grenadines Samoa, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovenia, Solomon Islands Somalia, South Africa, Spain Sri Lanka Sudan, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste Togo, Tunisia, Tuvalu, United Arab Emirates, Uruguay, Vanuatu, the Bolivarian Republic of Venezuela, Vietnam, Yemen, and Zimbabwe.

¹¹² Some states referred to arguments of substance in order to justify their abstention in the vote on the resolution.

¹¹³ UN General Assembly Resolution, Human Rights Council, 2006, UN Doc. A/RES/60/251.

¹¹⁴ UN General Assembly, 108th Plenary Meeting: Draft Resolution (A/64/L. 63/Rev. 1), 2010, UN Doc. A/64/PV.108, 12.

¹¹⁵ https://reliefweb.int/report/world/un-united-make-right-water-and-sanitation-legally-binding_assessed_on_14/4/2020 at 12.30am

issued in the aftermath of the approval of the resolution, Amnesty International equally declared that the said document excellently re-affirms that the rights to water and sanitation are implicitly contained in several human rights treaties, including the ICESCR to which 160 states are party, CRC, which has reached nearly universal ratification, and are therefore legally binding rights.¹¹⁶

Six months later, in March 2011, the two main co-sponsors of the water and sanitation resolution, Germany and Spain, presented a further draft resolution at the Human Rights Council with the objective of extending the mandate of the Independent Expert.¹¹⁷ Instead of proposing a standard extension of the mandate, however, the draft resolution included some significant changes to previous language adopted by the Council on this matter. Firstly, there was a substantial change in the title of the resolution, from Human Rights and access to water and sanitation to the 'Human Right to Safe Drinking Water and Sanitation', fully endorsing the recognition of the right. Second, it welcomed the acknowledgment by the General Assembly and the Human Rights Council of the human right to clean drinking water and sanitation and the confirmation by the General Assembly that the human right to safe drinking water and sanitation stems from the right to an acceptable standard of living and is inseparably related to the right to the highest attainable standard of physical and mental health. Thirdly, while extending the mandate of the current mandate holder it decided to rename it 'special rapporteur on the human right to safe drinking water and sanitation for a period of three years. The resolution was co-sponsored by a significant number of states,¹¹⁸ and adopted by consensus.

Hence, the authentic interpretation of the ICESCR by the CESCR, coupled with the series of resolutions adopted by both the United Nations General Assembly and the Human Rights Council recognizing and reaffirming the right to water and sanitation, put an end to a longstanding discussion over the recognition of water and sanitation as human rights. These developments have reinforced the realization of the right to sanitation as a legally binding obligation on all state parties to the ICESCR and other human rights treaties,¹¹⁹ promoting the deepening and enrichment of international norms. In addition to these international efforts, several regional fora have emerged in recent years to shore up political commitment to improving access to sanitation. The South Asian Conference on Sanitation (SACOSAN)¹²⁰ has met regularly since 2003 to exchange ideas and identify priorities in improving access to sanitation. At SACOSAN III, held in Delhi, India, in 2008, representatives from national water ministries, non-governmental organizations (NGOs), and academics agreed on the Delhi Declaration, which explicitly recognizes access to drinking water and sanitation as human right, and emphasizes participatory, flexible, non-discriminatory effort towards achieving

¹¹⁶ Amnesty International, Public Statement, 'United Nations: Historic Re-affirmation that Rights to Water and Sanitation Are Legally Binding, 2010 (AI Index: IOR 40/018/2010).

¹¹⁷ UN Human Rights Council Resolution, The Human Right to Safe Drinking Water and Sanitation, 2011, A/HRC/RES/16/2.

¹¹⁸ Albania, Andorra, Armenia, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Chile, Colombia, Costa Rica, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Lithuania, Luxembourg, Maldives, Monaco, Morocco, the Netherlands, Nicaragua, Norway, Palestine, Panama, Peru, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Uruguay, and Yemen

¹¹⁹ See CEDAW (n 6); CRC (n 18).

¹²⁰ SACOSAN is made up of Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka

universal access to sanitation.¹²¹ SACOSAN IV, held in Colombo, Sri Lanka, in April 2011, reiterated the importance of recognizing the right to sanitation, focusing on the theme sanitation as it relates quality of life. The equivalent 2011 African Conference on Sanitation (African) picked up similar issues, agreeing to focus on equity and pro-poor outcomes, and that states should work harder towards meeting previously agreed commitments. In May 2013, LATINOSAN III also reaffirmed the human right to sanitation in its Panama Declaration.¹²²

3.6 SANITATION AS DISTINCT RIGHT

The 2010 General Assembly resolution explicitly recognizing the human right water and sanitation, and the Human Rights Council resolution of the same year clarifying that this right derives from the right to an adequate standard of living refer to a single human right. The title the Special Rapporteur itself refers the human right to water and sanitation. The first Special Rapporteur herself, was of the opinion that water and sanitation should be treated as distinct human rights, both included within the right to an adequate standard of living, and with equal status. Amnesty International be taken the same approach.¹²³

There were pragmatic reasons for this approach. Far too often, because of the political preference given to water, when water and sanitation are listed together, the significance of sanitation is downgraded. The classification of water and sanitation as separate human rights offers an incentive for governments, civil society and other stakeholders to pay special attention to the concept, and eventual realisation of, basic requirements for the right to sanitation. The further separation of the right to sanitation from the right to water acknowledges that water-borne systems are not the basis of all sanitation choices. In addition, sanitation evokes the idea of human dignity rather than many other human rights concerns. All modern instruments of human rights are pervaded by the principle of integrity. The ICESCR preamble and the ICCPR specifically agree that the fundamental integrity of the human being stems from all human rights. The UDHR includes many references, including Article 22, to human dignity, claiming that all ... is entitled to Realization ... Economic, social as well as cultural rights, that are crucial to his dignity.¹²⁴

Dignity relates to the intrinsic worth of each human being, which should be recognized and respected by others. There are certain fundamental conditions upon which we must insist to have a 'minimum definition of what it means to be human in any morally tolerable form of society'.¹²⁵ Degrading living conditions and denial of basic needs fall below the minimum definition.¹²⁶ Dignity closely relates to self-respect, which is difficult to maintain when being forced to squat down in the open, with no respect for privacy, not having the opportunity to clean oneself after defecating, and facing the constant threat of assault at such a vulnerable moment. The practice of manually cleaning the human waste can never be expected to be tolerated under the conceptions of human dignity. Therefore, the Independent Expert believed

¹²¹ The Delhi Declaration, Third South Asian Conference on Sanitation, New Delhi, 21 November 2008.

¹²² Declaración de Panamá, Tercera Conferencia Latinoamericana y del Caribe de Saneamiento (LATINOSAN 2013), Ciudad de Panamá, Panama, 31 May 2013

¹²³ Amnesty International, 'States Urged to Support Rights to Water and Sanitation' (29 July 2010) <https://www.amnesty.org/en/latest/news/2010/07/estados-deben-apoyar-derecho-agua-saneamiento/> assessed on 13th April 2020

¹²⁴ UDHR (n 49)

¹²⁵ Jerome J Shestack, 'The Philosophical Foundations of Human Rights', 20, 203 (Human Rights Quarterly 1998)

¹²⁶ Oscar Schachter, 'Human Dignity as a Normative Concept', 848,852 (1983) American Journal of International Law 92017)

that lack of access to sanitation constitutes demeaning living conditions; it is an affront to the intrinsic worth of human beings, and should not be tolerated in any society.¹²⁷

Since the issue of sanitation is governed by dignity, and sanitation cannot be wholly subsumed into any other established human right, it should be treated as a distinct human right. While the proliferation of rights has been warned to run the risk of violating established human rights, norms need to be modified to counter current (or only recently recognised) threats to human beings. The UN General Assembly, in resolution 41/120, stated that standard-setting activities in the field of human rights should relate to standards that are, *inter alia*, of fundamental character and derive from the inherent dignity and worth of the human person' and are sufficiently precise to give rise to identifiable and practicable rights and obligations.¹²⁸ It could be argued that sanitation is as vital as other explicit components of the right to an adequate standard of living, such as food, clothing and housing, because of the fundamental value of sanitation for the preservation of a life of human dignity, and that it could be implied by that right.

3.7 HUMAN RIGHT OBLIGATIONS RELATED TO SANITATION

Human rights protect individuals from the state's excess. It is an attempt to guard them against oppression and injustice. The idea of guaranteeing certain rights is to ensure that a person has minimum guaranteed freedom.¹²⁹ A working definition of sanitation in human rights terms includes an appreciation of the human rights responsibilities relating to sanitation.

, which is the one proposed by the Independent Expert, and endorsed by the CESCR. In addition to this definition, considering sanitation as a human right also implies that states are obliged to respect, protect, and fulfil human rights as they relate to sanitation. More concretely, states must, *inter alia*:¹³⁰

- Abstain from initiatives that threaten or refuse the current access of individuals or communities to sanitation. States must also ensure that human excrete management does not have a negative effect on human rights.
- To ensure compliance of the non-state actors¹³¹ to the human right obligations concerning sanitation, which requires it to adopt these by legislations and other methods to prevent the negative effect on them. Strict regulatory framework has to be framed by states in respect of private sanitation operators.
- To take steps to apply the maximum available resources to the gradual realisation of economic, social and cultural rights as they relate to sanitation, States must move as quickly and efficiently as possible to ensure access to safe, affordable and appropriate sanitation for everyone, providing privacy and dignity. This needs intentional, concrete and focused steps towards full realisation, especially with a view to creating an atmosphere that enables

¹²⁷ Report of the Independent Expert (n 4), para 57

¹²⁸ *Id* at para 58

¹²⁹ M.P. Jain, *Indian Constitutional Law*, 874 (2019)

¹³⁰ U N General Assembly Resolution, Setting International Standards in the Field of Human Rights, 1986, UN Doc A/RES/41/120.

¹³¹ Non state actors include private individuals, private enterprises, civil society organizations, and any other entity, which is not an agent of the state.

individuals to realise their sanitation-related rights. Promoting hygiene and education is an integral part of this duty.

- Consider and justify diligently any retrogressive steps relevant to the obligations of human rights with regard to sanitation
- Adopt steps required to ensure that economic, social and cultural rights are completely realised as they relate to sanitation, inter alia, by properly identifying human rights responsibilities relating to sanitation in the national political and legal structures and by immediately developing and implementing a national sanitation policy and action plan.
- Provide effective judicial or other suitable remedies in cases of breaches of human rights obligations relating to sanitation at both national and international levels. Victims of breaches, including restitution, compensation, satisfaction and/or assurances of non-repetition, should be entitled to sufficient reparation.
- States are required to fulfil their sanitation-related human rights obligations in a non-discriminatory manner and pay careful attention to health-related groups especially vulnerable to exclusion and discrimination, including those living in poverty, health workers, women, girls, the elderly, persons with disabilities, persons affected by health conditions, refugees and refugees.
- In order to bring about the requisite behavioural improvements, participation is also essential for achieving group control and commitment. All individuals must have complete and fair access to sanitation knowledge and its effect on their health and the environment. To ensure the greatest possible dissemination, knowledge should be made accessible across different media and translated into all applicable languages and dialects.
- Importance must be given to address the needs of these groups and, where possible, proactive steps should be taken to remedy existing discrimination and ensure access to sanitation for them. De jure and de facto discrimination on the basis of race, colour, sex, age, language, faith, political or other opinion, national or social origin, land, birth, physical or mental disability, health status or any other civil, political, social or other status must be abolished by the States. States are also at the obligation to ensure that the individuals and communities concerned are aware, that they have access to sanitation and hygiene information and that they are able to take part in all processes related to the preparation, development, maintenance and monitoring of sanitation services. Complete involvement, including the inclusion of all the groups involved, is important to ensure that hygiene solutions meet the specific needs of communities and are accessible, technically feasible and culturally viable.

3.8 CONTENT OF HUMAN RIGHT TO SANITATION

3.8.1 Availability

Within or in the direct vicinity of each home, health or educational institution, public institutions and locations, and workplaces, there must be a sufficient number of sanitation facilities (with associated services). To ensure that waiting time are not unreasonably long, there must be a sufficient number of sanitation facilities. Although it is tempting to specify a particular minimum number of toilets required to satisfy the availability requirement, such determinations can be counterproductive in terms of human rights. It is important that the evaluation of any community's sanitation requirements is guided by the context, as well as by

the characteristics of unique groups that may have different sanitation needs. In this regard, engagement is a critical feature of the fulfilment of health-related human rights obligations.

3.8.2 Quality

Sanitation facilities must be hygienically safe to use, which ensures that human, animal, and insect interaction with human excrement must be effectively avoided. In addition, sanitation facilities must ensure access to safe hand washing water and menstrual hygiene and hygienic disposal mechanisms for human waste. To safeguard the sustainability of sanitation facilities and continued access, daily cleaning, emptying of pits and other places that collect human excrement and maintenance of the same are necessary. In addition, sanitation facilities must be physically safe to use, ensuring that the superstructure is secure and that the floor is built to minimise the risk of accidents. In addition, sanitation facilities must be physically safe to use, ensuring that the superstructure is secure and that the floor is built to minimise the risk of accidents.

Ensuring safe sanitation requires adequate promotion of hygiene and education to allow people to hygienically use toilets in a way that respects the protection of others. It is considered that manual emptying of pit latrines is dangerous (as well as culturally inappropriate in many countries, contributing to the stigmatisation of those burdened with this task), which means that it is important to use mechanised alternatives that effectively avoid direct contact with human excreta.

3.8.3 Physical Accessibility

Sanitation facilities must be readily available to anyone within or in the immediate vicinity of any home, institution of health or education, public institutions and locations, and workplaces. It must include access at during day and night, physical connectivity must be secure. The location of sanitation facilities must ensure that there are minimal risks to users' physical protection. This has specific consequences for the path that leads to the building, which should be safe and accessible for all users, including the elderly and people with disabilities.

3.8.4 Affordability

Access to sanitation facilities and services, including the construction, vacuuming and maintenance of facilities, as well as the treatment and disposal of faecal matter, must be available at an affordable price for all persons without restricting their ability to obtain other essential goods and services, including water, food, accommodation, health care and education guaranteed by other human rights. The disconnection of water resulting from the failure to pay often affects water-borne sanitation, and this must be taken into account before disconnecting the supply of water. Different systems and mechanisms, including income support programmes and measures aimed at lowering the cost of sanitation services, may be placed in place to ensure affordability. In order to ensure affordability, subsidy schemes could be an option. Experience shows that in-kind contributions (such as labour) are often successful in projects involving sanitation. The choice of technology may also have an effect (as well as sustainability) on affordability. Human rights do not determine which policy is better, but focus on considering the situation in a context-specific way. There are differences depending on the region with respect to the cost of sanitation. In urban areas, for instance, a connection to the sewerage system would almost always be the user's cheapest and most convenient choice. However, as with water connexions, the price of a sewerage system link would often be prohibitive for users

living in poverty, and policies should be developed by governments to counter this. On-site sanitation is likely to be the preferred solution in remote areas where sewerage is usually not available. This could include subsidies for the emptying of human waste disposal receptacles, and related maintenance.

3.8.5 Acceptability

The sanitation facilities must be acceptable. It is a highly sensitive issue across regions and cultures and differing perspectives about which sanitation solutions are acceptable must be taken into account regarding design, positioning and conditions for use of sanitation facilities.

As of today, the human right to sanitation is widely accepted, including in the Sustainable Development Goals¹³² and the Sustainable Development Agenda 2030—a situation that was unthinkable some ten years ago. Nevertheless, there is a long way to go to ensure that everyone in the world has access to sanitation in conditions of safety and dignity. Recognition of the right is simply an indispensable first step in bringing about changes. Now it is up to the government to transform this promise into concrete action for all, with the support of the international community and of civil society. One crucial dimension of turning the human right to sanitation into a reality is its justiciability, and holding public bodies accountable for non-compliance cases. In 1992, the CESCR “breaches of economic, social and cultural rights which, if they occurred in relation to civil and political rights, would provoke expressions of horror and outrage and would lead to concerted calls for immediate remedial action”.¹³³ Although the recent decades have seen tremendous progress in identifying violations, taking them more seriously and remedying them both at national and international level, there is still a long way to go before violations of economic, social and cultural rights not only provoke outrage, but also lead to appropriate preventive and remedial action. Although it is widely accepted that failure to meet any human rights obligation constitutes a breach, key components of the right to sanitation are far too frequently seen mainly as aspirational policy objectives. Many situations of lack of enjoyment of the right to sanitation have not been clearly defined as violations; there has been no recourse to judicial or quasi-judicial mechanisms; and these situations have not been handled with the urgency and degree of commitment they need, particularly given their potentially devastating impact on a large number of people. Where states have the requisite resources, the existence of deprivations of access to even sanitation provision is unjustifiable. Violations of the right to sanitation are often linked to systemic patterns of exclusion and unfair relations of power. Greater attention to breaches of the right to sanitation and its structural causes can empower marginalized groups to secure effective remedies.

3.9 HUMAN RIGHT PERSPECTIVE OF MANUAL SCAVENGING

Often, in international discourse, when domestic systems fail to address human rights violations, attention is paid to a country's international legal obligations.¹³⁴ Surprisingly, however, it turns out that few scholars have analyzed India's international legal responsibilities

¹³²UN General Assembly resolution, Transforming our world: the 2030 Agenda for Sustainable Development, 2015, UN Doc. A/RES/70/1

¹³³ UN General Assembly, World Conference on Human Rights, Preparatory Committee, Contribution submitted by the Committee on Economic, Social and Cultural Rights, 1993, UN Doc. A/CONE157/PC/62/Add.5, para 5.

¹³⁴ Kenneth Roth, What Are Human Rights For? Three Personal Reflections, in INTERNATIONAL HUMAN RIGHTS LAW 7 (Daniel Moeckli et al. eds., 2nd ed. 2014).

with respect to manual scavenging. According to one report issued by the Indian government, many manual scavengers are self-employed.¹³⁵ However, a great proportion of scavengers are hired by municipal bodies as contract employees to clean; dry latrines and open sewers where human filth is disposed. While the UDHR is generally considered to be non-binding,¹³⁶ in 2014, the Supreme Court of India acknowledged that the declaration places real, binding legal obligations onto the state in *Safai Karamchari Andolan & Ors. v. Union of India & Ors.*¹³⁷ The provisions of International Convention on the Elimination of All Forms of Racial Discrimination,¹³⁸ CEDAW¹³⁹, UDHR, ICESCR¹⁴⁰ can be specifically made available to manual scavengers.

3.9.1 THE RIGHT TO HUMAN DIGNITY

The accurate meaning of the right to dignity has remained elusive. Article 1 of the UDHR proclaims, "All human beings are born free and equal in dignity and rights."¹⁴¹ The ICESCR reiterates this provision in its preamble. Instead of articulating a universal interpretation of this right, Christopher McCrudden acknowledges that human dignity must be defined on a case-by-case basis.¹⁴² The Constitutional Court of South Africa presented one interpretation of human dignity in *De Reuck v. Director of Public Prosecutions*.¹⁴³ In this case, the South African Court determined that the criminality of child pornography was compatible with human dignity because it combatted something viewed as an "evil in all democratic societies." This seemingly harmless interpretation of human dignity might actually pose a challenge for prohibiting manual scavenging. Unlike with child pornography, India lacks a serious majoritarian outcry against this employment.¹⁴⁴ Nevertheless, the Court seemed to pay more attention to the harm caused to the victims, exploring the problem about twenty times compared to mentioning the interpretation of the harm by society only once.¹⁴⁵ Therefore, it is important whether a practise is perceived as bad, but it is not the deciding factor. At a minimum, the Court noted, that both physical damage and social deterioration are practically incompatible with human dignity.¹⁴⁶ From the moment they are born, manual scavenging impairs workers' intrinsic sense of worth. Since their advent in the 18th century BC, their social determinations have remained largely unchanged. Attempting to turn manual scavengers to "sanitation

¹³⁵ Annie Zaidi, *Manual Scavenging is Still a Disgusting Reality in Most States Despite an Act of Parliament Banning It*, FRONTLINE (Sept. 9, 2006)

¹³⁶ Ed Bates, History, in Moeckli et al. eds., *supra* note 7, at 15, 31.

¹³⁷ *Safai Karamchari Andolan v. Union of India*, (2014) (4) SCALE 165

¹³⁸ International Convention on the Elimination of All Forms of Racial Discrimination, QG.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force Jan. 4, 1969 [hereinafter: ICERD].

¹³⁹ UNITED NATIONS TREATY COLLECTION, CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN ratified by India on July 9, 1993.

¹⁴⁰ International Covenant on Economic, Social, and Cultural Rights, art. 15, G.A. Res. 2200A (XXI), U.N. GAOR, 21 Sess. Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter: ICESCR]

¹⁴¹ Universal Declaration of Human Rights, *supra* note 20, art. 1.

¹⁴² Christopher McCrudden, Human Dignity and Judicial Interpretation of Human Rights, 4 EUR. J. INT'L L. 655 (2008).

¹⁴³ *De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others* 2003 (1) SA (CC) at 19 (S. Afr.).

¹⁴⁴ See generally, BHASHA SINGH, UNSEEN: THE TRUTH ABOUT INDIA'S MANUAL SCAVENGERS (trans. Reenu Talwar, 2014).

¹⁴⁵ The Court mentioned and analyzed "harm" twenty times during the case. *De Reuck*, *supra* note 35.

¹⁴⁶ *Id*

workers," and equipping workers with better instruments, would not restore the human dignity of scavengers. The stigma is not attached to the scavengers' tools used; it is attached to the physical labour involved in the cleaning of human faeces and their caste status.¹⁴⁷ In addition, relabelling the occupation would not resolve the fact that municipalities specifically employ Dalits for this form of job. In order to promote the rights of scavengers under Article 1, this type of labour must be eliminated altogether.

3.9.2 FREEDOM FROM CASTE DISCRIMINATION

The Indian Supreme Court determined that ICERD¹⁴⁸ is sufficiently violated by the nexus between caste and manual scavenging. Racial discrimination is defined by the UN Authoritative Committee for ICERD¹⁴⁹. " Accordingly, this Committee clarified "that discrimination based on 'descent' includes discrimination . . . Cantered on social stratification forms such as caste and similar hereditary status structures that nullify or impair their equal enjoyment of human rights. The Committee found that a very large number of Dalits are forced to work as manual scavengers and child workers and are subjected to extremely unsafe working conditions and exploitative labour arrangements, including debt bondage.

3.9.3 THE RIGHT TO HEALTH

While the right to human dignity could be used to condemn the health risks associated with manual scavenging, the right to health, codified in Article 12 of the ICESCR, is a more logical tool for obvious reasons. While it is possible to use the right to human dignity to condemn the health risks associated with manual scavenging, for obvious reasons, the right to health, codified in Article 12 of the ICESCR, is a more pragmatic instrument. Although the right to health is not to be understood as a right to be healthy, certain facilities and conditions required for the realisation of the highest achievable quality of health are mandated by the right.¹⁵⁰ The combination of associated health risks with minimal pay prevents a number of scavengers from accessing medical services. In the delivery of health care, many scavengers face prejudice. In conjunction with UNICEF, the Indian Institute of Dalit Studies states, Discrimination in access to and use of health services at the health centre may [and is often] practised during diagnosis, medication dispensing, laboratory testing, waiting in the health centre, and paying user fees. The physical and social damage intrinsic to manual scavenging makes the right to health entirely inaccessible to these populations.¹⁵¹

3.9.4 RIGHT TO GENDER EQUALITY

Although this practise is troubling because it denies employees sufficient remuneration, human dignity, and the highest achievable quality of health, there is much more concern about the fact

¹⁴⁷ ROSE GEORGE, THE BIG NECESSITY: THE UNMENTIONABLE WORLD OF HUMAN WASTE AND WHY IT MATTERS 97 (2008).

¹⁴⁸ Safai Karamchari Andolan, *supra* note 55, at 3;

¹⁴⁹ "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin." Accordingly, this Committee clarified "that discrimination based on 'descent' includes discrimination . . . based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights

¹⁵⁰ Comm. on Economic, Social, and Cultural Rights, General Comment No. 14 The Right to the Highest Attainable Standard of Health (Article 12 of the ICESCR), 9 (2000).

¹⁵¹ SANGHMITRA S. ACHARYA, ACCESS TO HEALTH CARE AND PATTERNS OF DISCRIMINATION: STUDY OF DALIT CHILDREN IN SELECTED VILLAGES OF GUJARAT AND RAJASTHAN, 2 INDIAN INSTITUTE OF DALIT STUDIES & UNICEF (2010),

that this happens disproportionately to women. (CEDAW) states that while different international human rights treaties protect the rights of women, they do not resolve the particular challenges women face. CEDAW 's Article 5(a) rejects historical traditions and new customs that oppress women as they evolve and requires Member States to eradicate stereotypes that advance men and women's traditional roles.¹⁵² In 2005, the International Labour Organization observed that "95 per cent of a total of 700,000 manual scavengers were women." Human Rights Watch reports that women typically collect excrement from residential dry latrines while men clean out sewage pipes.⁶ This causes a problem of visibility. While men typically work outside the residence, women are continually seen as bonded to the home. The Special Rapporteur on Violence against Women Rashida Manjoo states, "The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life." Because vulnerable women are openly hired for this occupation, India neglected its obligations under Article 5 of the Women's Convention. Some scholars may argue that manual scavenging at least provides a means of livelihood for workers and that this "choice" is protected by international human rights law. It is true that Article 6 of the ICESCR guarantees the "right to work" of a person and if manual scavenging comes under the auspices of this right, India has a legal duty to uphold this right. (CESCR), the UN's authoritative interpretive body for the treaty, made clear that Article 6 secures the right to decent work. There are three conditions necessary for decent work: (1) employees freely choose and accept the work, (2) occupation respects worker safety, and (3) employees receive just remuneration supporting themselves and their families. Hence manual scavenging does not fall within the purview of "decent work". Although labelled as a form of labour, it is in no way defensible as form of employment as it lacks dignity which is an essential criterion. Manual scavenging, more like slavery, violates the right to human dignity, wellbeing and equality between men and women. Notwithstanding this, the domestic systems of India have failed to ban manual scavenging.¹⁵³

3.10 INDIAN CONSTITUTIONAL PERSPECTIVE IN RELATION TO SANITATION AND MANUAL SCAVENGING

There are certain basic Fundamental Rights which have been entrenched in order to make them out of the reach of transient political majorities. Hence these are rights which in any way should not be interfered with, tampered or violated by others or by the Governmental policies. The idea behind guaranteeing these rights is to ensure that all individuals have certain minimum degree of freedom and are able to live their life with dignity. Hence certain written constitution's guarantee these right to the people. Over the years the Indian constitution has evolved in such way that it has several numbers of rights that have acquired the status of Fundamental Rights by the Judicial Interpretation of the articles by keeping pace with the changing times. The constitution secures all Rights which are needed for the people to live their life to the fullest. Inhumane cleaning processes essentially constitute a blatant violation of important provisions such as Ar,14,16(2),17, 19,21,23,42,46,47,338.

¹⁵² Elizabeth Sepper, *Confronting the "Sacred and Unchangeable": The Obligation to Modify Cultural Patterns Under the Women's Discrimination Treaty*, 30 U. PA. J. INT'L L. 585, 608 (2008)

¹⁵³ See, e.g., HUMAN RIGHTS WATCH, *BROKEN PEOPLE: CASTE VIOLENCE AGAINST INDIA'S UNTOUCHABLES* (1999); HUMAN RIGHTS WATCH, *HIDDEN APARTHEID: CASTE DISCRIMINATION AGAINST INDIA'S "UNTOUCHABLES"* (2007)

3.10.1 RIGHT TO EQUALITY

The right to equality is comprehensively guaranteed by our constitution via Articles 14 to 18. “Equality is one of the magnificent corner-stones of Indian Democracy”.¹⁵⁴ Article 14 of Constitution of India embodies the general principle of equality before law and equal protection by law and prohibits unreasonable discrimination.¹⁵⁵ It is explicitly an epitome of noble ideas which has been mentioned in Preamble of our Constitution

In the case of **Change India vs Government Of Tamilnadu**¹⁵⁶ In the public interest, the writ petition was filed seeking orders from the State to pay interest for delay in compensation release to the heirs of the identified manual scavengers who lost their lives due to scavenging. Declaring that the practice of manual scavenging and the operation of Dry Latrines is continued in violation of Articles 14, 17, 21 and 23 of the Constitution and of the 1993 Act the Supreme court passed order to grant lumpsum amount of 10 lakhs to the petitioners.

In *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*¹⁵⁷ landmark judgement was passed by SC by identifying and highlighting the apathy and plight of oppressed sections of society, particularly scavengers and sewage workers, who risk their lives by going down the drainage without any safety equipment and protection and are deprived of fundamental rights to dignity, life and freedom for several decades. SC also criticised the Government and the state apparatus as being insensitive and turning a blind eye to the plight of sewer workers, manual scavengers who are forced to live an indignified life due to their abject poverty. It was held to be a clear violation of Ar 14 and 21 of the constitution.

In *Safai Karamchari Andolan v. Union of India*¹⁵⁸ the SC recognised manual scavenging as an inhuman, degrading, and undignified profession the danger of manual scavenging in India. The SC noted that under the EMSCDL Act of 1993, the PEMSR Act 2013 neither dilutes the constitutional mandate of Article 17 of the Constitution nor condones inaction on the part of union and state governments. It was stated that Articles 17 and 21 of the Constitution are expressly acknowledged by PEMSR Act as the rights of people interested in sewage cleaning and cleaning. SC laid emphasis on the rehabilitation of manual scavengers in accordance with part IV of the PEMSR Act, 2013.

3.10.2 CONCEPT OF UNTOUCHABILITY AND FORCED LABOUR

During drafting of the Constitution of India, there was considerable discussion on the provisions relating to the abolition of untouchability and forced labour, namely Articles 17¹⁵⁹ and 23¹⁶⁰ of Part III of the Constitution. These were attempts which were made to prevent the subjugation of those class of people who were considered to belong to the lower class and their exploitation at the hand of the upper class. Untouchability in general and of manual scavenging

¹⁵⁴ Thommen J in *Indra Sawhney V. UOI* AIR 1993 SC 477

¹⁵⁵ Article 14 states "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

¹⁵⁶ WP No 25276 Of 2017

¹⁵⁷ 2011 (8) SCC 568.

¹⁵⁸ 2014 (4) SCALE 165.

¹⁵⁹ Constitution of India, 1950, Art. 17: Abolition of Untouchability: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'Untouchability shall be an offence punishable in accordance with law .

¹⁶⁰ Constitution of India Art. 23: (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

in particular was depreciated in certain terms by the Constitutional Assembly. Various members have depicted their anguish in this regard. The very clause about untouchability and abolition goes a long way to show to the world that unfortunate communities that we called 'Untouchables' will find solace when this constitution comes into effect. It is not a certain section of the Indian Community that will be benefited by this enactment, but a sixth of the population the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country.¹⁶¹

The functioning of the Constitution will depend on how people will behave in the future, not on the actual enforcement of the law. Hence it was intended that a group known as untouchables in my course and that our delegates abroad won't have to hang their heads in shame if anyone asks such an issue in an international organisation.¹⁶²

While discussing the freedom to practice a profession of one's choice, another member of the Constituent Assembly pointed out how meaningless such a right is for the untouchables in the following words:

"The most unfortunate people in this country, in my opinion, are the Sweeper. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their freedom to practise any profession or trade is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him".¹⁶³

Dr BR Ambedkar, who presided over the Constituent Assembly and is widely recognized as the founder of the Constitution of India, made his views very clear both within the Constituent Assembly and outside. In his widely celebrated work *Annihilation of Caste*, he described the abominable permutations of the practice of untouchability across the country, and rubbished the defence of the caste system as being a method of efficiency. He stated:

"the first thing to be admonished against this view is that the Caste System is not merely division of labour. It is also a division of labourers.... Social and individual efficiency require us to develop the capacity of an individual to the point of competency to choose and to make his own career. This value is dishonoured in the Caste System as it involves an attempt to appoint tasks to individuals in advance selected not on the basis of trained original capacities, but on that of the social status of the parents."¹⁶⁴ Clearly, Ambedkar was fully aware of the

¹⁶¹ Views expressed by Shri Vi Muniswamy Pillai during the discussion on 29 November 1948 on Article 11 (present Article 17) in the Constituent Assembly, Constituent Assembly Debates, Volume VII, 665-8.

¹⁶² Views expressed by Smt. Dakshayani Velayudhan during the discussion on 29 November 1948 on Article 11 (present Article 17) in the Constituent Assembly, Constituent Assembly Debates, Volume VII, 665-8.

¹⁶³ Views expressed by Shri H.J. Khandekar during the discussion on 2 December 1948 on Article 19, Constituent Assembly Debates, Volume VII. Although this speaker used the genteel 'sweeper' throughout his submission, it is clear from the content that he is referring to manual scavengers. This is further made clear in the response to his submission by another member where the term 'bhangi' is used, which denotes the specific sub-caste group. Use of the word 'bhangi' to describe a person belonging to a lower caste is now a criminal offence under Section 3(1) of the Untouchability (Offences) Act, 1955.

¹⁶⁴ BR Ambedkar, *Annihilation of Caste*, 145, 3rd Ed, 1945

pernicious exclusion and subordination of people now citizens of Independent India which Result from the so-called efficiency rationale of the caste system. These debates resulted in the inclusion of Article 17 in Par II of the Constitution, entitled Fundamental Rights, which abolished untouchability in Independent India.¹⁶⁵

In the *Asiad Project Workers* case SC held that FR under Ar 17 are available against private individuals and it is constitutional duty of the state to see that these fundamental rights are not violated.¹⁶⁶ In another case of *State of Karnataka v. Appa Balu Ingale*¹⁶⁷ SC held that the main object of Ar 17 is to liberate the society from the ritualistic adherence to blind and traditional belief which has no legal basis. It aims to establish equality to the Dalits on par with general public, and absence of disability on the basis of caste or religion.

Hence this principle equally applies to the manual scavengers as well as all workers employed in unclean occupation as they have been prisoners of this system of caste, oppression and other social constrains for decades. In **Somasundaram v. The Deputy Superintendent of Police**¹⁶⁸, here the person engaged for cleaning the septic tank had died during the process. The employer was charged under s 288 s 304 of IPC and S 8&9 of PEMSR Act. The court found the employer guilty and condemned the practice on the above-mentioned grounds. A series of similar cases have come up before the over a period of time.

3.10.3 RIGHT TO LIFE AND ITS EXPANDING HORIZONS

A very mesmerizing development in the Indian Constitutional jurisprudence is the extended dimension given to Article 21 by the Supreme Court in the post-Maneka era. The Supreme Court has avowed that in order to treat a right as Fundamental Right it is not necessary that it should be expressly stated in the Constitution as a Fundamental Right. Political, social and economic changes in a country entail the recognition of new rights. The law is rising in its eternal youth to meet society's demands. In **Maneka Gandhi v. UOI**¹⁶⁹ Article 21 became multi-dimensional . It was held that right to live is not merely confined to physical existence but includes the right to live with human dignity . Further in the case of **Francis Coralie Mullin v. Union Territory of Delhi**¹⁷⁰ the court said that right to live is not merely restricted to animal existence . It means something more than physical survival. This extension in the dimensions of Art 21 has been made possible by giving an extended meaning to the word 'life and liberty' in Article 21 . These two words are not to be read in a narrow way in Article 21. There are organic words to be understood meaningfully. The right to life enshrined in Article 21 was generally interpreted as meaning something more than mere survival, mere existence or animal existence .If therefore includes all those aspects of life which go to make a man's life meaningful, complete and worth living .The Supreme Court has asserted that Article 21 is the heart of the Fundamental Rights.¹⁷¹ It has enough positive content and is not merely negative in its reach even though Article 21 is worded in negative terms.¹⁷² The Supreme Court has in

¹⁶⁵ SHOMONA KHANNA, INVISIBLE INEQUALITIES- AN ANALYSIS OF THE SAFAI KARAMCHARI ANDOLAN CASE ,299, 1st Ed ,2019

¹⁶⁶ Peoples Union For Democratic rights v. Union Of India AIR 1958 Mys 84

¹⁶⁷ AIR 1993 SC1126

¹⁶⁸ CrI.O.P.(MD)No.7457 of 2020

¹⁶⁹ AIR1981SC746

¹⁷⁰ AIR 1978SC597

¹⁷¹ Unni Krishnan State of Andhra Pradesh, AIR 1993 SC 2178 (1993) I SCC 645,

¹⁷² P Rathinam v UOI, AIR 1994 SC 1844: (1994) 3 SCC 394

several instances opined that in order to treat a right as a Fundamental Right, it is not necessary that it should be expressly stated as a Fundamental Right. The Supreme Court has imposed a whole bundle of human rights out of Article 21 by reading the same along with some Directive Principles.

Another broad formulation of the concept of life with dignity appears in **Bandhua Mukti Morcha**¹⁷³ in which the following interpretation was given

"to live with human dignity, free from exploitation. It includes protection of and strength of workers, men and women, and of the tender age of the children against opportunities and facilities for children to develop in a healthy manner and in conditions of dignity" In order to allow an individual to live with human dignity, these are the minimum requirements that must exist. It is undisputed that this violates the notion of human dignity and affords safety within the framework of Art 21 in case of the barbaric methods of scavenging and sewer cleaning. The mandate under Ar 21 is available to all people. The ever-growing number people involved in unclean occupations and the consequent deaths and other occupation related illness and disabilities reduces the potential of a person to live a life of dignity and needs to be addressed at the earliest.

3.11 RIGHT TO SANITATION IN INDIA

Regulation and governance of sanitation in India lies with state governments and local government. State governments can adopt laws relating to sanitation. Legislative competence is with state government, the Constitution envisages major sanitation related responsibilities to be vested with the local governments (panchayats, municipalities and corporations). There is no explicit provision for sanitation in our constitution. However the Higher Judiciary have interpreted Art 21 in such a way as to include within its purview the right to sanitation. *Virender Gaur v. State of Haryana*, Supreme Court of India¹⁷⁴ It was held that right to live a dignified life includes sanitation without which it cannot be enjoyed. *LK Koolwal v. State of Haryana, High Court of Rajasthan*,¹⁷⁵ It was held that health maintenance, sanitation, protection of the environment come within the framework of Article 21 because it adversely affects the life of the person and amounts to slow poisoning and reducing the life of the person. Sanitation is also covered by DPSP under part iv of the constitution. 47, which provides that it is a duty of the government to raise the standard of living. Sanitation a factor that contributes to a decent standard of living. Ar 48A that makes it a duty of the state to 'protect and improve the environment'. This also covers within its purview sanitation.¹⁷⁶

In the rural context, sanitation is the duty of gram panchayats under the Panchayati Raj Institution (PRI) laws,. In this regard, the duties of the panchayats include the responsibility to take all appropriate steps to improve sanitation, to enforce rural sanitation systems and to carry out sanitation-related activities, such as the cleaning of public roads, drains, tanks, wells and other public places; the construction and maintenance of public latrines; and the maintenance and maintenance of public latrines. The obligation of local authorities to provide and maintain sanitation facilities has been underlined by judicial forums in India. The obligation of local

¹⁷³ Peoples Union For emocratic rights v. Union Of India

¹⁷⁴ (1995)2 SCC 5

¹⁷⁵ AIR 1988 Raj. 2

¹⁷⁶ K.J. JOY AND SARITA BHAGAT (EDS), RIGHT TO SANITATION IN INDIA: NATURE, SCOPE AND VOICES FROM THE MARGINS 455(2017)

authorities to provide and maintain sanitation facilities has been underlined by judicial forums in India. In **Municipal Council, Ratlam v. Vardhichand**¹⁷⁷, Supreme Court, held that By pleading financial incapacity, a responsible municipal council set up for the precise purpose of preserving public health and providing better finances can not run away from its principal duty. Decency and dignity are non-negotiable elements of human rights and constitute a first charge for local bodies of self-government. There are other laws that acknowledge the rights and obligations associated with Sanitation in some unique locations or buildings, such as schools and workplaces. By prescribing sanitation duties, these statutes recognise the right to sanitation.¹⁷⁸

3.12 RECOMMENDATIONS OF NHRC ON MANUAL SCAVENGING AND SANITATION:

NHRC has made following recommendations to be followed by the public authorities while dealing with issues on Manual Scavenging and Sanitation. These are as follows: -¹⁷⁹

1. A periodic systematic survey should be carried out, at least once every three years, in association with dependable NGOs. It should include all dry latrines, manual scavengers and come up with suggestions for rehabilitation and other opportunities to provide alternative livelihoods.
2. UP, Bihar, J&K and Assam have the highest number of dry latrines, as per the information available to the Ministry of Housing and Urban Poverty Alleviation, Government of India. These four States should therefore take all appropriate steps for the full conversion and demolition of dry latrines and the rehabilitation in their respective states of manual scavengers. All other states should also take the requisite action on the basis of a detailed survey.
3. Jammu & Kashmir and Delhi must speed up the rate of the Act's adoption, which should be accomplished as early as possible.
4. The definition of manual scavengers is different from that of sanitary workers and, as provided in the MS Act, 1993, all authorities can limit the definition of manual scavenging.
5. The presence of too many organisations also prevents the removal of manual scavenging and recovery programmes. Therefore, the nodal agency should be made up of the District Magistrates and joint instructions should be given to the States / Union Territories and to the District Magistrates from the three Central Ministries concerned with manual scavenging to take the required measures for coordination and alignment of efforts. A coordinating body should also be in place at state level to oversee the framing of appropriate rules and regulations, the survey as envisaged in the recommendation, the conversion or demolition of dry latrines, the rehabilitation of manual scavengers, prosecution of violators etc.
6. In certain states, the problem of lack of space and water shortage in some pockets must be tackled through the implementation of suitable technologies an advanced method.

¹⁷⁷ AIR 1980 SC 1622

¹⁷⁸ the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, it is the duty of the employer to provide sufficient latrine and urinal facilities at work place which can be accessible to the building workers at all times (section 33).

¹⁷⁹ NHRC recommendations on manual scavenging and sanitation, <https://nhrc.nic.in/press-release/nhrc-recommendations-manual-scavenging-and-sanitation> assessed on 15th april 2020

7. The municipal and panchayat bye laws of all States must have provisions not to permit the construction of any new house with dry latrines or without water shield latrines or sanitary latrines with appropriate technology and steps should be taken to demolish dry latrines created in the past and to create new water shield latrines or sanitary latrines with appropriate technology.
8. As in the case of bonded labour, the Ministry of Social Justice and Empowerment may develop modalities for the payment of immediate relief of Rs.10,000 to manual scavengers awaiting rehabilitation.
9. Even after parents have stopped manual scavenging and rehabilitated, the scholarship to the children of manual scavengers should not be prevented.
10. It should be ensured that the BPL cards are given to established manual scavenger families who are entitled to get the BPL cards.
- 11 State governments must issue advertisements for cases of manual scavengers and dry latrines in leading newspapers and post the same on the Panchayat / Municipal Notice Boards.
12. The list of manual scavengers listed should be posted on the website and in important public places for general public inspection and broad advertisements should be provided. The notified authority may be contacted by any person who is left out.
13. The District Magistrate must issue a certificate to the manual scavenger upon registration, on the basis of which all the agencies concerned should extend benefits to which he or she may be entitled.
14. The State Commissions for Human Rights should begin monitoring cases of manual scavenging in the States and the subsequent rehabilitation of manual scavengers. It must take measures to eliminate it.
- 15 Lastly, Manual scavengers predominantly belong to ex untouchable castes and, therefore, are subjected to additional discrimination and social exclusion based on untouchability. Abolition of untouchability is a Constitutional mandate. Therefore, the onus of eradicating manual scavenging should rest on the state, on the Central and state governments equally. Despite the special laws, instructional mechanisms and inclusive policies meant for manual scavengers, they continue to be compelled by circumstances to perform de-humanizing and degrading work.

3.13 CONCLUSION

Sanitation has emerged as an international Human Right and its significance has been asserted by various international organisations and instruments. However, the pernicious practice of manual scavenging, sewer cleaning is still rampant and many deaths are proof of the existence of the same. Right to sanitation is a human right, a fundamental right, however the realisation of the same is a dream taking into account the current Indian scenario where there are lakhs of people who go inside the gutters to find their livelihood. In addition to remedying individual violations, identifying violation patterns will also help prevent such violations, and will require government to address their structural causes in policeman and budgeting. Human rights violations of sanitation are often associated with wider deprivations and other violations, including human rights to life, health, food, housing, education, work, and a healthy

environment. In addition, infringements of the right to sanitation in general need to be given greater consideration. Victims of violations of the right to health and sanitation are among the most stigmatized and marginalized in society, and taboos remain to prevent open discussion of the indignities associated with unhygienic conditions. All actors should frame water and sanitation violations more clearly as violations of human rights to water and sanitation, with a view to drawing attention to the peculiarities of these violations and the deprivations and indignity that they often inflict. The central Government must take steps to remedy this and ensure its proper implementation.

CHAPTER FOUR

LEGISLATIVE FRAMEWORK RELATING TO MANUAL SCAVENGING AND SANITATION

4.1 INTRODUCTION

In addition to the plethora of constitutional provisions and international instruments there have been a number of legislative measures which were aimed at eradication of the scourging activity of manual scavenging and the rehabilitation of manual scavengers. The prevalence and shocking deaths of sanitation workers even years after the implementation of these measures raises serious questions regarding their efficacy and enforcement machinery which calls for a relook at these provisions. In the earlier days the concept of manual scavenging was restricted to the idea of manual carrying of human excreta by people. With the passage of time and taking into account the advanced technological facilities available it is now imperative that a wider interpretation be given to this concept. The same idea has also been mooted by several supreme court decisions. Now the concept of manual scavenging involves in its ambit the sanitation workers, manhole workers and all those workers who are engaged in hazardous removal of waste. The corollary of this all-inclusive concept hence requires an equally strong legislative machinery to address the loopholes and take note of the nuances for stricter implementation and monitoring. The roots of this measures can be traced back to earlier times, however the efficacy of these measures remains disputable.

4.2 COMMITTEES FOR THE UPLIFTMENT OF SCAVENGERS

The legislative history can be traced back to various committees being appointed to look into the issue and the formulation of schemes and legislations.

4.2.1 BARVE COMMITTEE REPORT (1949)¹⁸⁰

This Committee was appointed under the chairmanship of V. N .Barve to study and enquire into the living conditions of scavengers in Bombay . This committee is also known as the

¹⁸⁰ Recommendations of the report of barve committee (1949), no.f.13-118-/54lsg, government of india, ministry of health, New Delhi, 24th September ,1995

scavengers living conditions Enquiry Committee. Following are the important observations and recommendations made by the committee:

- The caste of Banghi¹⁸¹ was originally confined to certain places like Karnaraka , Maharashtra, Gujarat etc Ancestors of Banghis were field labourers but was never involved in the task of scavenging .As years passed these people took to the work of cleaning latrines for profit motive and improving their life. A stage was reached where bhangis exploited their monopoly and a sort of customary right was created. With the passage of time The Bhangis got lost in the vicious cycle of miseries.
- The Gharaki system or the system of customary right of scavenging has to be abolished both in the interest of the Bhangis and also in the interest of public sanitation.
- Suitable measures have to be taken to awaken the sanitary conscience and civic sense of the public in the concern of abolition of the practice of removal of night soil and to reintegrate them into the society where they can take due share in the public life of the society.
- The Committee pointed out that in certain municipal Acts, there was provision to regulate construction, maintenance and control of water-closets, privies, latrines etc but there were no provisions in relation to scavenging of public latrines. This acted as a barrier for the municipalities from breaking the so- called customary rights of Bhangis and from improving the methods of scavenging in order to avoid the hand removal.
- The living conditions of scavengers were extremely poor . There ought to be a provision for their housing and the municipal Acts ought to be Amended suitably to incorporate such a provision.
- House rent should be paid to homeless scavengers who have not been provided free residence by the local bodies.
- Local bodies should always avoid constructing the usual pan latrines . They should also refuse permission to new house owners to construct receptacle latrines.

¹⁸¹ Bhangis denote an Indian class or jati who were traditionally treated as untouchables. It consists of more than 28 sub-groups of which major ones are Amdaria , Balmiki , Bari , Chuhra , Dhanuk, Dom, Hela, Koelbari , Machua , Pattharpor etc .They were historically restricted to three occupations – cleaning latrines, sweeping and scavenging. During the colonial period they were brought from villages to remove human excrements and clean the city. They united to form a community often claimed to have a common origin from saint Valmiki . he was raised by a sweeper woman.

- The committee suggested the use of night soil for the production of gas for street lighting , fuel etc.
- The committee recommended that five hours of scavenging work has to be the maximum for all scavengers. The practice of giving off days should also be given impetus.
- Campaigns must be planned by the Public health Authorities of states with the cooperation of local bodies and social workers for securing improvements in the living conditions of scavengers .
- Government must appoint an Assistant to each Director of local authorities in a State in order to secure the implementation of Committees recommendations .
- Local bodies, Gram Panchayats and other Local Authorities should include in their Annual Report a special chapter giving details about the living conditions and conditions of work of scavengers and sweepers and effect improvement in their life .
- Co-operative credit societies has to be organised with the help of local bodies for the welfare of scavengers.
- Lastly the committee recommended that the sanitary conscience , civic sense and the sense of social justice of people in general must be aroused by impressing upon them the importance of sanitation and health.

4.2.2 BACKWARD CLASSES COMMISSION (KAKA KALELKAR COMMISSION)

The first backward classes commission was appointed in the year 1953. The committee with Kaka Kalelkar as the chairman submitted its report in 1955. It identified that the scavengers lived in sub humane conditions. The committee had prepared its report by going to several harijan headquarters and studying their situation. The word sub-human falls short of describing their apathy. The Bhangis help maintain sanitation and health by cleaning the latrines. Without them the whole population would be affected by a ravage of epidemics. Despite these the bhangis live in the filthiest of the surroundings. The receptacles used for carrying night soil often leak. Any society which makes one section of its population to do such degrading tasks must be ashamed of themselves. The committee found that the municipalities were the greatest sinners as they failed to bring any improvement in the living conditions of manual scavengers

and neglected their plight.¹⁸² They always fail to take adequate measures to address the plight of the manual scavengers and escape under the lame excuse of not having adequate funds. The stigma associated with the job of cleaning latrines and scavenging was so much deep rooted that Gandhiji had to threaten a fast in order to secure the permission for one of his Brahmin colleagues to clean latrines in the British jail. The committee was of the opinion that the entire nation regard Gandhiji as the father of the nation hence bound in them is the responsibility of removing this blot from the Indian civilization. The existing separate quarters allotted to the bhangis must be abolished and there must be social inclusion by accommodating them along with others. The observations and recommendations by the backward class commission were brought to the notice of all state governments in October 1956 by The Ministry of Home Affairs. It further emphasised the need to introduce up-to-date methods of mechanical cleansing so that the inhuman methods of doing this work by hand and carrying the night soil on head is obviated as far as possible. The committee also recommended that specific schemes covering all aspects of life must be formulated to uplift the bhangis from subhuman existence.

4.2.3 CENTRAL ADVISORY BOARD FOR HARIJAN WELFARE

In 1956, under the chairmanship of Late Pandit Gobind Ballabh Pant, the Ministry of Home Affairs set up the Central Advisory Board for Harijan Welfare. This board reviewed, inter alia, the working and living conditions of sweepers and scavengers in the country and recommended that the government implement a centrally funded scheme for manual scavenging eradication.

4.2.4 MALKANI COMMITTEE¹⁸³

The board in its meeting on 12th October 1957 constituted a committee, known as the scavengers Inquiry Committee to prepare a scheme to put an end to manual scavenging. Some of the recommendations were as follows:

i) Working conditions- Wheel barrows has to be provided for putting an end to the practice of carrying the night soil on head. There must be mandatory use of receptacles in private and public latrines. The local bodies must provide standardised scrapers to the manual scavengers. The use of rubber gloves especially pail-depots must be encouraged. It further suggested that carrying of night soil on head must be made a punishable offence.

¹⁸² Shriram Maheswari, Mandal commission and Madalisation- A Critique 86 (3rd ed. 1995)

¹⁸³ N. R. Malkani, Chairman P. N. Rajabhoj, Member K. L. Balmiki, Member Rajkrishna Bose, Member N. S. Kajrolkar, Member O. K. Moorthy, Report of the Scavenging Conditions Enquiry Committee, 352.60954 MAL-S, 1961

ii)Housing for sweepers and scavengers- Construction of quarters for conservancy staff should not be near to dumping grounds morgues , etc and they must be in colonies inhabited by others so as to avoid segregation. Measures must be taken to improve the housing facilities of scavengers so as to instil dignity among them. This would also be beneficial for their children. A single room tenement would be inadequate from the point of view of moral hygiene . Hence all tenements must at least consist of two rooms, kitchen and latrine . Positive measures must also be taken to provide them with electricity and water supply.

iii)Wages- Wages in accordance to the Minimum wages Act must be provided to the scavengers. State Governments must appoint committees to consider the question of wages to the scavengers in detail. The basic wages and other allowances to the scavengers must be fixed which should not fall below the minimum wage. For full time employees the hours of work should not be more than 7 hours per day of which only four to five should be reserved for scavenging work. Part time workers should not be asked to work both during morning and evening as this would prevent them from obtaining other work. The scavengers must be given casual , privileged , earned leave etc and the local bodies must frame rules in this regard. The state Government's must make provisions in the local bodies where scavenging work is municipalised , wherein they can avail a full day off in a week. The committee noted that “ As long as dry latrines continue the problem will continue and having underground sewers will be a story of far distant future”. Hence first step towards the eradication of scavenging must be abolition of all dry latrines. The recommendations and observations of the committee were sent to all state Governments And a Centrally sponsored scheme for the improving the living conditions of sweepers and manual scavengers .

4.2.5 COMMITTEE ON CUSTOMARY RIGHTS

The Central Department of Social Welfare appointed this Committee in 1965 under the chairmanship of Prof N.R. Malkhani to examine the question of abolition of customary rights in manual scavenging. The Committee submitted its Report in 1966 and found that where scavenging is not municipalised the latrines were cleaned privately by one particular scavenger who acquired customary rights in cleaning latrines as against other scavengers by understanding and agreement. ¹⁸⁴The response of the Union as well as the State Government

¹⁸⁴ NR Malkani, Clean People and unclean country 45 (1st ed . 1969)

to these recommendations was very poor and hence no action was taken in pursuance of these recommendations.¹⁸⁵

4.2.6 PANDYA COMMITTEE

During 1968-69, under the chairmanship of Shri Bhanu Prasad Pandya, the National Labour Commission formed by the Union Ministry of Labour appointed a sub-committee to investigate the working conditions of sweepers and scavengers. One of the main suggestion put forth by the committee was that a comprehensive legislation has to be formulated by the union Government to regulate the work, service and living conditions of manual scavengers. Such an Act should also provide for inspectorate and enforcement machinery". Committees of the similar manner were also constituted in several states such as Uttar Pradesh (1955) , Haryana (1969) , Kerala (1971) ,Karnataka etc.

4.3 SCHEMES AND INTERVENTIONS OF GOVERNMENT

4.3.1 IMPROVEMENT IN THE WORKING AND LIVING CONDITIONS OF THOSE ENGAGED IN UNCLEAN OCCUPATIONS

In giving effect to various recommendations made by the Malkhani Committee The government of India introduced a Centrally sponsored scheme during the third five-year plan. It was divided into two parts which dealt with improvement in the working conditions of sweepers, scavengers , tanners and flayers and the second aspect dealt with improvement in the living conditions of those Scheduled Castes who were engaged in unclean occupation or landless labourers. Financial assistance was provided by the union Government to the State Governments to enable them to give grant-in-aid to municipalities/local bodies for the purpose of hand carts , Wheel -barrows,gum-boots and other protective devices. Subsidies could be provided for the purpose of construction of houses for scavengers, sweepers, flayers. It also provided provision for providing house sites to those engaged in unclean occupation or landless labourers who belonged to the scheduled castes. This scheme was intended to be a supplementary one in the course of long term solution to the problem of scavenging.

This scheme had the following shortcomings:

The wheel-barrows were designed in such a manner which were not suitable to be handled by women as it was too heavy. Further the municipalities did not receive any financial assistance

¹⁸⁵ Rama Sharma, Bhangi, Scavenger in Indian Society: Marginality, Identity and politicization of the community, 61 (1st ed. 1995)

for repairing them. no proper place was provided for parking of these wheel barrows. The protective gears and the improved instruments were not supplied to all scavengers and even if supplied they were seldom used by them because of the lack of awareness. This Scheme was considered to be a failure and was discontinued in the fifth five year plan

4.3.2 CENTRALLY SPONSORED SCHEME OF MINISTRY OF WORKS AND HOUSING

This scheme was taken up by the Ministry as a pilot cum demonstration project for replacement of dry latrines by water borne latrines in the selected towns. This initiative was taken under the Fifth Five Year Plan with an estimated outlay of Rs 4.40 crores. The most important aim was to abolish the manual handling of night-soil, to demonstrate cheaper methods for the disposal of human waste and to improve the sanitation in the country. Selected states were given Central assistance in the form of loans. The state Governments were not receptive towards this Scheme and the absence of subsidies further reduced its efficiency. This resulted in the dropping of this scheme in Sixth Five Year Plan.

4.3.3 VALMIKI MALIN BASTI AWAS YOJNA (VAMBAY):

In 2001, the Government of India initiated this scheme to provide shelter and improve the current one's for people living below the poverty line in urban slums, which helps to make cities free of slums. The scheme is shared with states on a 50:50 basis. Women-headed households are given priority. The Government releases subsidies on a 1:1 basis with loans.¹⁸⁶

4.3.4 TOTAL SANITATION CAMPAIGN (TSC):

The Total Sanitation Campaign is a holistic initiative aimed at providing sanitation facilities in rural areas with a wider objective of eradicating open defecation practices. TSC was introduced in 1999, when the Central Rural Sanitation Program was restructured to drive demand and focus on people. It follows the 'low or no subsidy' concept where a nominal subsidy is provided to rural poor households for the construction of toilets in the form of an incentive. It aimed to achieve its objective by placing emphasis on several aspects.¹⁸⁷

¹⁸⁶ <https://nhrc.nic.in/> assessed on December 14 at 10 PM

¹⁸⁷ TSC gives strong emphasis on Information, Education and Communication (IEC), Capacity Building and Hygiene Education for effective behavior change with involvement of Panchayati Raj Institutions (PRIs), Community Based Organizations (CBOs), and Non Governmental Organizations (NGOs) etc. The key intervention areas are Individual Household Latrines (IHHL), School Sanitation and Hygiene Education (SSHE), Community Sanitary Complex, Anganwadi toilets supported by Rural Sanitary Marts (RSMs) and Production Centers (PCs)

4.3.5 NIRMAL GRAM PURASKAR YOJNA:

The Government of India introduced an incentive scheme for totally sanitised and open defecation-free Gram Panchayats, Blocks, and Districts named the 'Nirmal Gram Puraskar' in June 2003 to add vigour to the TSC. This incentive is for Panchayati Raj Institutions (PRIs) as well as individuals and organisations.¹⁸⁸

4.3.6 NATIONAL SCHEME OF LIBERATION AND REHABILITATION OF SCAVENGERS (NSLRS):

The Government launched (NSLRS) in March 1992 to provide alternative jobs for the scavengers and their dependents. The scavengers and their dependents are educated in trades of their skill under the NSLRS, which can provide them with alternate jobs. The trainees receive a stipend of up to Rs.500/- every month and a tool kit allowance of up to Rs.2,000/- over the course of training. There is a specified financial package for various trades for rehabilitation under scheme with financial assistance of up to fifty thousand. Under NSLRS, the Government of India has developed and issued guidelines for all States and their Special Central Assistance (SCAs) to form groups consisting of five to twenty five scavengers and to establish a production-cum-trading-cum service centre through Sanitary Marts for the large-scale conversion of dry latrines in which NSKFDCC would provide the loan component.

4.3.7 PRE-MATRIC SCHOLARSHIPS FOR THE CHILDREN OF THOSE ENGAGED IN UNCLEAN OCCUPATIONS:

Aim of this scheme was to provide financial support to children of people involved in works relating to dry latrine, tanner, flayer and sweeper scavenging or who have traditional connections with scavenging to pursue pre-matric education. Under the scheme, 100 percent central assistance over and above their respective committed liabilities is given to the States / UTs to execute this scheme. Each year, the system tries to provide assistance to over 6 lakh students.

4.3.8 INTEGRATED LOW COST SANITATION SCHEME (ILCS):

The Centrally Funded Scheme for Urban Low Cost Sanitation was launched in 1981 by the Ministry of Home Affairs and later introduced through the Ministry of Social Justice and Empowerment to eradicate the dehumanising practise of physically carrying night soil. The

¹⁸⁸ Supra Note 186

scheme allows for the conversion of dry latrines into low-cost twin-pit sanitary latrines and the release of scavengers by removing manual scavenging altogether. It has been implemented on a 'whole town basis' and is run by the Housing and Urban Development Corporation (HUDCO) by offering a mixture of central government subsidies and HUDCO loans in a synchronised manner.¹⁸⁹

4.3.9 PAY AND USE TOILET SCHEME:

Central assistance through the Housing and Urban Development Corporation (HUDCO) was made available to Urban Local Bodies (ULBs) under the 'Pay and Use Toilet Scheme' for the construction of toilets for footpaths and slum dwellers who were unable to build their own toilets. The project duration was one year and the subsidy was payable in four equal instalments upon presentation of the certificates of usage for each instalment.

4.3.10 ASSISTANCE TO STATE SCHEDULED CASTES DEVELOPMENT CORPORATIONS (SCDCs):

In 1978-79, this scheme for assistance to State Scheduled Castes Development Corporations was launched as a Centrally Funded Scheme in States / UTs with a significant population of Scheduled Castes. At present, in 26 States and UTs, SCDCs are operational. They play an extremely useful role in mobilising the economic development funds of the Scheduled Castes, who live below the poverty line. They also served as promoters and catalysts for financial credit generation. It provides loans and subsidies to target groups.

4.3.11 SELF EMPLOYMENT SCHEME FOR REHABILITATION OF MANUAL SCAVENGERS:

One of the most important schemes which was by MSJE aimed at the rehabilitation of Manual Scavengers. Main objective is Rehabilitation of manual scavengers, which also requires assistance. Scavengers and who are dependant on them will be eligible for assistance under any scheme of Government of India / State Governments regardless of their income, who are yet to be given assistance for rehabilitation. Education, credit, and subsidies will be provided to the scavengers. Credit will be issued by banks which, at the rates prescribed under the scheme, charge interest on the beneficiaries. NSKFDC or any other recognized agency at the apex level shall, through its State Channeling Agencies (SCAs) or any other recognised agency at the State level, provide interest subsidies to banks for the difference between the interest paid by the

¹⁸⁹ LOK SABHA SECRETARIAT, Manual Scavengers: Welfare and Rehabilitation, 2013

bank and the interest to be paid at the level of the be. Term loans to a maximum amount of five lakhs and micro financing to a maximum of Rs. Twentyfive thousand will be admissible under the scheme. Assistance of Micro financing self help groups (SHGs) and reputed Non Governmental Organisations(NGOs) will be taken for this purpose. All activities under the scheme will be carried out by NSKFDC or any other entity listed under the scheme and will coordinate with the agencies concerned to ensure maximum benefits for the beneficiaries. NSKFDC or any other identified entity shall be free to reimburse the admissible expenditure of its own funds under the scheme, which shall be reimbursable to them.

4.4 PROHIBITION OF MANUAL SCAVENGING - LEGISLATIVE ATTEMPTS

4.4.1 Untouchability Offences Act 1955

The Act made untouchability unlawful and a punishable offence . The original law did not expressly recognise manual scavenging, but under its terms, it became a crime to force on someone else a practise or profession because of untouchability, and this in essence included manual scavenging. The penal provisions (of six months' imprisonment or a fine of Rs.500) were not strong, however, and compliance was even weaker.

4.4.2 Protection of Civil Rights Act 1955

Section 7A was incorporated in the in 1976, almost three decades after India secured independence, which for the first time expressly made any person compelled to scavenge an offence punishable by imprisonment on grounds of untouchability. This did nothing to avoid the practise, however. Again, this provision failed as it was riddled with the same poor penalties, dismal execution, in addition to low understanding of the quality and use of legal provisions.

4.4.3. The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989

It built a stronger legal regime to stop and punish acts of untouchability and violence. It provided for some offences such as atrocities and imposed stricter penalty on those guilty . Special courts were set up for speedier trial of such cases. The main objective was to rehabilitate and provide relief to victims of such offences and for matters connected therewith or incidental thereto. But even this had very little impact on the continuance of 'unclean occupations' like manual scavenging, and the humiliation suffered by them. It took another 17 years, till 1993, for Parliament to pass Act which rendered even voluntary employment of

manual scavengers for removing excreta an offence, and another four years for the Act to be notified. State governments took even longer, up to 18 years, to even notify the Act.

4.4.4 National Commission for Safai Karamcharis Act, 1993¹⁹⁰

The Act created the National Safai Karamcharis Commission to study , review and monitor the implementation of the various safai karamcharis schemes as an autonomous body, as well as to correct their complaints. The Act is a welfare statute enacted for the welfare of individuals in different state agencies working in cleaning and plumbing work. Section 31 of the PEMSR Act grants the National Commission for Safai Karamchari legislative duty to track the enforcement, investigation and non-implementation of the PEMSR Act 2013.

4.4.5 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993¹⁹¹

In 1993, the MS act was enacted in order to transform the constitutional ideal of 'fraternity' into a guarantee of an individual's dignity. Its long title was 'An Act to provide for the prohibition of the employment of manual scavengers as well as construction and continuation of dry latrines and regulation of construction and maintenance of water-seal latrines' and matters connected. This Act was the first major legislative attempt to prohibit employment of manual scavengers and continuation of dry (ie non water-sealed) latrines. It consists of five Chapters and have a total of twenty four sections.

The 1993 Act, however, contained several escape routes leaving room for contraventions of its purpose with impunity. The language used in the Act was permissive rather than absolute. For example, under s 3, rather prohibiting employment of manual scavengers in absolute terms, it instead cast a duty to prohibit the employment of manual scavengers on state governments. Section 3(1) left enormous room for state governments as to when to prohibit, or in which area a prohibition should operate. The terminology used in s 3(1) allowed wide scope for state governments to decide in which areas the employment of manual scavengers might be prohibited and from which date such a prohibition might come into effect. The room left for state governments under s 3(1) was further entrenched by restrictions on the power of state governments under s 3(2) to issue notifications prohibiting employment of manual scavengers. Sub-section 3(2), in absolute terms, said that a state government could not issue a notification under s 3(1) unless: (i) it gave a notice of not less than ninety days' of its intention to prohibit

¹⁹⁰ Act no. 64 of 1993.

¹⁹¹ Act 46 of 1993

employment of scavengers; (ii) adequate facilities for the use of water-seal latrines in that areas existed; and (iii) it was essential or expedient to do it for the protecting and improving the environment or public health in that area.

It is evident from s 3(2) that the language used therein affected the authority of a state government under s 3(1). Unless the requirements under s 3(2) were met, the intended prohibition by a state government would not take effect. Thus, s 3, on the one hand, conferred authority on a state government to prohibit the employment of manual scavengers and, on the other hand, severely restricted that authority, subjecting that government to the conditions set out in 3(2) .

The 1993 Act left additional scope for a state government to exclude any region or building or class of people from any provisions of the Act or from any particular requirement of the Act when compliance with the provisions or conditions is exempted or dispensed with by the state government upon its satisfaction. ¹⁹²In short, the 1993 Act provided tremendous leeway for a state government as to whether or not to prohibit manual scavengers from operating, when to prohibit, in which areas such prohibition may be exempted.

The 1993 Act also conferred power on state governments to appoint a District Magistrate, or as the case may be, a Sub-divisional Magistrate by an order published in the official Gazette, to be an 'Executive Authority' to exercise jurisdiction within such areas as it may have specified, to implement the provisions of the Act and, 'as far as practicable try to,' rehabilitate and endorse the wellbeing of the people who were engaged in scavenging. ¹⁹³The 1993 Act did not however lay down in absolute terms that the Executive Authority so appointed should carry out the provisions of the Act but only said that 'as far as practicable [it was to] try to' rehabilitate and promote the welfare of the persons who were engaged in scavenging. The use of such permissive language left enormous scope for a state government to decide on the appointment of the District Magistrate or Sub-divisional Magistrate as an 'Executive Authority' and discretion was not only given in respect of the appointment of the Executive Authority but in respect of the rehabilitation of persons engaged in scavenging. ¹⁹⁴

The use of permissive language in the 1993 Act was not limited to the instances described above, but even percolated down, for example, to the framing of schemes, the appointment of

¹⁹² Supra note 90 ,S4

¹⁹³ Id S5

¹⁹⁴ Id

inspectors and penalties, sanctions for prosecution, the power of the court to take cognizance of an offence under Act. For example, the language used in s 6(1), as in the case of s 5, equally permissively left wide scope for state governments to make 'one or more schemes' for regulating the conversion of dry latrines into (or construction and maintenance of new) water-seal latrines, and for the rehabilitation of people who were engaged in or employed as manual scavengers in any area in respect of which a notification prohibiting the employment of manual scavengers was issued.¹⁹⁵ Even the appointment of inspectors under the Act was left to the discretion of state governments,¹⁹⁶ and the penalties prescribed for contravention of the provisions of the Act were meagre. Penalties were not only meagre but also exempted an individual representing a corporation accused of violating the Act if that individual could show that the violation happened without their knowledge or that they had taken all due diligence to avoid the violation.¹⁹⁷

Furthermore, prosecution under the Act was made possible only with the prior sanction of the Executive Authority.¹⁹⁸ In addition, the courts were prohibited from taking cognizance of an offence under the Act unless the case was lodged within three months of the date on which the alleged commission of the offence came to the complainant's attention.¹⁹⁹

Thus, the 1993 Act not only created escape routes by the use of permissive terminology which allowed functionaries to avoid their obligations, but it also conferred excess discretionary power on state governments in a way that negatively conditioned the implementation of the Act. The net result was that the 1993 Act was a gross failure in achieving its objectives. Employment of manual scavengers continued unabated and insanitary latrines continued in existence. Several government departments such as military engineering works, the army, public sector undertakings and Indian railways still employed scavengers, even after the 1993 Act came into force. This all occurred despite the introduction of several schemes for rehabilitation, such as the National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS), Pre-matric Scholarships for the Children of those Engaged in Unclean Occupations, and a Self-employment Scheme for Rehabilitation of Manual Scavengers.²⁰⁰ As of April 2002, sixteen States had enacted MSAct, 1993, but there was no proof of its implementation in any

¹⁹⁵ Supra note 190 S6

¹⁹⁶ Supra note 190 S9

¹⁹⁷ Supra note 190 S10

¹⁹⁸ Supra note 190 S17

¹⁹⁹ Supra note 190 S18

²⁰⁰ GV Narasimha Rao, Employment of Manual Scavengers: A Curse on Human Dignity, 2015 Lawasia J. 77, 81(2015)

of the States. The presence of the Act was not even stated by the Schemes. Lateral assistance to the Scheme through the release of scavengers (i.e. the conversion of dry latrines into water-borne ones) was not compatible with the success of rehabilitation initiatives of scavengers. Even the rehabilitation rate was very low. Even the definition of Scavenger was not on any settled basis, resulting in the inclusion of disqualified persons in the list of beneficiaries by the survey agencies of the States thereby damaging the interests of the eligible ones.

4.4.6 THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013

Given the above background, the Government of India in the year 2013 and with a firm determination to eradicate the dehumanizing practice of scavenging enacted The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 (the 2013 Act).²⁰¹ The 2013 Act is a second major legislative attempt intended to end the dehumanizing practice of manual scavenging. It is divided into eight Chapters and has a total of thirty nine sections.²⁰²

The 2013 Act, recognising the persistence of the dehumanising practice of manual scavenging, took cognizance of the inadequacy of the pre-existing, 1993 law. It seeks to assure the dignity of the individual as enshrined in the preamble of the constitution, and to help protect weaker sections of the population from social injustice and exploitation. The 2013 Act intends to correct the historical injustice and indignity suffered by manual scavengers and to rehabilitate them to a dignified life.²⁰³ The improved provisions include definitions of specific expressions, such as 'hazardous cleaning',²⁰⁴ 'insanitary latrine',²⁰⁵ 'manual scavenger'²⁰⁶ and

²⁰¹ Act 25 of 2013

²⁰² Sessa Kethineni & Gail Diane Humiston, Dalits, The "Oppressed People" of India: How are their Social, Economic, and Human Rights Addressed?, 4 WAR CRIMES, GENOCIDE, & CRIMES AGAINST HUMAN. 99, 101 (2010).

²⁰³ Jason Gale, India Failing to Control Open Defecation Blunts Nation's Growth, BLOOMBERG, 178 (2009)

²⁰⁴ 2 (d) "hazardous cleaning" by an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder

²⁰⁵ 2(e) "insanitary latrine" means a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed: Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear,

²⁰⁶ 2 (g) "manual scavenger" means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression "manual scavenging" shall be construed accordingly.

'sewer'.²⁰⁷ Other provisions provide for the identification of insanitary latrines, their demolition and the construction of sanitary community latrines and their hygienic upkeep at all times, as well as an obligation of the local authorities to conduct survey of insanitary latrines and construction of sanitary community latrines and their hygienic upkeep.

There is also a prohibition on the construction of insanitary latrines; a prohibition on the employment and engagement of manual scavengers (as well as provisions to liberate forthwith every person engaged in manual scavenging); an obligation on occupants to demolish or convert insanitary latrines at their own cost within a stipulated time; and empowerment of local authorities, in cases of failure by an occupier to demolish or convert, to recover the costs of such conversion or demolition.²⁰⁸ The Act further includes declarations nullifying any contract, agreement or instrument employing or engaging a person for the purposes of scavenging, and enjoining the employer to retain the person so employed or engaged without retrenchment, subject to that person's willingness and on the same emoluments.²⁰⁹ There is a prohibition on local authorities or agencies from employing or engaging persons for hazardous cleaning a sewer or a septic tank.²¹⁰ Punishments are also provided for contravention of key provisions.²¹¹

Each District Magistrate (DM) and local authority is responsible for ensuring that no individual is engaged as a manual scavenger within its jurisdiction, that no insanitary latrines are installed, maintained or used. Rehabilitating manual scavengers and investigating and charging offenders of the Act. The state government, in addition to the DM, can designate subordinate officers and inspectors. They are responsible for carrying out the duties under the Act. Examination of latrines, open drains, premises to constitute an offence under this Act. Examination of a manual scavenger and seizing of relevant records also come within the Act. The legislation requires the implementing authorities to provide arrangements for the construction of a sufficient number of community sanitary latrines in order to eliminate open defecation within their jurisdiction and for the use of suitable technical devices for the cleaning of sewage and septic tanks. Central and State supervisory committees and supervisory committees should be constituted in every district in order to supervise implementation. The National

²⁰⁷ (q) "sewer" means an underground conduit or pipe for carrying off human excreta, besides other waste matter and drainage wastes;

²⁰⁸ Supra Note 201, S 5

²⁰⁹ id S6

²¹⁰ Id S7

²¹¹ id Ss 8,9

Commission for Safai Karamcharis (a statutory body) shall monitor implementation and inquire into complaints about contraventions of the Act.

Other provisions include provisions relating to surveys to be carried out for identification of manual scavengers in urban,²¹² and rural,²¹³ areas and for their rehabilitation.²¹⁴ There are also provisions relating to implementing authorities,²¹⁵ as well as procedures for trials,²¹⁶ for constituting vigilance committees at district and sub-divisional level with specific functions,²¹⁷ for monitoring committees at both state and central level,²¹⁸ and for the role of the National Commission for Safai Karamcharis in monitoring the implementation of the Act.²¹⁹

In the leading case of *Safai karamchari Andolan and Ors v. Union Of India and Ors* ²²⁰it was held that the rehabilitation of the persons referred to in the final list as manual scavengers under Sections 11 and 12 of the PEMSAR Act 2013 shall be carried out in accordance with the provisions laid down in Part IV of that Act.

CRITICAL ANALYSIS OF THE PROVISIONS

Definition of manual scavenging²²¹ – In spite of the purpose of the Act to prohibit the employment of manual scavengers, the explanation of the concept of 'manual scavenger' under s 2(g)(1) of the 2013 Act still leaves space for the engagement of scavengers. The 'manual scavenger' concept states that 'a person with protective gear is not considered to be a manual scavenger.' If they do so with the aid of such devices and protective equipment as the central government may prescribe, the explanation exempts any person engaged or employed in the cleaning of excreta. The cleaning of human excreta is against human dignity, either manually or mechanically; therefore, the cleaning of excreta with the assistance of mechanical devices does not make scavenging dignified. As its title connotes, the very act of subjecting a person to clean human excreta goes against the goal of the 2013 Act as well as the spirit of the Constitution of India. In absolute terms, the cleaning of human excrement in any form should be forbidden.

²¹² Supra note SS 11,12

²¹³ Id at 14,15

²¹⁴ Id at SS13,16

²¹⁵ Id at S17

²¹⁶ Id at SS21,22and23

²¹⁷ Id at S24

²¹⁸ Id at S27,30

²¹⁹ Id at S31

²²⁰ WPC NO 583 of 2003

²²¹ Supra noteS2(1)

Barriers to court – Not unlike the 1993 Act, s 10 of the 2013 Act prohibits the court from taking cognizance of the offence unless a complaint is lodged within three months of the date of the alleged commission of the offence.²²² This time limit for lodging a criminal complaint would allow violators of the provisions of the Act to go scot free if the complaint is not lodged for any reason whatsoever. This time limit for lodging a criminal complaint would allow violators of the provisions of the Act to go scot free if the complaint is not lodged within the time limit for any reason whatsoever. For substantiated allegations to be filed, the three-month span is too short a span. An offence is an offence once it has been committed. Moreover, the court's power to receive complaints remains ineffective by requiring a claimant to seek prior authorization from the appropriate relevant state government

Ambiguity in the framing of the schemes and accountability of the implementing authorities —Even though the 2013 Act provides for rehabilitation, it does not prescribe any clear rehabilitation measures to be enforced. Also, the Act is not explicit on the implementation process, nor is it explicit whose duty it is to frame the schemes and execute them.

Penalties – The 2013 Act provides for penalties for violations of the main provisions against the employing of a manual scavenger or the construction of a dry latrine, or for the hazardous cleaning of a sewer or septic tank by a human. But the fines imposed are very meagre. Instead of prescribing light penalties, the 2013 Act could have proclaimed any breach of it a criminal offence with serious penalties that will more significantly contribute to eradicating the danger of manual scavenging. The 2013 Act still remains silent on the responsibility of the implementing authorities in cases of failure to comply with or failure to comply with the provisions of the Act.²²³

Railway workers: The Act provides that a passenger coach in railway when cleaned using protective gears would not be considered as insanitary latrine thereby excluding them from the purview of this Act. Liberation will come for sewer workers and rail workers with the implementation of technical improvements that make the profession humane, dignified and clean, as well as ensuring that people do not have to make any physical or other forms of direct

²²² Id at

²²³ The penalty for employing manual scavengers or failing to demolish insanitary latrines is imprisonment of one year and/or a fine of Rs. 50,000 for the first offence. Subsequent offences will be punished with imprisonment up to two years and/or a fine of Rs. 1,00,000. The penalty for the hazardous cleaning of septic tanks and sewers is imprisonment of two years and/or a fine of Rs. 2,00,000 for the first offence, and five years and/or a fine of Rs. 5,00,000 for subsequent offences. Offences under this law are cognizable and non-bailable. The law permits the state government to confer powers of a Judicial Magistrate of the first class on an Executive Magistrate to conduct trials. Complaints have to be made before the court within three months of the offence.

contact the dirt that affects their health. Technologies are globally available that could be invested in by both Indian Railways and municipalities, as mentioned, which would remove the need for human beings to manually handle excreta. The irony is that these public investments are not made by federal, state and local governments because human beings are available to do this job cheaply, driven by their birth in the most deprived castes and lack of other opportunities for living. Unfortunately, their lives are often considered cheap and frequently prematurely extinguished, often due to asphyxiation within sewers, respiratory or skin disorders and other occupational health threats for which they are not medically insured and often de-insured.

4.4.7 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013²²⁴

These rules were made under the powers conferred by the PEMSR Act, 2013 and were aimed at the effective and efficient implementation of the said Act and to fulfil its objectives. It consists of five chapters and 14 sections in total. The definition for cleaning device in S 2 (b) includes both mechanically and manually propelled equipment used to Clean or allow the conveyance or flow of sewage from septic tanks in sewers or septages, and avoid direct manual contact with such sewage or material and are not limited to the equipment mentioned in S5. There shall be a "District Level Survey Committee" with District Magistrate as the Chairman.²²⁵ Such a committee has to monitor the surveys and oversee the implementation. It shall also conduct awareness programmes and give wide publicity in newspapers regarding the survey conducted. It must also periodically prepare consolidated list of all manual scavengers of the district. A State Level Survey Committee with similar functions is provided at the state level.²²⁶ "Protective equipment" means personal protective equipment and safety equipment to be supplied, worn or used by safai karamcharis or sanitary workers for the cleaning of sewage and septic tanks, which may be required for the particular nature of the work to be carried out.²²⁷ "Safety precautions" include, but are not limited to, the precautions referred to in Rule 6 which are all necessary measures to minimise the person's risk and to prevent the person engaged in the cleaning of sewers and septic tanks from contracting illnesses and injuries as a

²²⁴ In exercise of the powers conferred by sub-sections (1) and (2) of Section 36 read with clause (a) of sub-Section (1) of Section 37 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013), the Central Government hereby makes the following rules,

²²⁵ S2(c) of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013

²²⁶ Id at S 2(j)

²²⁷ Id at(g)

result of exposure to sewage or any other substance in any physical state (solid , liquid or gas) inside sewers or septic tanks .²²⁸

As per the rules "Safai Karamchhari" or "Sanitation Worker" means any person engaged in or employed for any sanitation work, other than domestic work. Thus the definition is very large in its scope and has the potential to cover a wide range of workers

S3 Casts obligations on the Employer Towards Employees Engaged in the Cleaning of Sewers or Septic Tank to provide protective gear. Any situation where manual sewage cleaning is absolutely required can be done only after the CEO of the local authority has approved it to do so after documenting in writing the particular valid reasons for authorising such cleaning.

It is very clear that this rule remains merely on the paper given the number of deaths of workers that had happened.

S4 provides for 44 items of safety devices to be provided by the employer at the time of cleaning. It is not limited to these and additional equipments must also be provided.²²⁹ A simple look into the sec is sufficient to understand how our workers are forced to do the deadly activity unequipped, or with meagre no of devices. This calls for urgent action.

Further sec 6 provides that all the protective equipment's are to be checked every 6 monts and comfortable body suits are to be provided to all workers. The cleaning of septage should be done only during day time and should not go beyond 90 minutes at a stretch. It also provides for minimum oxygen count of the man hole as 19.5% and not beyond 21%. All persons engaging in these activities have to be continuously monitored using CCTV or Signal camera. Emergency breathing supplier has to be provided in case of urgency.

Sec7 casts additional responsibility of providing portable fans, flashlights air blowers etc in good working condition. The person employed shall be insured (atleast 10 lakh) and the premium is to be paid by the employer. Rescue equipment such as tripod and harness system,

²²⁸ Supra note 224

²²⁹ Air compressor for blower(ii) Air line breathing apparatus(iii) Air line respirator with manually operated air blower(iv) Air Purifier Gas mask/chin corcege(v) Artificial respiration/Reticulate(vi) Barrier caution tape(vii) Barrier cream(viii) Barrier cone(ix) Blower(x) Breath mask(xi) Breathing Apparatus(xii) Caution board(xiii) Chlorine mask(xiv) Emergency medical oxygen resuscitator Kit(xv) First Aid Box(xvi) Face Mask(xvii) Gas Monitor (4 gases)(xviii) Guide Pipe Set(xix) Full body wader suit(xx) Fishing wader suit attached with boots(xxi) Hand gloves(xxii) Head Lamp(xxiii) Helmet(xxiv) Helmet demolishing(xxv) Lead acetate paper(xxvi) Life guard pad(xxvii) Modular Airlines Supply Trolley System(xxviii) Normal face mask(xxix) Nylon rope ladder 5 metres(xxx) Nylon safety belt(xxxi) Pocket book(xxxii) Port oxy(xxxiii) Raincoat(xxxiv) Reflecting Jacket(xxxv) Safety belt(xxxvi) Safety body clothing(xxxvii) Safety body harness(xxxviii) Safety goggles(xxxix) Safety Gumboots(xl) Safety helmet(xli) Safety showers(xlii) Safety torch(xliii) Safety Tripod Set(xliv) Search light

basket stretcher, first aid as mention in the annexure 1 of the rules shall be maintained by the employer.

Sec8 says that post cleaning precautionary measures such as wash up, sanitisation, medical creams for skin and other medical assistance.

If all the safety precautions mentioned from S3-8 were followed then there would be no / minimum number of deaths and accidents which points non- compliance with these rules.

Chapter 2 deals with insanitary latrines. S 9 says that human excreta shall be treated as fully decomposed when it becomes stable material with no unpleasant odour and containing valuable plant nutrients. S 10 says that there shall be a survey for identifying insanitary latrines which is to be done by the CEO of local authority. After preparing the final report the same shall be forwarded to the State Level survey Committee which shall furnish the same before Central Ministry/Department dealing with the Schemes of conversion of insanitary latrines into sanitary latrines for the urban and rural areas. The beneficiaries under the scheme can apply for the financial assistance. After the completion of survey all the insanitary latrines has to be converted by the occupier to sanitary latrines, failing which the local authority shall order for the demolition and recover the money from the occupier.

Chapter 3 deals with the survey of manual scavengers. The local authority must ensure that those echoes conduct these surveys are properly trained it shall also take the help of NGO'S's and good spirited members of community working for the benefit of manual scavengers and safai karamcharis. It shall invite these people through awareness programmes to declare themselves as manual scavengers and safai karamcharis. Provisional list shall be prepared first. After hearing the objections, the final list shall be published. Manual scavengers identified, one from each household, must be qualified immediately after identification to receive cash assistance of Rs. 40,000. The beneficiary shall be allowed to withdraw, in monthly instalments, a sum not exceeding Rs. 7 000.²³⁰

States and officials claiming that there are no manual scavengers is corroborative of the fact that proper survey as envisaged under the Rules are not conducted.

Chapter 4 deals with powers of the inspector which includes conducting inquiry and identifying the commission of offences under rules, taking measures to stop hazardous cleaning, power to

²³⁰ Supra note 225, S12

inspect sites, take evidence, photos etc.²³¹ On finding that a local authority, individual or agency engages or employs an individual in a hazardous cleaning operation, the inspector shall promptly inform that authority, person or agency to cease such a hazardous cleaning operation and shall include a written notice to that effect in the form annexed to these rules as Annex-III.²³²

Chapter 5 deals with state monitoring committees. As per S14 it shall meet once in every 6 months under the chairperson and its minutes shall be recorded as a permanent record.

Had the rules been implemented in its full spirit and vigour, then India would not have witnessed innocent lives coming to an end with many more suffering daily and fighting to make a living in deplorable conditions. The framework of the rules may appear to be attractive, as it ensures high standards of safety to the workers. But the implementation remains weak and requires serious intervention. Moreover the narrow definition Provided under the PEMSR Act restricts the scope of its application to very few people, with the eligible ones being left out. The saddest part is than even the the implementation part is extremely pathetic and the laws merely remain on paper.

4.5 JUDICIAL INTERVENTION IN MANUAL SCAVENGING

Judiciary has always played an active role in strengthening the cause of socio-economic welfare by translating several directive principles into enforceable rights for the upliftment of poor and weaker section of the society. A liberal interpretation of article 21 of the constitution has created numerous rights and has given a new direction to social welfare jurisprudence in India. With regard to judicial response towards the manual scavengers, recently courts have adopted a stern attitude towards the manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

The case of **Safai Karamchari Andolan v. Union of India**²³³ is a milestone in the field of manual scavenging. It was a writ petition has been filed by the Petitioners as a PIL under Article 32 of the Constitution praying for issuance of a writ of mandamus to the Respondent-Union of India, State Governments and Union Territories to strictly enforce the implementation of Act,

²³¹ Supra note 225,S25

²³² Id

²³³ 2014(4)SCALE 165

1993 (in short 'the Act'), inter alia, seeking for enforcement of FR'S guaranteed under Articles 14, 17, 21 and 47 of the Constitution

Brief facts: The practice of manual scavenging in the country has been prevalent for ages. While the survey conducted by the petitioners could identify twelve lakh manual scavengers for the year 2002-3 the official statistics released by MSJE was only 6,76,009 of which 95% were Dalits. 72.05 lakhs dry latrines were identified by sub-Committee of the Task Force constituted by the Planning Commission in 1989. Dry latrines not only continued to exist but rose to 96 lakhs. Various schemes were formulated by the central government for the welfare and rehabilitation of manual scavengers. In 1993 the MS Act was passed. It remained in a state of hibernation for several years and was finally implemented in 1997. However the act was not effectively implemented and manual scavengers were employed in areas such as army, railway, military engineering etc. In 2003 the report filed by CAG evaluated the national scheme which provided for rehabilitation of manual scavengers and their dependents. The report concluded that the scheme had failed to achieve its objective even after 10 years and total investment of more than 600Cr. Even though funds were available they are not properly utilized. The committees created for the purpose of monitoring was also not functional. The major reason stated behind its failure was the failure to employ law that was rarely used. Hence in December 2003 the present writ petition was filed by Safai Karamchari Andolan along with 6 civil society organizations as well as individuals belonging to the community of manual scavengers.

Relief sought for : complete eradication of dry latrines, to direct respondents to adopt the Act and properly implement it by formulating plans and on time bound basis; complete eradication of practice of manual scavenging and rehabilitation of persons engaged in it; to declare continuance of the practice of manual scavenging and the operation of Dry Latrines violative of Articles 14, 17, 21 and 23 of the Constitution and the 1993 Act; To direct Union Government to issue directions to all local bodies to implement the provisions of the act and prosecute the offenders.; to file compliance reports at regular intervals pursuant to the direction of the court.

The Court condemned the practice of untouchability which is abolished by Art 17. Apart from this, there are various international conventions and covenants to which India is a party, which prescribe the inhuman practice of manual scavenging. UDHR, CERD and the CEDAW. From 2003 this writ petition was treated as a continuing mandamus. Several orders have been passed by this Court having far reaching implications. The Petitioners had brought to focus the non-

adopting of the Act by various States which led to ratification of the Act by State Assemblies (including the Delhi Assembly which ratified the Act as late as in 2010). Affidavits were filed from time to time by the Union and State Governments as well as the Petitioners as per the directions of the Court and also as to the compliance of those orders. Due to pressure, in 2013 a survey was conducted by the Central Government. However, it covered only few towns and rural areas were not covered. The petitioners contended that the survey had shown only little progress. Petitioners, with their limited resources managed to identify 1098 manual scavengers in Bihar, however the survey by the government could identify only 136. Similar was the outcome of other states. For a decade various attempts were made and directions were issued by the courts to put an end to manual scavenging. Effective intervention of the court resulted in the passing of the PEMS Act, 2013. The Act has got broad features. Chapter I of the provides definitions of "hazardous cleaning", "insanitary latrine" "manual scavenger" as contained in Sections 2(1)(d), (e) and (g) thereof respectively. The local authorities have to conduct the survey of insanitary latrines. The occupier must be given a notice, within 15 days he must demolish the insanitary latrine. Within a period of 9 months as many sanitary latrines as may be deemed necessary must be constructed.²³⁴ Chapter III of the Act contains provisions for prohibition of insanitary latrines and employment and engagement as manual scavenger. S5 prohibits the employment of manual scavengers and construction of insanitary latrines. As per S6 any contract entered into prior to the commencement of this Act for the employment of scavengers shall be void. S 7 prohibits persons and authorities from employing anyone for hazardous cleaning of sewers and septic tanks. S 8 provides punishment for violation of S5&6, 1st contravention with imprisonment of 1 year or fine upto Rs 50000 or both. Subsequent contravention with imprisonment of upto 2 years and fine upto 1 lakh or both. According to S9 the contravention of S7 1st contravention with imprisonment upto 2 years or with fine upto Rs 2 lakh and 2nd contravention with imprisonment upto 5 years or with fine upto Rs5 lakh or both. S13 provides for rehabilitation of identified manual scavengers. S 31 provides that the NCSK. It has to monitor the implementation of the act and can take suo motu notice of non-implementation of the Act. S 33 provides appropriate technical appliances must be given by the local or other agencies while engaging persons for cleaning of the septage and sewers. After analysing all these provisions and in the light of various orders of the court it dismissed the petition by giving certain guidelines.

²³⁴ S4 of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013

The guidelines provided for rehabilitation of those included in the final list according to part iv of the Act, one-time cash assistance, scholarship for children, allocation of residential plot and finances for constructing home, subsidy and concessional loan for at least one member of the family of rehabilitated manual scavenger, railways were directed to take time bound strategy for ending manual scavenging, etc The long battle of justice to manual scavengers with its judgment, which was confined to the walls of the court. Their plight remains the same as the law remains merely on the paper and the regulations and judicial pronouncements was in vein and couldn't meet the outcry of the people.

In the case of **Criminal justice society of india v. UOI & ORS** ²³⁵relevant questions like whether the inability to eliminate scavenging amounts to violation of states duty to promote welfare of people, just and humane conditions of work etc were raised. The court has observed it to be violation of human dignity and condemned the process.

4.6 AN ANALYSIS OF THE FIVE-YEAR PLANS

India, on the path of development through planning for its people, adopted the Plan resolution on 15 March 1950. The resolution dealt with poverty alleviation and health issues in detail. The problem of sanitation was discussed within the larger framework of water, health, and poverty, As per the mandate of the Indian Constitution, sanitation is a subject in the State List.²³⁶ But when it comes to policy formulation and major programmes, the Centre has historically played a very significant role in terms of highlighting the issue and designing policies on sanitation. At the federal level, rural sanitation falls under the Ministry of Drinking Water and Sanitation while urban sanitation is the responsibility of the Ministry of Urban Development. Through the 73rd and 74th constitutional amendments, the responsibility for providing sanitation was devolved to local governments, Overall, the issue of sanitation has so far been dealt with within the larger framework of planning initiated at the Centre with broader policies and programmes set in coordination between the ministries and the Planning Commission (now the NITI Aayog).²³⁷

²³⁵ WP(C) NO 1031 of 2019

²³⁶ Constitution of India, Seventh Schedule, List 11, Entry 6

²³⁷ With the changed socio-economic and political environment, the planned development model in India has undergone momentous changes, Despite the fact that access to basic sanitation is one of the most crucial elements of human development, the programmes and policies around sanitation in India have evolved only gradually. With the neoliberal turn in the Indian economy and polity, the supply driven approach to sanitation has been replaced by demand-based low-cost sanitation since the 2000s.

Through the FYPs, the Centre took steps in terms of guiding much of the investment on the issue of sanitation. The Centre also assisted in setting up the institutional mechanisms to lend money to the state to initiate policies on sanitation. For instance, Planning Commission report mentions the role of the Centre in promoting various organizations to deal with the site of training and research, and in promoting water quality monitoring and human resources development programmes.²³⁸ The FYPs, historically reflected the priorities of the Indian state, and also provided guide lines for the policies to be made by the Central Government as well as state governments. The Centre allocated funds through various plan heads, and also ensured that the funds were provided in state budgets. Indeed, progressively larger allocations were made for sanitation in successive FYP. The overview of FYPs vis-à-vis policy making on sanitation presents a mixed trend. It was almost after four decades of independence that the Central Rural Sanitation Programme (CRSP) was launched in 1986, which was restructured after more than a decade into the Total Sanitation Campaign (TSC) in 1999. The major shift from the CRSP to the TSC can be seen as a paradigm shift towards a community-led and citizen-centric approach from the earlier state agencies led approach. Later, the TSC was further revamped into the Nirmal Bharat Abhiyan (NBA) in 2012, and then relaunched as the Swachh Bharat Mission (SBM) in 2014.

The first phase of planned development in India can be broadly identified with the Nehruvian vision of heavy industry-based economic growth, which was expected to ultimately translate into 'public good'.²³⁹ This growth model recognized the key problems that India was facing at the time of Independence. Soon after that, the First FYP was launched in 1951. The following objective was set for it:

*The central objective of planning is to create conditions in which living standards are reasonably high and all citizens, men and women have full and equal opportunity for growth and service. We have not only to build up a big productive machine-though this is no doubt a necessary condition of development-we have at the same time to improve health, sanitation and education and create social conditions for vigorous cultural advance. Planning must mean coordinated development in all these fields.*²⁴⁰

²³⁸ Planning Commission, India: Assessment 2002: Water Supply and Sanitation (Planning Commission of India, 2002), 23.

²³⁹ See Sukhmoy Chakravarty, Development Planning: The Indian Experience (Oxford University Press, 1993).

²⁴⁰ Planning Commission, 1st Five Year Plan, 'Chapter 2: Objectives, Techniques and Priorities in Planning' (1951), para 4.

Such intent and focus of planning received immediate reflection in government policies in the initial years. The first National Water Supply and Sanitation Programme was formulated by the Central Government during the First FYP in 1954.²⁴¹ Water supply was identified as a key factor to ensure environmental hygiene and sanitation. Under this programme, an amount of Rs 12 crore was sanctioned as loans for urban water supply schemes, and Rs 6 crore as grants towards rural water supply schemes.²⁴² The Plan document attempted to link poor housing infrastructure in India with the issue of sanitation. It found that only 3 per cent of the population was served by a sewerage system, and thus there was an urgent need to widen the coverage in the coming years. Although no clear road map was mentioned in the Plan document, housing needs occupied a significant place on the agenda.²⁴³ The Plan took the position that the state had a duty to step in to fill the gaps wherever private enterprise is unable to fulfil the requirements to ensure housing and thus sanitation, especially in relation to lower-income groups.

The First FYP even remarked that most of the towns are growing haphazardly, which is leading to a large number of sub-standard houses and slums, ultimately contributing to poor sanitation in the cities.¹⁵ In the above-mentioned context of provision for housing and sanitation, the First FYP also noted that the growth of slums is a shame to the country and it is a matter of regret that Governments, both Central and State, have so far paid slight attention to this acute problem.²⁴⁴ The Plan further took on the local bodies-mainly municipalities of that time-for ignoring the rules and regulations related to sanitation, which had led to uncontrolled growth of slums in major cities.²⁴⁵ The First FYP document also mentioned the necessity of linking education, health, and hygiene to sanitation. It urged the improvement of public health through imparting elementary knowledge on sanitation. Overall, a large part of the investment in the First FYP was made in water supply, sewerage, and latrine construction, with special emphasis on states like Bihar, where only 5 per cent of the population was using these essentials of sanitation. The First FYP also took up policy formulation and responsibilities as the topmost agenda. It categorically asked the states to look into the matter of sanitation with utmost care.

²⁴¹ Water supply and sanitation remained part of housing and health in the first few FYPs.

²⁴² There is a difference between loans and grants. While urban areas were given loans, which were to be returned, rural areas were getting grants, which were not to be paid back.

²⁴³ Planning Commission, 1st FYP, Chapter 35: Housing para 1.

²⁴⁴ Id at para 3.

²⁴⁵ E. CHAPLIN, *THE POLITICS OF SANITATION IN INDIA: CITIES, SERVICES AND THE STATE* 67. (Orient BlackSwan, 2011),

Towards the end of the First FYP, the Central Government introduced the National Water Supply and Sanitation Programme, allotting funds for urban and rural sanitation separately.

The Second FYP (1956-61) was in many respects an extension and expansion of the First FYP. The allocation to sanitation under the head of housing, water supply, and sewerage was quadrupled, with a special emphasis on water supply. This time, a special provision of Rs 10 crore was made for urban areas which had established corporations.²⁴⁶ The Plan mandated that state governments should allocate the funds for water supply and sanitation. Further, the Second FYP made special provisions for the welfare of Harijans as a focus area for sanitation.²⁴⁷ While dealing with their housing and (incidentally) their sanitation needs; the emphasis was more on developing institutional mechanisms, which would study the prevailing conditions, and evolve better designs, lay-outs, and methods of construction, to ensure minimum standards of sanitation.²⁴⁸ Provisions for better lighting, ventilation, and drainage were made compulsory in upcoming housing schemes for the poor, both in rural and urban areas.

The Second FYP proposed a substantive increase in the allotment of funds for both rural and urban sanitation schemes. In rural areas, the Plan underlined the crucial role of the active participation of the village community in ensuring proper implementation of policies centred on sanitation. The Plan also highlighted the need to take into consideration the growing urbanization in India, and its implications for sanitation and water supply.

In continuation of the Second FYP, the Third FYP emphasized the village-centric policy approach. In policy parlance, the Third FYP advocated that:

“an effort should be made to create greater awareness of rural sanitation problems and to introduce the use of sanitary latrines in schools and camps for groups of houses and, where possible, in individual houses. It would facilitate the introduction of latrines if the local sanitary inspectors are trained in casting the latrine sets. With the participation of the local people these latrines can be constructed at a fairly low cost.”

A central focus on health to tackle the issue of sanitation was conspicuously missing from the Second FYP but was brought back in the Third FYP (1961-6). The broad objective was to ensure preventive healthcare services. This was not possible without paying due attention to

²⁴⁶ Planning Commission, 2nd Five Year Plan, 'Chapter 25: Health', section on 'Water Supply and Sanitation' (1956), para 47.

²⁴⁷ Id at Chapter 26, paras 6 and 7

²⁴⁸ Planning Commission, 2nd FYP, 'Chapter 26', para 11.

the issue of sanitation. Learning lessons from the Second FYP in terms of the need for divergent focus on urban and rural challenges, sanitation in urban areas was dealt with differently this time. Programmes emphasizing sanitation schemes were supposed to be implemented in a phased manner now with tight technical scrutiny at every stage of implementation. In addition, the urgency and importance of providing drainage and sewerage, and arranging for safe disposal of sewage in towns and cities were identified as key concerns in the Third FYP. Under this Plan, in addition to 53 continuing Schemes, 529 new urban water supply and sanitation schemes were taken up at a cost of about Rs. 135 crores. 150 new schemes were taken up during three Annual Plans at a cost of around Rs. 39 crores.

The Fourth Five Year Plan stated that urban and rural areas would be long before they could give full sewerage and sanitation. It proposed a phased plan to either implement a proper subterranean sewerage network or transform all dry latrines into some sort of improved latrines.²⁴⁹ The Fifth Five Year Plan called for the conversion of approximately 30 000-35 000 dry latrines into sanitary latrines and the coverage of approximately 84 towns with sewerage and drainage systems. Notwithstanding all these sanitation requirements in the Five Year Plans until 1980, only 27% of the urban population and 0.5% of the rural population had sewerage facilities.²⁵⁰

With the Sixth Five Year Plan came a very new thrust for water supply and sanitation that coincided with the start of the International Drinking water supply and the Decade for sanitation. The Sixth Plan contains for outlayed Rs. 3,922.02 crores for water supply and sanitation. It was estimated that nearly 98% of rural households had no latrines and very little attention was paid to the issue of rural sanitation. The program aimed at making a small start in this direction by conducting pilot projects in all states that would help to determine the attitudes of the population in rural areas towards the form of latrines to be provided. The Plan put considerable emphasis on the integrated growth of small and medium-sized towns and the environmental improvement of slums and called on the state town and country planning organizations to ensure that appropriate sewerage facilities are established in the formulation and implementation of Master Plans.²⁵¹ The Seventh Plan provided the Rs. 6,522.47 crores outlay for the Water supply scheme and sanitation. It has been highlighted that only by the end of the Sixth Plan, sanitation facilities could be provided for 33 per cent of the urban population

²⁴⁹ Planning Commission, Govt, of India, The Fourth Five Year Plan (1969-74) 322-324

²⁵⁰ Planning Commission, Govt, of India, The Fifth Five Year Plan dia, The Fifth Five Year Plan (1974-79) 82-3.

²⁵¹ Planning Commission, Govt, of India, The Sixth Five Year Plan (1980-85) 397- 401.

and less than 1 per cent of the rural population. There was a specific provision of Rs . 4 crores to boost the low-cost sanitation schemes in rural areas.²⁵² The Eighth Five Year Plan envisaged allocating Rs. 3,300 crores for rural sanitation. By 1990, only 1,82 per cent had been achieved against a goal to cover 25 per cent of rural areas under sanitation.

4.7 ASSESSING THE REALIZATION OF THE RIGHT TO SANITATION

The rural sanitation scenario in India is far from adequate. While 12.6 per cent of the households in urban areas do not have access to any kind of toilet, the same figure for rural areas is 69.3 per cent.²⁵³ According to the most recent report by the Government of India, the rural sanitation scenario has improved over the last few years from 38.7 per cent of the households in 2014 to 81.7 per cent as of April 2018. However, the presence of toilets does not always necessarily signify public health benefits and environmental quality either due to the non-use of toilets or due to their unscientific design or technology. For example, toilets with deep unlined pits may pollute groundwater due to the seepage of wastewater, and this is already a crisis in rural areas in certain states.

Open defecation or inadequate sanitation facilities do not affect everyone in a similar way. They may affect women, children, and other vulnerable sections disproportionately. For instance, open defecation has been highlighted as an important reason for child stunting in India. Similarly, studies have highlighted that women in rural areas face several health, safety and dignity-related issues including physical and sexual violence due to inadequate or lack of sanitation facilities.²⁵⁴

While the absence of toilet facilities poses serious challenges for the realization of the right to sanitation in rural areas, presence of certain types of toilets, for instance, dry latrines, also poses challenges. Dry latrines and the related practice of manual scavenging are important issues in the context of the realization of the right to sanitation in rural areas.²⁵⁵ On the one hand, the practice of manual scavenging exposes the link between sanitation and the caste system in India, because invariably people belonging to the lower castes, particularly Dalits

²⁵² Planning Commission, Govt, of India, The Seventh Five Year Plan {1985-90} 300-4 (1985)

²⁵³ Government of India, Census of India 2011, Availability and Type of Latrine Facility. For a discussion on various data on rural sanitation, see Arjun Kumar, Discrepancies in Sanitation Statistics of Rural India (2015) L(2) Economic & Political Weekly 13, and Amandeep Singh and Nikhil George, 'Revisiting Discrepancies in Sanitation Statistics of Rural India (2015) L(26) Economic & Political Weekly 96.

²⁵⁴ PU. Megha, P. Kavya, S. Murugan, and PS: Harikumar, Sanitation Mapping of Groundwater Contamination in a Rural Village of India (2015) 6 Journal of Environmental Protection 1, no. 34

²⁵⁵ Dean Spears, Arabinda Ghosh, and Oliver Cumming, Open Defecation and Childhood Stunting in India: An Ecological Analysis of New Data from 112 Districts

(predominantly women), carry out manual scavenging. On the other hand, it exposes a practice where human beings are in direct contact with human excreta, a situation that sanitation interventions must eliminate completely.

The realisation of the right to sanitation in rural areas is fundamentally based on the degree to which the above-mentioned issues are addressed by the law and policy system, among other related issues. Though a number of these issues have been identified in the legislations and policy structures, a key concern is the degree to which they are addressed at the level of implementation.

4.8 AN ANALYSIS OF SWACHH BHARAT MISSION IN THE LIGHT OF RIGHT TO SANITATION AND MANUAL SCAVENGING

On 2 October 2014, the 150th birth anniversary of Mahatma Gandhi, Prime Minister Narendra Modi restructured the existing Nirmal Bharat Abhiyan and announced another mission called Swachh Bharat Mission. The mission aims to eradicate open defecation in India by 2019 by constructing 12 crore toilets in rural India, at a projected cost of approximately INR two lakh crore (US\$29 billion). Ironically, under SRMS the government made shameful deductions of INR 5 crore in the budget estimate of 2017–18 as compared to the budget estimate of 2016–17. Swachh Bharat has gloried the broom and has posed an obstacle in the path of caste liberation. When the campaign to pull safai karamcharis out of the abyss of manual scavenging was reaching a decisive stage, Swachh Bharat entered the scene with pomp and show. The entire focus shifted from those cleaning the toilets to constructing toilets. Prime Minister Narendra Modi has bet big on this Swachh Bharat campaign but nobody asked the basic question—who will clean these 12 crore toilets? Nobody asked where the excreta and urine from these toilets will go. Are sewer lines being laid out for dealing with this urine and excreta? Till now there is neither any such proclamation nor any budgetary allocation for this. It is more likely that these 12 crore toilets being built under the Swachh Bharat Abhiyan will actually be 12 crore septic tanks.

After the Swachh Bharat Abhiyan, a lot of news reports have emerged about Dalit children being forced to clean toilets in schools. Also, the kids of manual scavengers are quite hesitant to share their parents' occupation in their schools. Inferiority complex generated because of the shame attached to their parents' profession also leaves them behind. And once they grow up then the only option, they are left with is to do the work that their families have been doing—the work of holding the broom and cleaning. Programmes like Swachh Bharat

Mission are more likely to prepare several grounds for exploitation of these kids if they continue to be compelled by their school administration to clean toilets. Moreover, a separate cess has been levied for Swachh Bharat and hence billions are being collected for constructing toilets. The government doesn't have any interest in identifying those who are scavenging and doesn't care about rehabilitating them; it only cares about the construction of toilets. All the big corporate houses are also busy competing in constructing toilets in the name of their social responsibility. The Corporate Social Responsibility (CSR) money which could have been used to improve the lives of ordinary people especially the safai -karamcharis is now being used only for constructing toilets. If the CSR funds of all big corporations are probed then we'll come to know that all these companies are claiming to build toilets at a mass level. It seems that the biggest problem of the country is construction of toilets and nothing else. Apparently the government is also contemplating making 30 per cent of all CSR money mandatorily to be used for Swachh Bharat.²⁵⁶

By focusing "Swach" on the users of the toilets and silencing the lives and struggles of the cleaners, Swachh Bharat is only perpetuating the practice of manual scavenging. Swachh Bharat Abhiyan has proved to be counterproductive in the people's struggle to break the historical ties between their birth and caste, and between their caste and occupation. The questions then arise; how much more burden will be placed on the community? How many more sewer-septic tank deaths is this nation waiting for? Even though one of the objectives of swachh bharat abhiyan was to eliminate manual scavenging the efforts in this regard has utterly failed to reap any benefits and on the other hand increased the difficulties due to increase in number of unscientific toilets especially in the rural areas.

4.9 CONCLUSION

Numerous number of legislations covering the area of sanitation and manual scavenging in particular have been enacted so far. The provisions of these Acts do provide for the , rehabilitation , upliftment of these workers and eradication of this practice. Still we find numerous number of newspaper articles and other statistics highlighting the unfortune death of sewerage cleaners, manhole workers etc. Most of the state governments claim that they have completely eradicated the practice of manual scavenging and this has become a thing of past. On the other hand the studies and surveys conducted by various voluntary organisations underline the sad reality that there are thousands and lakhs of human beings who are still

²⁵⁶ MANDER, H. (2001). UNHEARD VOICES: STORIES OF FORGOTTEN LIVES 45(2nd ed 2009)

entrapped in this heinous activity. The recognition ‘ right to sanitation is unambiguous , but there is little by way of realization of this right in India . Instead a complex framework consisting of Laws, policies and administrative directions at different levels must be there to govern administrative interventions. The existence of legislations without proper implementation machinery is ineffective. There must be a comprehensive policy and concrete legislation capable of tackling any contingent situation . A proper sanitation framework is essential to tackle the worst of the situations in a satisfactory manner Where rights of people are guaranteed.

CHAPTER FIVE

PLIGHT OF SANITATION WORKERS DURING THE COVID-19 PANDEMIC

5.1 INTRODUCTION

Coronavirus disease (COVID-19) is caused by SARS-COV2 and is the causative agent of a potentially lethal disease which is of great concern for global public health. Previous coronaviral outbreaks (CoVs) include severe acute respiratory syndrome (SARS)-CoV and Middle East respiratory syndrome (MERS)-CoV, which were described as a major threat to public health. COVID-19 is the most recently discovered coronavirus infectious disease.²⁵⁷ Before the outbreak began in Wuhan, China in December 2019, this new virus and disease had been unknown. COVID-19 is currently a pandemic that affects many countries worldwide. The Covid-19 pandemic affects all individuals.²⁵⁸ The entire world is battling against the pandemic with all its vigour. The doctors, nurses, health departments and most importantly the sanitation workers are in the forefront. The authorities are emphasising on investment in health system and health workforce to create decent working conditions, training and equipment. In addition to healthcare professionals, the frontlines of the global crisis caused by COVID-19 include another group of people. Through ensuring that our highways, parks, public areas, sewers, septic tanks, neighbourhoods, and public toilets are kept safe and hygienic, they put their life at risk every day and play a vital role in preventing the spread of the virus. They are none other than the sanitation workers who play a pivotal role in keeping our premises clean and are at an increased risk of contracting the disease. However, saddening is the fact that they have to indulge in cleaning activities without the required protection nor have they been properly addressed in any of the governmental measures. Almost daily we come across sanitation workers. The services they provide to us are very important, but are often ignored as insufficient emphasis is placed on the kind of environment in which they have to work just so that others can live and breathe in a healthier environment that prioritizes hygiene.

5.2 A BLATANT VIOLATION OF THE RIGHT TO SANITATION DURING PANDEMIC

As mentioned in the previous chapters right to sanitation is one of the most essential fundamental right of all human beings which has been acknowledged by the courts. However, the continuance of pernicious practices such as manual scavenging and other hazardous cleaning makes this one of the hardest rights to achieve. All forms of Unhealthy and dangerous cleaning constitute a violation of the right to sanitation. Hence this is a mere unrealised right in reality. The neglected and pathetic plight of the sanitation workers is once again a major concern which has went unaddressed in the grave times of COVID-19. Workers in the sanitation sector come under the category of essential services. The government appears to have hung a death warrant around the necks of sanitation workers by sending them to the front

²⁵⁷ World Health Organization, Q&A on coronaviruses (COVID-19), (June 14, 2020, 2:12 PM) <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses> Assessed on Sept 3rd at 10PM

²⁵⁸ Shivstav, *The epidemiology and pathogenesis of coronavirus disease (COVID-19) outbreak*, 12, 34 (2020)

lines to combat coronavirus.²⁵⁹ Almost five million who continue to work through the COVID-19 pandemic work without any protection and are stigmatized, unappreciated, and often shunned by others.²⁶⁰ They often find masks, gloves and hand soaps a luxury to them. They are forced by their employers; in this case, municipal corporations, contractors are primarily forced to either work and be paid or left unemployed. One of their biggest challenges is that they don't have any information about affected households, nor about those at high risk. They have very little recourse to health-safety nets, benefits, or access to already overflowing public health facilities if they contract the virus. The women sanitation workers are at stark. They constitute more than 50 percent of urban sanitation workers. Ministry of Health and Family Welfare has issued a directive stating that personal protective equipment (PPE's) should be provided to sanitation workers in hospitals and other places. But the extent to which these directives are complied with remains a matter of concern. In Panna district of Madhya Pradesh, a local activist on March 9, urged the District Collectorate office to provide sanitation workers with protective gears on an urgent basis to tackle the pandemic situation. After a few days, he got a call from the Collectorate office telling him that there was currently no "Urban Development and Housing Minister" in the state of Madhya Pradesh and that no money was sent by the state government to procure protective equipment. Recently, a sanitation worker assigned to work in Dharavi tested positive for the novel coronavirus. He, inadvertently passed it on to his wife who died on 12 April. Similar to most other urban poor families in metropolitans like Mumbai, there was no adequate residential space for his family to allow physical and social distance. Article 46 of the Constitution mandates the State to strive to uplift the weaker sections of society, taking into account their educational and economic interests, but when events such as Dharavi come to light, we recognize that only so much has been achieved and that they are deprived of their basic human rights. Just as sewer deaths have proved time and time again, the pandemic has failed to nudge the apathy of political leaders and governments. Everyday health workers are exposed to deadly trash but no special training or guidance is provided on how to handle these hazardous items. "As per the New England Journal of Medicine study, coronavirus can survive up to 72 hours on plastic and stainless steel, and up to 24 hours on cardboard."²⁶¹ No one has clear idea on what kind of waste material is in the dustbins and trash bags is disposed of. In India even though there exists guidelines and rules trash is not segregated-it's all mixed and put in one bag. Sanitation workers encounter sanitary pads many times, expired medicines and broken glasses in trash bags. Lack of protective gear complicates the sanitation work during normal times. Those factors make them much more susceptible to the virus during a pandemic. So, despite being at the frontlines, sanitation workers are still at the bottom of our priorities. A few days back, the Delhi chief minister's office tweeted. "Doctors are on the frontlines of the battle against coronavirus. All doctors serving in Delhi government's Lok Nayak Hospital and GB Pant Hospital on COVID-19 duty will now be housed in Hotel Lalit." The measure is commendable. But the fact is that no parallel measures exist for the sanitation workers. The WHO guidelines suggest that social distancing

²⁵⁹ Sagar Kumbhare, 'Sanitation Workers: At the Bottom of the Frontline Against COVID-19?', The wire

²⁶⁰ Abhinav Akhilesh, Meera Mehta, 'How Can We Support Sanitation Workers During COVID-19?' (June 15, 2020, 12:49 AM), <http://www.ipsnews.net/2020/04/covid-19-unique-opportunity-reform-health-systems/>

²⁶¹ Wu A, Peng Y, Huang B, et al. Genome composition and divergence of the novel coronavirus (2019-nCoV) originating in China. *Cell Host Microbe* 2020;27:325-328.

should be practiced and hands should be washed with soap at regular intervals to help prevent the virus spread. The ones that are really inclined to catch this virus, however, are not the ones that are under a lockdown, but the ones that provide essential services such as sanitation workers / safai karamcharis.²⁶²

5.3 JUDICIAL APPROACH

This topic was highlighted when a plea was filed in Supreme Court on 9-4-2020 highlighting the plight of migrant workers amidst Covid-19. The petitioner, Harnam Singh in his PIL²⁶³ prayed to the Court to give necessary directions to the State for sanitation workers to be issued with proper kit including gloves, masks, and boots etc., to wear while on duty. Unlike our health workers working in enclosed protected environments, they have to deal with what society as a whole has discarded as waste. The possibility of these workers contracting the virus from such places increases dramatically considering that the virus can survive on different surfaces for days unless sanitized.

5.4 GUIDELINES OF INTERNATIONAL LABOUR ORGANIZATION

The accountability lies not only with the government but also with the society thereby including every individual to ensure that our workers are provided with proper facilities and safe options especially in such a situation. We must understand how crucial their position is, and we should all come together to work towards their upliftment; be it socially or economically. In this respect, the government should endeavour to press for the adoption of the International Labour Organization's guidelines on technical advancement, health and hygiene and good working conditions for such workers; and other concerned issues.²⁶⁴ The International Labour Organization released some guidelines on 27-3-2020 for employers and workers suggesting to represent both parties' interest in the matter. The ILO suggests that employers should be responsible for ensuring that all preventive measures are taken to reduce the risk of occupational hazards by providing better protective equipment and clothes for employees.²⁶⁵ The ILO has developed International Labour Standards that provide guidelines for decent work in this sort of crisis. The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) is one such standard and establishes crisis responses that ensure human rights, including respect for democratic values and rights during work and international labour standards.²⁶⁶ The Recommendation sets out a comprehensive crisis response plan that involves immediate employment and social protection initiatives, and proposes that policymakers across the globe should try to guarantee basic income stability for citizens whose lives have been disrupted by the global crisis.

²⁶² Animesh Upadhyay & Shikhar Shukla, Advocating the Rights of Sanitation Workers Amidst Covid-19, (June .15., 254 PM) <https://www.scconline.com/blog/post/2020/05/12/advocating-the-rights-of-sanitation-workers-amidst-covid-19/>

²⁶³ Harnam Singh v. Union of India, [2020 SCC OnLine SC 449](#)

²⁶⁴ R097- Protection of Workers' Health Recommendation, 1953 (No. 97)

²⁶⁵ Article 16(3) of Occupational Safety and Health Convention 1981 (No 155)

²⁶⁶ Preamble and Paras 7(b) and 43 of the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)

5.5 WORLD HEALTH ORGANISATION INTERIM GUIDELINES ON SANITATION HYGEINE AND WASTE MANAGEMENT DURING COVID-19

5.5.1 Persistence of the COVID-19 virus in faeces, septage, drinking water, and sewage and on surfaces

While COVID-19 virus may be present in untreated drinking water, it has not been detected in supplies of drinking water. In addition, other coronaviruses were not found in surface or groundwater sources and therefore the risk of coronaviruses to water supply is small.²⁶⁷ Compared to non-enveloped human enteric viruses with documented waterborne transmission (such as adenoviruses, noroviruses, rotaviruses and hepatitis A), the COVID-19 virus is enveloped and thus less stable in climate. One study found that it survived only two in dechlorinated tap water and at 20 ° C in hospital wastewater.²⁶⁸ In contrast , high rates of influenza virus removal (> 4 log) were observed in drinking-water after just five minutes of contact time and a residual chlorine of 0.3 mg / l.²⁶⁹ In two days, substantial (99.9% removal) of coronaviruses are observed in primary sewage effluent at 23 ° C, in pasteurized settled sewage at 25 ° C for two weeks and in reagent grade water at 25 ° C.¹³ for four weeks. Temperature, low or high pH, and sunlight all make virus reduction easier. Recent evidence suggests that survival of COVID-19 virus (SARSCoV-2) on surfaces is similar to that of SARS-CoV1, the virus that causes severe acute respiratory syndrome (SARS)²⁷⁰, with survival ranging from 2 hours to 9 days on surface. The survival time depends on numerous factors, including surface form, temperature , relative humidity and virus pressure.²⁷¹ The same study also found that effective inactivation with common disinfectants such as 70 per cent ethanol or 0.1 per cent Hypochlorite sodium could be achieved within 1 minute.

5.5.2 Safe Management of septage and wastewater

So far, there is no study which suggests that the COVID-19 virus has been transmitted with or without wastewater treatment through sewerage systems.²⁷² However, because viral fragments have been found in excreta and other possible risks of infectious diseases due to excreta, waste water should be treated in Centralized wastewater treatment works well designed and well managed. Each treatment stage (as well as time for retention and dilution) results in a further reduction of the potential risk.²⁷³ A waste stabilization pond (i.e. an oxidation pond or lagoon)

²⁶⁷ . Guidelines on drinking-quality, fourth edition, incorporating the first addendum. Geneva: World Health Organization; 2017

²⁶⁸ Wang X-W, Li J-S, Jin M, Zhen B, Kong Q-X, Song N, et al. Study on the resistance of severe acute respiratory syndrome-associated coronavirus. J Virol Methods. 2005;126(1):171-7

²⁶⁹ Lénès D, Deboosere N, Ménard-Szczebara F, Jossent J, Alexandre V, Machinal C, et al. Assessment of the removal and inactivation of influenza viruses H5N1 and H1N1 by drinking water treatment. Water Res. 2010;44(8):2473-86. doi.org/10.1016/j.watres.2010.01.013.

²⁷⁰ . Van Doremalen N, Bushmaker T, Morris DH, Holbrook MG, Gamble A, Williamson BN, et al. *Aerosol and surface stability of SARS-CoV-2 as compared with SARS-CoV-1*. N Engl J Med. 21,30 ,2020.

²⁷¹3, Kampf G, Todt D, Pfaender S, Steinmann E. *Persistence of coronaviruses on inanimate surfaces and their inactivation with biocidal agents*. J Hosp Infect. 246,251(2020)

²⁷² Interim recommendations on obligatory hand hygiene against transmission of COVID-19. Geneva: World Health Organization; 2020. <https://www.who.int/publications/m/item/interim-recommendations-on-obligatory-hand-hygiene-against-transmission-of-covid-19> June10,2020, 10.30 PM

²⁷³ Jefferson T, Foxlee R, Mar CD, Dooley L, Ferroni E, Hewak B, et al. Physical interventions to interrupt or reduce the spread of respiratory viruses: systematic review. BMJ. 2008;336

is generally regarded as a practical and simple wastewater treatment technology that is particularly well suited to the destruction of pathogens, as relatively long retention times (20 days or longer) are combined with relatively long retention times. Pathogen destruction is accelerated by sunlight, high pH levels and biological activity. Where existing wastewater treatment plants are not optimized to remove viruses, a final disinfection step may be considered.²⁷⁴ Best practices should be practiced to protect the health of the sanitation workers. Workers should wear suitable PPE, which includes protective outerwear, heavy-duty gloves, boots, goggles or a face shield, and a mask; should frequently perform hygiene of the hand; should avoid touching their unwashed faces, their hair, nose or mouth, and they can practice social distancing when working.

5.6 CONCLUSION

According to a National Commission report for Safai Karamcharis; a statutory body established by a Parliament Act for the welfare of sanitation workers, one person died on average every five days between 2015 and 2019 while manually cleaning sewers and septic tanks throughout India. This evidence comes from a time when the world hasn't faced a pandemic at all.²⁷⁵ Considering deadly and contagious this virus, if appropriate measures are not taken it will only add to the number of deaths of our sanitation workers. In this regard, the Indian government has undertaken measures to improve sanitation workers' living conditions and working environment, but the execution of all these policies has been very weak. In such situations when the government working round the clock trying to contain the virus by enforcing social distancing and telling that people wear masks and gloves, wash hands, etc. to prevent its spread, the question arises whether any of this is useful if any particular community remains deprived of such facilities. It is now understood that the virus spreads by respiratory contact and from surfaces on which it can survive for numerous hours and days. It is therefore correspondingly important for the government to ensure that anyone dealing with household or medical waste is well equipped so that they do not come into contact with the disease while it is being disposed of as even a single case of a worker contracting the virus while on duty could prove catastrophic.

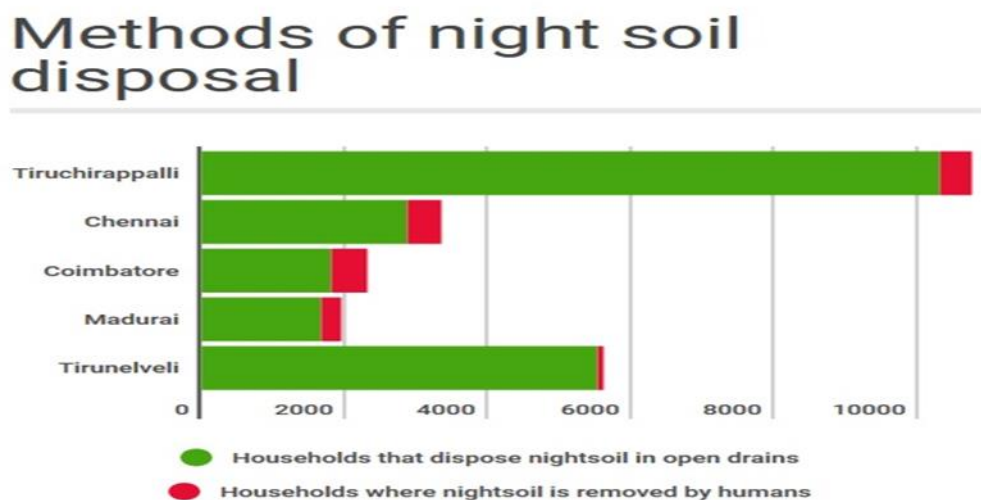
²⁷⁴ id

²⁷⁵ Tilley E, Ulrich L, Luthi C, Reymond P, Zurbrugg C. Compendium of sanitation systems and technologies, 2nd revised edition. Dubendorf, Switzerland: Swiss Federal Institute of Aquatic Science and Technology (Eawag); 2014.

CHAPTER SIX - EMPIRICAL STUDY

6.1 INTRODUCTION

No human being might find delight in cleaning the filth, sewers, septage, gutters, etc. In the west, this cleaning process has been comparatively mechanised, and utmost care is taken to ensure that all the sanitation workers are provided with required protective equipment. In the developing south countries, this is still done with the help of human assistance, particularly in the case of India. In the case of India, this has been performed and continues to be performed by predominantly the lowest classes for very low wages per day and in extremely unhygienic conditions without any protective equipment. In addition to the different vulnerabilities and risks they face in their day-to-day jobs, one of the striking obstacles faced by sanitation workers in the country is the fact that different levels of government do not even count them. We do not have the correct numbers of people who are involved in work of this kind. As urban local bodies have recently begun to contract this work to individuals or organisations, the need and responsibility to sustain and control such work is paramount. The available manual scavenging data from different sources gives a contradictory picture of the manual scavenging Scenario. As much a mystery as the details on the number of people involved in sanitation work or manual scavenging is the real number of deaths of sanitation employees.



Source: Census 2011

6.2 DISPARITY IN THE NUMBER OF MANUAL SCAVENGERS AND SANITATION WORKERS

The 2011 Census reports had pointed to the existence of 740,078 households where manual scavengers clean out waste and excreta. The septic tanks, public sewers, and railroad tracks that are also often cleaned by manual scavengers are not included in this figure. Moreover, about 21 lakh households had their waste disposed of in dry latrines or drains, which are also washed by manual scavengers.²⁷⁶ Nevertheless, it is to be noted is that the report has mentioned

²⁷⁶ As told to Parliament (July 24, 2019): Survey reveals 54,130 manual scavengers in 18 states <https://www.downtoearth.org.in/news/governance/as-told-to-parliament-july-24-2019-survey-reveals-54-130-manual-scavengers-in-18-states-65810> , Assessed on sept 3 at 3.30 pm

only those people who come within the traditional definition of the term manual scavenging. Moreover, many people engaged in this work might have gone excluded from this report. The modern scenario requires an improved and all-encompassing definition of the term manual scavenging. The definition of the term 'manual scavenger' in the Act of 2013 is a faulty one and creates the impression that it involves only those people who manually clean human waste without protective gear. This is highly deplorable as it excludes from its purview a huge number of people who are routinely engaged in the equally hazardous method of cleaning the sewers and other forms of high-risk cleaning methods. The workers who unfortunately die because of defective and damaged protective equipment are left out of the scenario.

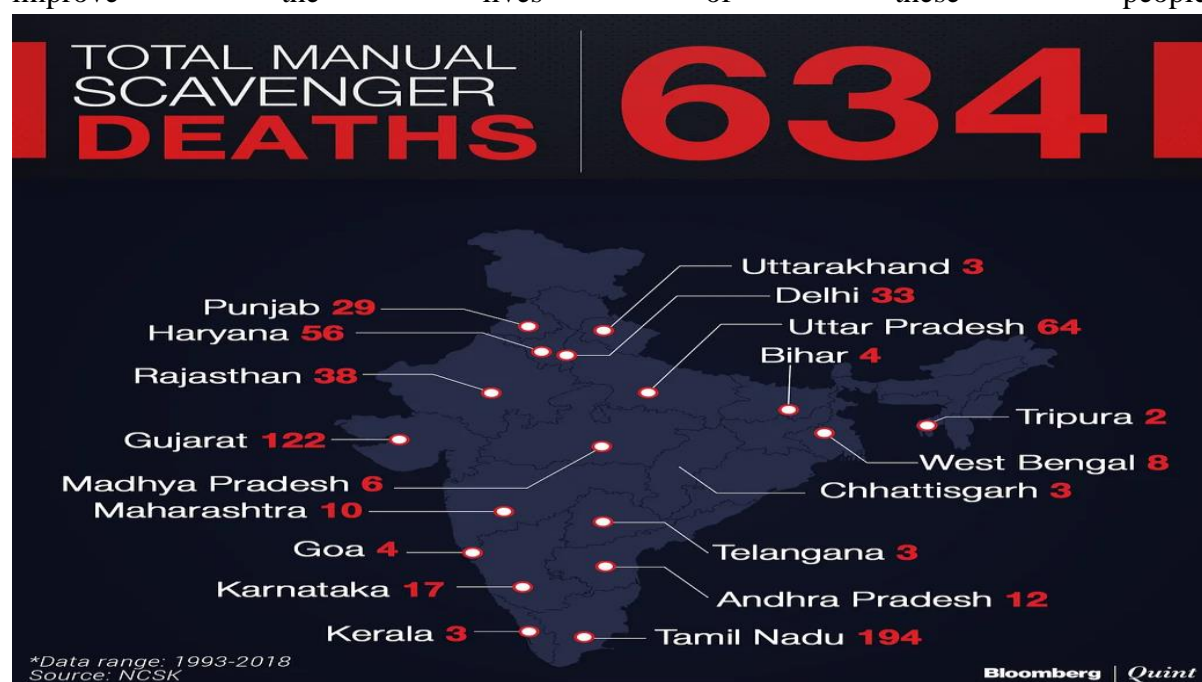
In July 2019, the Ministry of Social Justice and Empowerment's Parliament response reported that there are 54,130 manual scavengers from 170 districts across 18 states in the country . This covers 39,625 individuals identified by a national survey conducted by NITI Aayog and 14,505 individuals identified by the States²⁷⁷

In reply to a question from NCP Rajya Sabha MP Vandana Chavan, the Union Ministry of Social Justice and Empowerment (MSJE) open that between 2016 and November 2019, 282 sanitation workers lost their lives in the process of cleaning sewers and septic tanks in the country. The highest death toll was 40 in Tamil Nadu, followed by Haryana, who reported 31 deaths in manholes. Delhi and Gujarat each reported 30 fatalities, followed by Maharashtra and Uttar Pradesh, each with 27 fatalities. Although there were 50 deaths in 2016, 83 sanitation workers died in 2017 due to suffocation in septic tanks and sewers, and 66 fatalities were reported in 2018. The death count recorded from all over the world stood at 83 until November 2019. These statistics were based, the ministry maintained, on the number of FIRs filed in the respective states by the police. These estimates, however, may simply be the tip of the iceberg. The actual number of deaths may be much higher than recorded, according to the Safai Karmachari Andolan (SKA), an organisation working to eliminate manual scavenging. Since 2000, when the SKA began tracking national figures, the death count has been pegged at 1,760. Similar concerns about the reliability of official records were also posed in the past when the year 2017 in its first eight months, the National Commission for Safai Karamcharis (NCSK), a statutory body constituted by the Act of Parliament, released its data on all-India fatalities. During January-August 2017, the NCSK data accounted for 123 deaths. This could be termed as the first attempt ever made to account for such deaths, based on journal papers and voluntary disclosures by a few state governments. However, when the SKA published its own findings corresponding to the same, it reported a total of 429 deaths in the National Capital Region (NCR) alone, the troubling omissions in this data came to light. Such a lack of sensitivity is also illustrated in the government's own survey of manual scavengers about one of the country's most troubling realities. For example, in a survey conducted in 1992, almost 600,000 manual scavengers were found. In the updated survey figures reported by the MSJE in 2002-03, this number shot up to almost 800,000. In 2013, the number abruptly fell to just 13,639. Such a lack of sensitivity is also illustrated in the government's own survey of manual scavengers about one of the country's most troubling realities. For example, in a survey conducted in 1992,

²⁷⁷ <https://www.downtoearth.org.in/news/governance/as-told-to-parliament-july-24-2019-survey-reveals-54-130-manual-scavengers-in-18-states-65810> assessed on sept 13 at 10 AM

almost 600,000 manual scavengers were found. In the updated survey figures reported by the MSJE in 2002-03, this number shot up to almost 800,000. In 2013, the number abruptly fell to just 13,639.²⁷⁸ It therefore seems implausible that, according to a national survey conducted in 2018 covering 170 districts and 18 states, this number more than tripled to 42,303, despite the several positive steps taken under the Swachh Bharat Project. After U P (19,712), Maharashtra (7,378), Uttarakhand (6,033), Rajasthan (2,590), and Andhra Pradesh (1,982), Karnataka ranks sixth with 1,754 manual scavengers. But even this statistic seems extremely misleading, as the 2018 survey was performed only in areas where "there are reasons to believe the presence of manual scavengers," for reasons best known to the MSJE.

The real number of health workers' deaths is as much a mystery as the details on the number of people involved in sanitation work or manual scavenging. There have been many attempts to enumerate both the living and the deceased. In July 2019, the National Safai Karamcharis Commission (NCSK) revealed that at least 50 of them died in the first quarter of 2019 (limited to the data collected from 6 states alone). Although NCSK reports that on average, one sanitation worker died every five days in the country between 2017 and late 2018²⁷⁹, other sources estimate over three deaths every five days.²⁸⁰ As stated by organisations such as Safai Karmachari Andolan, many sanitation workers working as casual workers, contract workers and migrant workers were excluded from government counting. Due to the stigma, the most vulnerable sanitation workers frequently work informally. The lack of high-quality information and data makes it more difficult for policymakers to be persuaded to take decisive measures to improve the lives of these people.



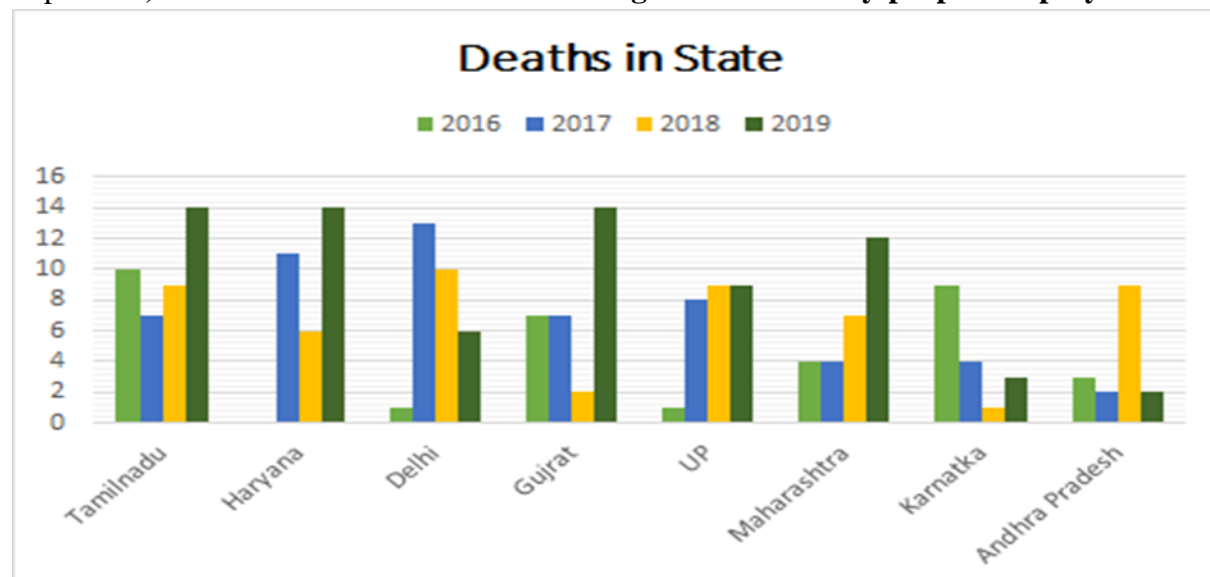
²⁷⁸ Lok sabha data

²⁷⁹ Shalini nair, 'One manual scavenging death every five days: Official data', <https://indianexpress.com/article/india/official-data-shows-one-manual-scavenging-death-every-five-days-5361531/> assessed on SEPT 14 at 5.50 pm

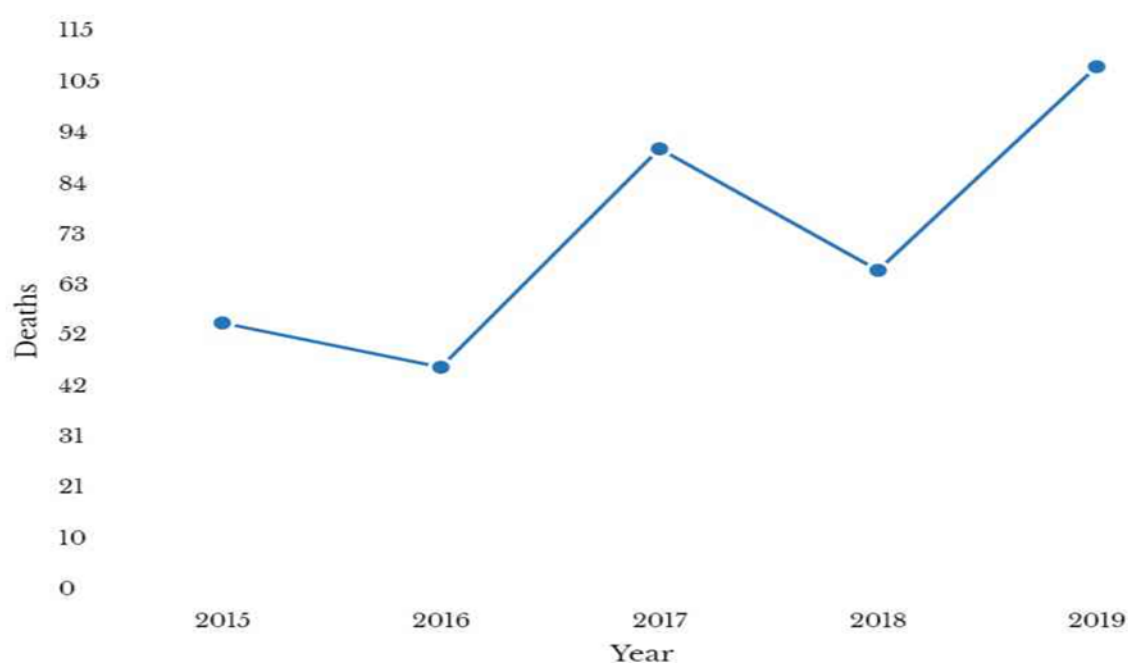
²⁸⁰ Justice Denied: Death of workers engaged in manual scavenging while cleaning the Septic tank or Sewer, Report by Rashtriya Garima Abhiyan

Source: Lok Sabha Data

In states such as Tamil Nadu, Haryana and Uttar Pradesh, where urbanisation was rapid and unplanned, **the number of deaths were much greater and many people fell prey to this** .



Deaths While Cleaning Sewers and Septic Tanks, 2015-2019

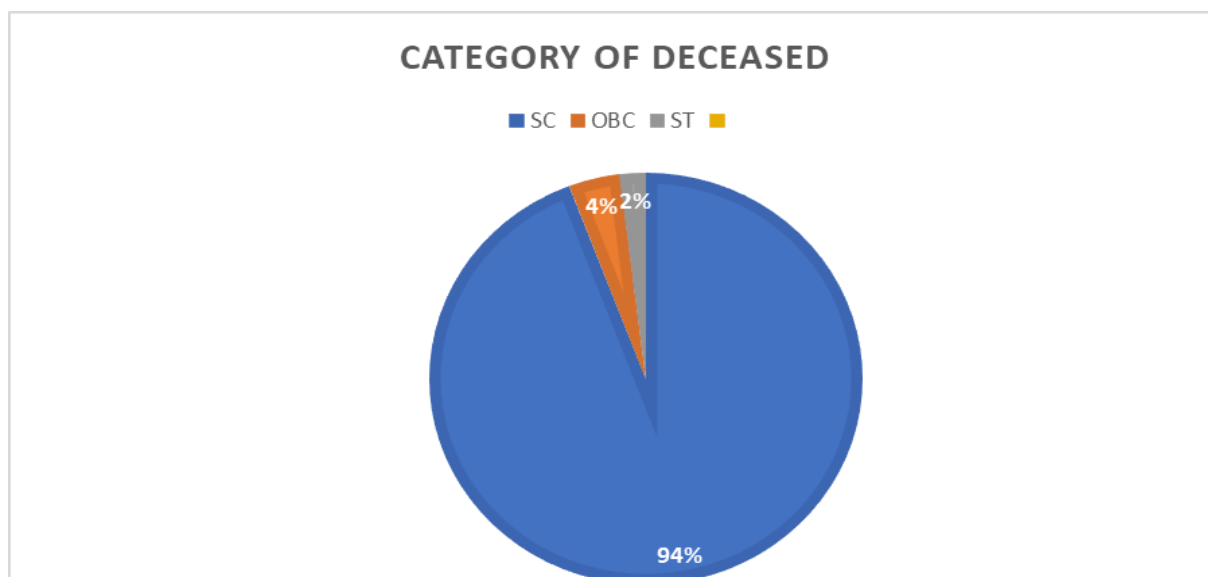


Source: Lok Sabha Data

6.3 REPORT OF RASHTRIYA GARIMA ABHIYAN²⁸¹

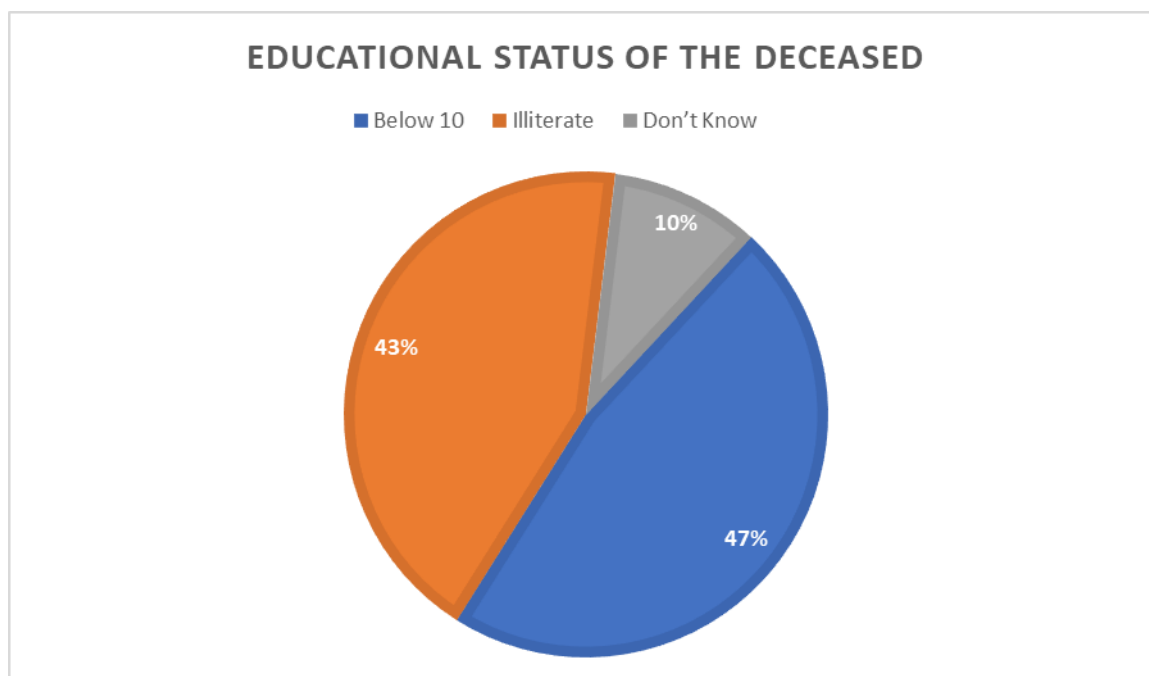
²⁸¹ JUSTICE DENIED: death of workers engaged in manual scavenging while cleaning the septic tank or sewer, report by rashtriya garima abhiyan

Sr No	State	No of deaths reported	No of deaths identified
1	Bihar	4	15
2.	Delhi	9	9
3	Gujarat	9	53
4	Haryana	6	2
5	Karnataka	2	3
6	Madhya Pradesh	15	9
7	Maharashtra	13	16
8	Punjab	3	15
9	Rajasthan	13	2
10	Tamil Nadu	9	15
11	Uttar Pradesh	14	15
12	Chhattisgarh	0	10
13	Andra Pradesh	0	17
14	Odisha	0	4
15	Jharkhand	0	2
16	West Bengal	0	8
17	Telangana	0	4
18	Kerala	0	3
19	Goa	0	3
		97	205



These many deaths revealed by the studies when India is competing with the developed nations and emerging as a global power is devastating and amounts to a national shame. One of the main reasons for this apathy is essentially the denial on the part of concerned authorities and the State Governments. In order to maintain the reputé in governance and to maintain the status quo of power they very conveniently place very less to little importance on these, matters and

furnish false details with the only desire to upkeep their reputation. This unethical political behaviour over the years has become a death trap for many. The failure of the rehabilitative measures has further worsened the situation by the dependants being forced to enter into this and thereby inheriting the legacy of filth, social harassment and indemnity.



The above pie chart clearly indicates that people with no or less education are mainly involved in these kind of work

PRIMARY OCCUPATION OF FAMILY AFTER THE DEATH OF THE DECEASED		
OCCUPATION	NUMBER	PERCENTAGE
Sanitation workers in Municipality	26	51
Septage cleaning	10	20
Drainage Cleaning	3	6
Traditional Manual Scavenging	2	3
Others	10	20
TOTAL	51	

This data clearly indicates how dependants of the manual scavengers are forced to enter into the profession to earn a living. It is not their choice but a curse on them due to the apathy of the state. Hence the vicious cycle continues.

The second significant aspect of the Manual Scavengers Act, i.e. the rehabilitation of manual scavengers through different skills initiatives, has suffered the most in view of such uncertainty about fixing the number of people involved in this job. Of the 42,203 manual scavengers reported in 2018 from across India, skill development training was provided to only 1,682 in 2018-19 and 978 in 2019 under the Self Employment Scheme for Liberation and Rehabilitation of Scavengers (SRMS), which includes a monthly stipend of INR 3,000. In 2018-19, out of the overall allocation of INR 110 crore, only INR 85.76 crore was used for SRMS skills programmes. In addition to a concessional loan for self-employment projects, the SRMS also provides a credit-linked back-ended capital subsidy of INR 325,000 to each of the listed manual scavengers and their dependents. Only 252 manual scavengers have earned this advantage, however. Furthermore, according to the recommendations of the 31-member panel headed by Rama Devi, Member of Parliament, every manual scavenger was to be awarded a one-time cash assistance of Rs 40,000. But only 27,268 of the 42,203 that have been reported have received such cash assistance.²⁸² It is ironic that such systematic killings are swept aside as deaths due to acts of negligence in a country where even an accidental insult or coercion with the intent to demean a member belonging to Scheduled Caste or a Scheduled Tribe will call for imprisonment for a period of upto 5 years and a fine under the Prevention of Atrocities Act. Most of the time even when the few identified manual scavengers are rehabilitated and provided skill training they find it very difficult to continue in their new job due to the societal ostracism and indifferent attitude toward them.

The wide disparities in the number of those involved in this highly demeaning task not only calls for measures to ensure that the state governments and concerned authorities publish the actual number of people involved But also bring sufficient policy measures for the benefit if the excluded and unidentified people.

6.4 FINDINGS ON SANITATION WORKER SITUATION AND DEATHS FROM STUDIES CONDUCTED BY OTHER ORGANISATIONS

STUDY	HIGHLIGHTS
Down The Drain! A study of the occupational and health hazards and the perils of contracting faced by sewerage workers in Delhi (2014). ²⁸³	The study addressed numerous problems faced by sewer workers in Delhi, including socio-economic problems, issues of health and welfare, and the need for reform. The Study was cantered on a 2008 database, it narrates that in Delhi alone, more than 5,50,000 Employees were deployed to bring sanitation in order in the region, covering 1,50,000 manholes spread over 5,600 kms of peripheral, internal and trunk sewers that hold 2,871 million litres per day of sewage.
Baseline survey of conservancy workers of Municipal	An annual average of 261 deaths among sanitation workers in this region. With 31% of respondents claiming

²⁸² Ibid at 3

²⁸³ <http://www.praxisindia.org/pdf/file/Down%20The%20Drain%20Report%20Web%20version.pdf>

Corporation of Greater Mumbai ²⁸⁴ Tata Institute of Social Sciences (2015)	ill health. Notwithstanding this, the protection of manual scavengers and Sanitation staff were severely ignored, with few receiving medical care, compensation for health conditions and injuries associated with work.
Participatory research conducted in 3 cities of India PRIA (2018)	Discrimination is faced by women health workers in legal recourse, fair salaries, for demanding entitlements as residents and employees, Decision-making techniques and benefits and welfare awareness. While workers' unions serve as an important safety organisation they were mostly for permanent workers and not for permanent workers. Contractual staff, and women who are usually removed.
Study on sanitation workers across India- Dalberg Associates (2018) ²⁸⁵	The study estimated that 5 million sanitation workers are working in different urban areas. They are engaged in different types of jobs, such as sewer cleaning, latrine sanitation, treatment of faecal sludge, railway sludge cleaning, waste treatment plant operations, government and public and drain cleaning, domestic jobs, and so on.
Budget brief of the Self-employment scheme for Rehabilitation of Manual Scavengers (SRMS) ²⁸⁶ Accountability Initiative and Centre for Policy Research (2019)	Significant gaps were identified in budget estimates, revised estimates and actual expenditures. Allocations to SRMS has been progressively declining since 2013-14. As of December 2017, 323 deaths due to sewer cleaning were reported, with complete compensation of INR 1 million paid in only 63% cases.

6.6 FINDINGS ON HEALTH AND SAFETY

A research undertaken by Centre for the Education and Communication (CEC) discovered in 2005 that with 200 sewage employees in Delhi there were few employees over the age of 60, and there is a noteworthy decline in the number of workers over the age of 60.²⁸⁷ The number of staff beyond the age of 50 which is indicative of extremely low life expectancy and also severe medical conditions thereby disabling them of engaging in work. Further studies also revealed that not all the permanent workers are provided with protective gears and the temporary sanitation workers are often not provided with these safety precautions. The masks

²⁸⁴ Darokar S (2018). *Manual Scavengers: A blindspot in urban development discourse*. *Economic and Political Weekly*. Vol. 53, Issue No. 22, 02 Jun, 2018

²⁸⁵ Dalberg Associates. The Sanitation Workers Project, <http://sanitationworkers.org/assessed>

²⁸⁶ Accountability Initiative and Centre for Policy Research (2019). Self-employment scheme for Rehabilitation of Manual Scavengers (SRMS) GoI, 2018-19

²⁸⁷ Page 45, Mander Harsh, India's Lowest Depths, ILO Report, 2019

and gloves to be used during cleaning are provided by the departments, which again in most of the times are not user friendly and of low quality. Proper training is not provided to them to make them equipped to use these measures which finally results in majority of the workers indulging in these without using any of these life saving measures.²⁸⁸

6.6 SCENARIO IN DIFFERENT DISTRICTS OF KERALA

The Sanitation and the septage scenario in specific is covered by plethora of national and local rules, regulations etc and monitored by the concerned authority.²⁸⁹

KOCHIN MUNICIPAL CORPORATION	
QUESTIONS RAISED THROUGH PERSONAL INTERVIEW	ANSWERS GIVEN BY THE HEALTH OFFICER
1) Is manual scavenging still prevalent in your Corporation?	Manual scavenging is something that has been eradicated in the early '90s
2) What are the benefits /welfare schemes provided for rehabilitated manual scavengers and sewerage workers?	N.A
3)How many sanitation workers are employed by the Corporation?	1200 Permanent sanitation workers .
4)Are there any wards that are not declared as ODF?	Ward number 16 is not declared ODF
5)What are the details of the sewerage and septage workers employed by the Corporation	Details not maintained
6)How many cases of illegal disposal of human waste/septage waste have been reported in the past 10 years?	Very few
7) How many sanitation workers have died during the course of work	None in the history of corporation

²⁸⁸ Shaileshkumar Darokar, Manual Scavengers: *A Blind Spot in Urban Development Discourse*, Vol. 53, Issue No. 22, 02 Jun, 2018

²⁸⁹ 1. The water (Prevention and control of pollution) Act, 1974. 2. Kerala Water Supply and Sewerage Act, 1974 3. The Environment Protection Act, 1986 4. The Kerala water Supply and Sewerage Act, 1986 5. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Put a ban on dry latrines, i.e., latrines with no water-seal or flushing mechanism, and the employment of persons for manually carrying human excreta. 6. The 73rd & 74th Constitutional Amendment Act, 1993 (The Seventh Schedule (Article 246) of the Indian constitution classifies 'Public health and sanitation [...]' and 'Water, that is to say, water supplies, irrigation and canals, drainage and embankments [...]' as state subjects (List II, Entry 6 and List II, entry 17, respectively). The local bodies are thus responsible for initiating preventive and reactive measures to tackle infectious diseases, and directing and managing sanitary facilities and infrastructure) 7. Kerala Municipality and Panchayat Raj Act, 1994

All the details concerning the details of sanitation scenario was collected by interviewing Mr C. Thomas Joshi , Health Supervisor cum Health Officer I/C Corporation of Kochi . The technical details of the drainage system is dealt by the engineering department. There are 21 Health Circles and 74 division under cochin municipal corporation. There are almost 1200 sanitation workers. Informal workers are under the control of residential association / NGOs. They are not under the control of the Corporation. The permanent workers enjoy the same conditions of service as that of other Government servants. The temporary worker are appointed as and when required. At present they get Rs 630 for 6 hours of work. The councillors of the respective areas have to submit the periodic data to the Corporation. The Corporation is in no way directly or indirectly involved or keeps records of those people engaged in the sewerage cleaning and there are two septage treatment plants – one at Brahmapuram and other at Willington Island with a capacity of 1 Lakh MLT. Division No 63(Udaya colony) is not yet declared ODF. The presence of manual scavengers was ruled out .He refrained from hiving his opinion on the railways employing them. Moreover, he was highly inconsiderate about how the concept of manual scavenging has evolved over times.

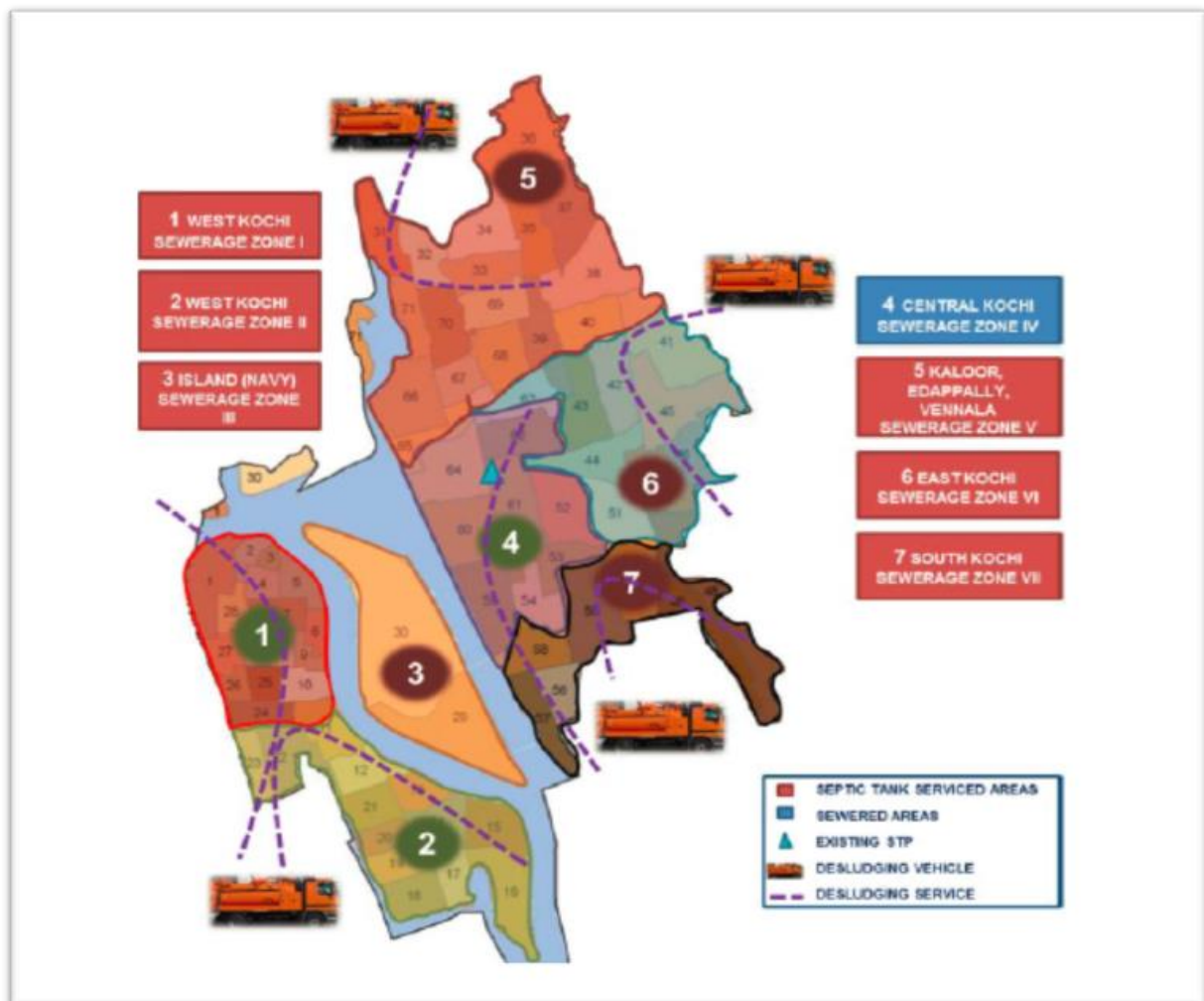
6.6.1 AN ANALYSIS OF THE CURRENT SITUATION OF KOCHIN MUNICIPAL CORPORATION

There is a current sewerage system covering approximately 6% of the population (36000), 5% of the city, around M. G. Road, maintained by the Kerala Water Authority with a 4.50 MLD STP at Elamkulam. Also, GCDA (Greater Cochin Development Authority) operates a small STP with a capacity of 900 m³ catering to the needs of around 7086 people on 1 hectare of land. However, both of these are not properly functioning. The total daily septage produced in Kochi Municipal Corporation is around 379 m³(602046 x 230 litres per year/365) .94% of the population is not covered with any centralized sewage treatment system and rely on the septic tank (72%) and pit (3%) based on-site toilet system. 2% of the population drains the faecal waste into storm water drains, and 4.1% use shared or community toilets. Onsite disposal practice of the remaining 20% of the population is either not quantified or documented. 72% of the population is having septic tank-based toilets. The total number of septic tanks would be then 101520(564000 x 0.72 ÷4) if the members of a household is taken as 4. Surveys show that many septic tanks do not comply with location, design and construction guidelines.²⁹⁰

The Kerala Municipality Act, 1994 regulates the responsibilities for the topics of water and sanitation within the state of Kerala. The responsibility for the sanitation sector is entrusted to the Standing Committee for Health and Education of the Municipal Council. 8. National Building code (NBC) 2005 9. Kerala State Pollution Control Board Circular 2006 10. National Urban Sanitation Policy 2008 11. Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 by which “hazardous cleaning” in relation to sewers and septic tanks was also banned. The law now provides that manual cleaning of sewers and septic tanks, if necessary, may be carried out only in very controlled situations, with adequate safety precautions, and in accordance with specific rules and protocols for the purpose. All public and private sector staff should adhere to safety norms as provided in the Manual on Sewerage and Sewage Treatment published by the Ministry of Urban Development. 12. Kerala State Pollution Control Board Circular 2010 13. Advisory note on septage management, 2013 14. The Prohibition of employment as Manual scavengers and their rehabilitation Act, 2013 15. Kerala State sanitation strategy, 2015 16. Swachh Bharat Mission(Urban) Guidelines, 2014 17. Solid waste management rules, 2016. Apply to the final and safe disposal of post-processed residual faecal sludge and septage 18. The Model Building bye law 2016 19. National policy on Faecal sludge and septage management, 2017 20. Bureau of Indian Standards(BIS)

²⁹⁰ KOCHI MUNICIPAL CORPORATION, SEPTAGE MANAGEMENT BYE LAW (includes operational guidelines)

Under the Kerala Sustainable Urban Development Project, the Kochi Municipal Corporation has set up two septage treatment plants. A treatment capacity of 100m³ / day is available for each plant. One of the treatment plants is located in Brahmapuram near the Municipal Solid Waste Management Facility of the Municipal Corporation and the other is located in Willington Island's A2 market, which is in agreement with Cochin's Port Trust. Unfortunately ever since its inception both the plants have encountered several problems in its functioning and mostly the solid waste plant at Brahmapuram is also used for septage disposal thereby resulting in pollution of ground water.



Source: SFD PROMOTION INITIATIVE FINAL REPORT

Despite stringent rules framed by the Corporation in addition to the union legislations as against the information given by the HO there are cases of illegal disposal of septage waste.²⁹¹ Moreover various data indicate the continuance of manual scavenging that too in the traditional form.²⁹² The trivial attitude of authorities have resulted in non identification of manual scavengers thereby depriving them of the benefits assured under the MS Act. The denial

²⁹¹ Abhimnaya Harigovind , STPs in district ill-equipped to deal with enormous volume of waste, <https://www.thehindu.com/news/cities/Kochi/stps-in-district-ill-equipped-to-deal-with-enormous-volume-of-waste/article29614479.ece> Assessed on Sept 3 at 9AM

²⁹² Data from interview with NGO HEAD.

on the part of authorities to Accept the current sanitation scenario and take implement measures to tackle the situation is condemnable .

6.6.2 THIRUVANTHAPURAM MUNICIPAL CORPORATION

The details were collected by interviewing Mr. Dr. Sasikumar, Health Officer of Municipal Corporation of Thiruvananthapuram

THIRUVANANTHAPURAM MUNICIPAL CORPORATION	
QUESTIONS ASKED DURING PERSONAL INTERVIEW	ANSWERS GIVEN BY HEALTH SUPERVISER
1) Is manual scavenging still prevalent in your Corporation?	No
2) What are the benefits /welfare schemes provided for rehabilitated manual scavengers and sewerage workers?	No person has availed benefit under the MS Act 2013
3)How many sanitation workers are employed by the Corporation?	Exact data not available
4)Are there any wards that are not declared as ODF?	All wards are ODF
5)What are the details of the sewerage and septage workers employed by the Corporation	Details are maintained by the respective bodies
6) How many sanitation workers have died during work in the last 10 years?	No such deaths in the history of the Corporation
7)How many cases of illegal disposal of human waste/septage waste have been reported in the past 10 years?	Exact data not available

As per the information given there are 100 wards and almost 50% houses are directly collected to the sewage treatment plants. The other houses in periphery areas have scientific septic tank with soak pit and rarely requires septage collection . The other houses need sewage collection and for this the corporation has 7 honey suckers or the septage suckers. As and when needed the people can approach the Corporation for this purpose . Online registration for the same is also available through registration in the official website. Due to rampant disposal of septage waste by private operators in public places and water bodies, as a permanent solution all the private operators were brought under the Corporation and now work in association with the Corporation. To make things more simple an App named Smart Trivandrum App was also launched in the year 2020. Online payment through Debit Card and Credit Card is permissible. All protective equipments including foot pads , reusable gloves and masks are claimed to be provided. It was informed by the officer that in an inquiry from the Central Government the Department had reported the number of manual scavengers to be zero.

6.6.3 THRISSUR MUNICIPAL CORPORATION

The details were collected vis RTI.

THRISSUR MUNICIPAL CORPORATION	
QUESTIONS RAISED THROUGH RTI	ANSWERS RECEIVED
1) Is manual scavenging still prevalent in your Corporation?	There is no manual scavenging in our Corporation.
2) What are the benefits provided for rehabilitated manual scavengers?	None
3) How many sanitation workers are employed by the Corporation?	126 Permanent sanitation workers and 330 L.D.R Workers.
4) Are there any wards that are not declared as ODF?	Thrissur Corporation is declared ODF SINCE 2018.
5) What are the details of the sewerage and septage workers employed by the Corporation	There are no sewerage and septage workers employed by the Corporation.
6) How many sanitation workers died during work in the past ten years	Ten sanitation workers
7) How many cases of illegal disposal of eptage waste was reported in the last ten years?	A few cases

6.6.4 CALICUT MUNICIPAL CORPORATION

Details were collected via RTI

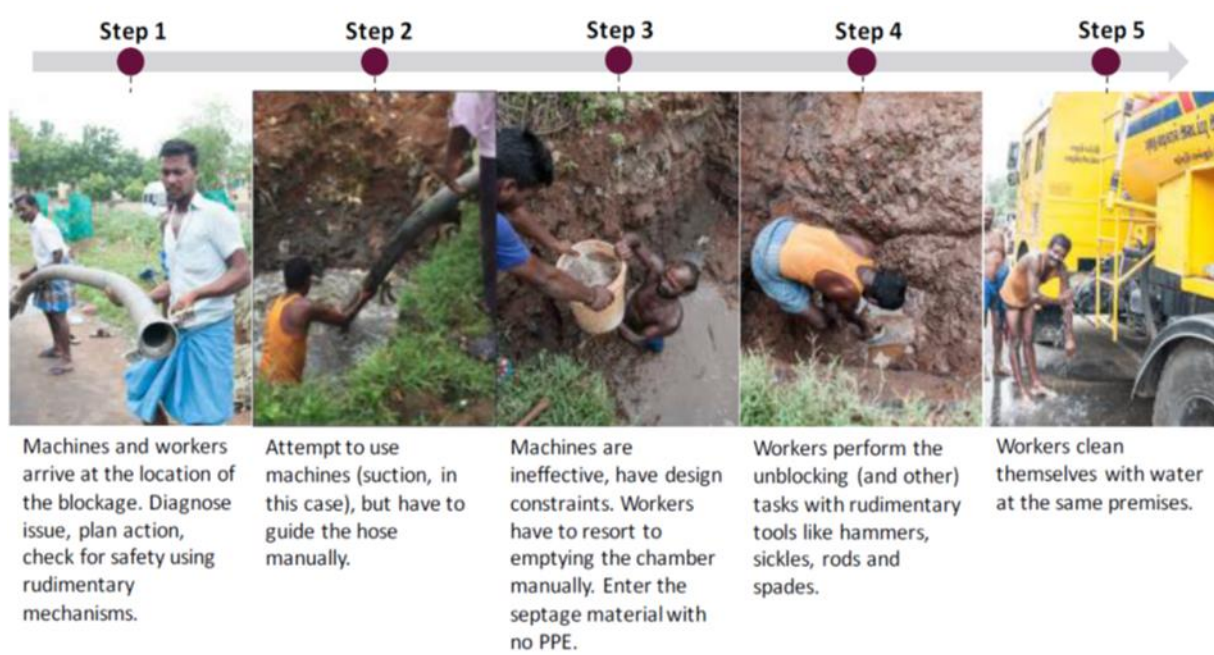
CALICUT MUNICIPAL CORPORATION	
QUESTIONS RAISED THROUGH RTI	ANSWERS RECEIVED
1)Is manual scavenging still prevalent in your Corporation?	Noi manual scavengers in Calicut municipal corporation
2)What are the benefits provided for rehabilitated manual scavengers?	N.A
3)What are the pitfalls in the sewerage system in your Corporation	N.A
4) How many wards do not have ODF Status?	N.A
5) What are the details of the sewerage and septage workers employed by the Corporation?	N.A
6) What is the total number of sanitation workers employed by the Corporation?	618 permanent and 63 temporary
8) How many sanitation workers have died during work in the past 10 years?	Information not available

9) How many cases of illegal disposal of sanitation workers have been reported in the past 10 years?	N.A
10) What all measures are taken for welfare of sewerage workers?	N.A

All the four corporations taken for study in Kerala have completely ruled out the possibility of existence of manual scavengers. However The Lok Sabha data identified 600 manual scavengers in the state of Kerala in the national survey undertaken under the MS Act 2013.²⁹³ The officials of Department of scheduled caste reported that it received a total of 594 applications from the dependants of those engaged in unclean occupation in the year 2018 seeking financial assistance, the number rose to 2042 in the year 2019 . Further 3 deaths were also reported in state of kerala for which financial assistance was not given.²⁹⁴ This itself is indicative of the fact that manual scavenging is still in roll and the claim by the state authorities of its eradication is a mere fantasy. The case of *PK Satheeshan v. southern Railway*²⁹⁵ taken up by HC of Kerala on 6th july 2020 further adds coherence to the fact of railways employing manual scavengers.

6.7 PROCESS OF SEWER CLEANING

The claim of providing protective gears to those engaged in unclean profession is not met with in majority of the situations and the actual process looks more or less like that of in the image given below:



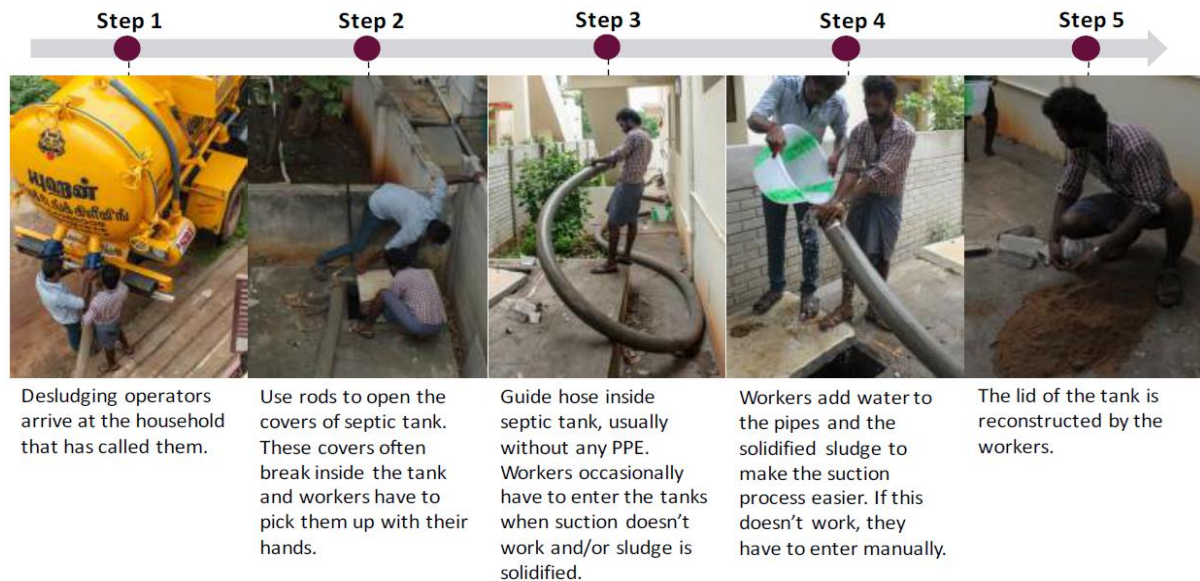
Source: Dalberg report

²⁹³ Ashwin.J.Kumar, 600 people are engaged in manual scavenging in Kerala http://timesofindia.indiatimes.com/articleshow/72150419.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst, assessed on

²⁹⁴ id

²⁹⁵ WP(C) No20190 of 2014

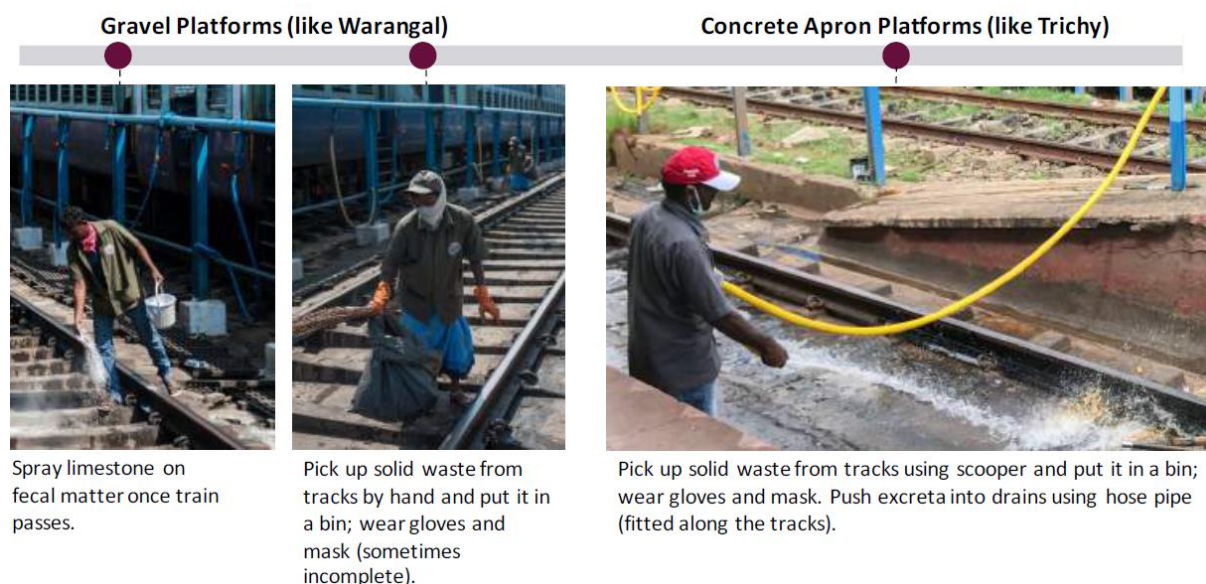
6.8 PROCESS OF SEPTAGE CLEANING



Source: Dalberg report

It is true that certain percent of manual scavengers and sewer workers use the suction pumps for cleaning. Still then there is a manual intervention and even then majority of them do not use protective gears.

6.9 PROCESS OF RAILWAY TRACK CLEANING



Source: Dalberg report

The policy to install bio toilets in the train coaches have not been accomplished and still there is a wide employment of manual scavengers by the Indian Railway. This is highly dangerous as the railways never take up their responsibility and deny the employment of scavengers. A

lot of cases of death of manual scavengers in Railways are still pending, without their dependants receiving any compensation or assistance from the Government.

6.10 CONCLUSION

The fact that there are numerous numbers of manual scavengers in our country is a harsh reality which the officials should not deny. Hiding of the numbers will in no way cure the issue. Nothing more than the outcry of these people is required to establish their existence. The various data revealed in this respect adds coherence for the need for proper identification and rehabilitation of these workers. A lot of challenges were encountered in undertaking the empirical study in Kerala. Most of the officials outrightly denied its existence. The confusion in understanding the concept of manual scavenging is the main factor behind these. Moreover, they were reluctant to give information and were interested in highlighting the few positive measures in the field of sanitation. The right to sanitation remains one of the recognized as well as most violated fundamental right in contemporary India which is a matter of shame. Mere declaration of ODF cannot be taken to mean the absence of unclean profession. The statistics point out that the number of scavengers are more in ODF areas due to the increase in number of toilets. The SBM has utterly failed to improve the condition of manual scavengers. There must be a serious attempt to identify and map different forms of sanitation work and workers; incentivise officers to undertake such mapping and make them culpable on failing to do so. Ensuring strict compliance with the standard operating procedures and emergency sanitation response systems for operations in sewer lines and septic tanks should be made mandatory and monitored regularly to ensure dignified engagement as well as health and safety of the workers associated. “Right to sanitation” will acquire its significance in the full extent only if the unsafe cleaning activities are completely abolished.

CHAPTER SEVEN

CONCLUSION AND SUGGESTIONS

Dignity, Liberty, Equality are various facets of life. To live a life of fullest dignity is the right and aspiration of every individual. Yet even after many years of independence and despite being the biggest democracy, we find many thousands of people dying in the process of making India clean. This is an irony. On one side the Honourable Supreme court has vouched by the right to sanitation, it has pronounced it to be a fundamental right. Even the practice of manual scavenging and sewerage cleaning has been condemned by the court in several cases, however this has remained mere lip service as still flocks of people are entrapped in this practice and continue to suffer due to this unclean practice. Deaths remain mere numbers as most of the state governments turn down claims of prevalence of manual scavenging and sewer deaths. This work is an attempt to analyse the factors that result in persistence of manual scavenging, how the traditional concept of manual scavenging has been expanded to include within its purview almost all forms of cleaning and how this practice remains to be a blot on the right to sanitation.

Chapter Two of the work deals with the concept and nature of manual scavenging. Cleanliness is equal to godliness is an age-old adage familiar to all of us. If cleanliness can be equated with divinity then it must have been equally obvious that those who clean must be considered divine as well. However so had never been the case with India's manual scavengers. Even in Vedas and in ancient society cleaning was done by the lower class of the society. These were the stigmatised people who belonged to the lower class of the society. They were considered as outcasts. People belonging to the higher classes never mingled with them. Hence it constituted the most pathetic form of untouchability wherein the scavenger community had separate areas for all their daily activities. Those who called themselves the privileged harshly excluded them in all aspects of social political and economic life. They had to carry filth for a very marginal amount which was barely sufficient to fill their tummy. Hence, they never had the opportunity to come out of the situation by educating themselves. This left themselves in a vicious cycle as the children of these scavengers were forced to enter into the same profession due to not being educated. This continued for ages and hence manual scavenging became a caste-based stigmatization. Hence manual scavenging was simply the process of carrying the filth on head and cleaning the dry latrines. With the advancement of technology came new types of toilets and sewerage systems. This too demanded the manual cleaning or proximate form of cleaning thereby endangering and causing serious health repercussions on the persons cleaning. Hence manual scavenging now not only includes manually carrying the human excreta on head but also all forms of toxic cleaning putting the person in proximity with the sewage. One of the defences raised towards the lesser number of manual scavengers being prevalent is that they use some form of equipment or machines to clean this sewage thereby minimising the manual contact. How can this be accepted? They are doing the same job. That they use some kind of machines do not add any dignity to their profession. Moreover, this also does not add any safety to their profession as most of the deaths of workers have occurred due to defective equipment. Hence in this modern world manual scavenging can and should never be considered as the manual cleaning of human waste. In this new world of industrialisation and modernisation manual scavenging encompasses all those forms of sewer cleaning, septage cleaning, railway track cleaning, manhole cleaning etc which requires human assistance.

The problems faced by these community from time immemorial has been a plenty. Stark poverty left them underprivileged and undernourished. The health factors are many with many studies attributing several diseases serious diseases connected to this along with decreased life expectancy. If work can take away one's life, then this forms a blatant violation on the right to life. The social stigma attached to these workers makes it one on the continuing forms of untouchability. Again, untouchability is something that is considered to be a thing of past. This cannot be true when people are engaged in hazardous cleaning and a sense of distancing is shown by other people towards them. With changing times comes changing realities. Homosexuality was once considered to be against the order of the nature and illegal. Now it is accepted they too are a part of the society and their rights have been explicitly recognized. Hence it is high time to deviate from the traditional concept of manual scavenging and to include within its ambit all those cleaning procedures involving human involvement thereby putting their life in danger.

Chapter three intends to analyse the international and constitutional perspective on manual scavenging and the right to sanitation. The international community has in several instruments emphasised the importance for the right to sanitation and had taken correlative measures by incorporating measures to be taken to upkeep the sanitation requirements in several instruments. In the initial stages there were no instruments which solely emphasized on the right to sanitation as such. Sanitation occupied a place along with other aspects such as the right to water, right to health adequate standard of living, physical security etc. Sanitation occupied an ancillary position in all these instruments. Later the remarkable developments in the human rights law paved way for the self-standing to sanitation. This can be called as one of the essential rights which is essential for the realisation of the right to life. Numerous numbers of measures have been taken to incorporate measures related to sanitation. The declaration of 2008 as the international year of sanitation was one of the steps to provide impetus toward realising and implementing various sanitary measures. The International community has clearly laid down the criteria that every sanitation facility must comply with. They are availability, quality physical accessibility, affordability and acceptability. The analysis of the sanitary networks in India will make it clear that there are a very few networks satisfying these criteria. Most often many of these criteria are neglected thereby putting the life of the people at peril. In many cases the stakeholders are not even aware of these criteria. there has to be sufficient measures by which it can be ensured that these basic criteria are being complied with. The fact that India is not a signatory to all the International conventions also brings about a problem in its implementation. In such a scenario the concerned government authority must undertake an analysis of all the sanitary measures that are being used in the foreign countries for the disposal of human waste. Maximum possible efforts have to be taken to incorporate all the positive measures and developments in our system. Moreover, the constitutional mandate of untouchably remains a goal to be achieved on the face of continuance of the process of manual cleaning of sewers. This again forms a violation of many other fundamental rights. Hence the persistence of manual scavenging is a blatant violation of articles 21,17,23, 14 of Constitution of India. Such a scenario is condemnable given the fact that the supreme court has time and again made observations and have issued guidelines for the eradication of manual scavenging. The right to sanitation is inextricably intertwined with the achievement of safe and sanitary conditions for all. The human rights instruments also have specific provisions that can have great significance in abolishing this demeaning concept.

The fourth Chapter deals with the legislative and constitutional framework relating to manual scavenging and sanitation. The committees for the abolition of manual scavenging and deliberations on putting an end to manual scavenging is something that existed from the 1950's. However, that manual scavenging still continues to be an existing form of untouchability and a degrading profession is also a reality. The Protection of Civil Rights Act, 1955, The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, were the first measures aimed at reducing manual scavenging. Then came the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. However, the fact that there was not even a single prosecution under the act was evince of the fact that this was a faulty Legislation which provided a little for the manual scavengers. It does not mention health as a component of rehabilitation and provides a meagre amount to the worker in the name of assistance for alternative occupations, which most manual scavengers are not even aware of. Nothing in the act mentions provisions relating to the death of manual scavengers or compensation in such cases. Then Prohibition and Employment of Manual Scavengers and their Rehabilitation Act, 2013 made its way. However, this act also did not reap the results as it excluded from its ambit any worker if he used a protective gear. Despite there being a provision which mandates the use of technological appliances for cleaning sewers there is no relief to the workers who still have to enter manholes and sewers with defective or unscientific tools. The rules too have given priority on equipping the manual scavengers with protective devices, but have the same fate. The implementing machinery is very weak. All the Acts have miserably failed to provide the desired outcome thereby resulting in the blatant violation of constitutional safeguards of these people.

Chapter Five analyses the miniscule attitude of the government wherein it has conveniently not placed the importance on the sanitation workers that they deserve and which is the need of the hour. COVID -19 Crisis have affected the entire world How much is done by them during this crisis situation is known to all of us, but conveniently neglected by the authorities. The sanitation workers are those class of people who do not have the luxury of staying at home during the spread of virus at an alarming rate. They remove the faeces, clean septage sewers, pits, hospital waste, drainage most of the times without any protective equipment. Social distancing is a fancy to them as most of them live in crowded places and the fact that they come in close proximity with untreated sewers and drainage make the situation even worse. There was a huge outcry from the part of the health workers when they didn't receive the adequate number of PPE'S and were supplied with a few defective ones. However, the sanitation workers don't have the requisite knowledge and in most situations is incapable of mobilising mass support. Many sanitation workers have died by cleaning septage and sewers even during lockdown but no action has been taken from the part of the government. In order to avoid the death of scores of these people the Government must ensure that protective measures are taken for them as well. The responsibility for ensuring that these people are equipped with the needed protective equipment must be fixed with the local authorities.

Chapter Six was an attempt by the researcher to collect data from the relevant sources to analyse the actual situation of sanitation. The results obtained is sufficient to conclude that nothing has changed despite these many attempts and

With regard to concerns related to human rights, manual scavenging remains a serious concern. Even though legislations, considerable budgetary allocation, and economic assistance programmes for the scavenging communities has been put in place.⁵⁹ But the most vital pre

requisites which is required is the rigorous enforcement and scrutiny measures required to ensure proper implementation of laws and effective use of budgetary allocation. Ultimately, Public awareness to prevent deterioration

SUGGESTIONS

1) The process of social ostracism of the scavenging class and the vicious cycle of being entrapped in the profession despite of years of battle against the same denote that entitlements of various forms devised by the government are not reaching them thereby depriving them of the normal social, economic, political and cultural life. It is a gross form of violation of all their fundamental and other civic rights and constitutes a living mode exclusion. This can be rectified only by formulating a productive agenda encompassing measures for their alternative livelihood and proper rehabilitation. The areas in which they can be rehabilitated needs to be specifically mentioned and effective measures must ensue from the part of executives to make it happen. Special training can be given to them to make them capable of agriculture, handloom and other vocational industries. Financial assistance has to be given soon after the training programme to enable them to start small scale Business. In case of extended families with senior citizens, measures have to be taken for providing medical assistance free of costs. In addition to this medical aid should also be given to treat diseases that they suffer. The Right to sanitation cannot be said to be fully achieved unless these intricate aspects are properly addressed.

2) The other aspect of eradicating any form of injustice is by educating and creating awareness. Providing education to the children of rehabilitated as well as identified workers of the field is only one of the steps towards this regard. Education must be given a wider interpretation. This should encompass creating an overall awareness for the entire society of the persistence and challenges faced by the cleaning community. All people must attain a mental awareness to realise that they are also one among us who help others to live a healthy life. People should understand the significance of rehabilitating this class of the society. Government sponsored ads can prove to be effective tool in this aspect. Such ads have often been used in the past years for creating awareness about various issues like HIV-AIDS, TB etc . Ads of the similar nature were made for swatch Bharath abhiyan as well. However, the same ads were silent regarding manual scavenging even though one of its objective was to eradicate manual scavenging. Ads which aim to improve sanitation must also focus on the issue of manual scavenging, how manual scavenging now includes a wider arena of cleaning jobs apart from the traditional concept . This is very essential to remove the stigmatisation of these class of people. The right to sanitation is a mere myth with the living concept of manual scavenging.

3) There has to be effective co-ordination between all the ministries which has a key role in eradication of manual scavenging and rehabilitation. Further there needs to be a co-ordination between the private and public authorities. A co-ordination committee must be set up with sufficient members from each ministry and members from reputed NGO'S . They must periodically hold meetings, analyse situations and come out with plans. The Ministry of Women and Child Development and the Ministry of Labour also have an important role as in many areas women manual scavengers are more than men.

4) A survey which was conducted and as per the records of Ministry Of Social Justice and empowerment identified that there are more than seven lakh manual scavengers. There has been meagre attention towards the people who have been employed in cleaning the drains

septic tanks etc. In most of the cases they are merely private providers who are not attached to any Government agencies. Hence deaths of sanitation workers are reported from government owned facilities, residential buildings, malls, hotels apartments etc without any data of them being available with the government. There is a need to put an end to this. Proper measures need to be taken to collect data of how the sewer and septage networks are being operated.

5) Further the faulty metrics in the high-end infrastructure also lead to sewer deaths. The instances of people dying in the sewer pits, manholes etc due to failure of safety equipment are also rampant. On the institutional side there is a confusion between the public and private responsibilities. The public authorities limit their role to the sewer lines and the drainage leaving the residents with septic tanks and leach pits much to their own recourse. On the legal front the environment laws and the municipal laws make reference to sanitation and waste water disposal without any mention of septage cleaning. These laws need to be Amended in order to bring necessary and required changes.

6) Innovators, companies, corporations, NGOs, research institutions, and all the concerned authorities should propose technology and business solutions to clean sewers and septic tanks without human entry. One of the most acclaimed development in the area of mechanisation is the development of bandicoot robots by Genrobotics. This is a technological invention made in Kerala that has travelled parts of India and got large publicity. However, the fact that not many numbers of robots have been put to use has to be taken into account. The mechanisation through robots is something that has to be promoted and measures has to be taken by the state and the central governments to put a greater number of robots for the hazardous cleaning activities. However mechanisation is only a temporary relief and the treal solution lies in changing the toilet technologies. The pattern adopted in the west can be taken as a model which does not require emptying. Such possibilities need to be explored and has to be implemented.²⁹⁶

7)The practice of manual scavenging still continues which is evident of the fact that proper sanitation facilities is not yet achieved. Many surveys conducted by the NGO, s and other voluntary organisation claim that there are many fry latrines in the country which do not find ant mention in the official government records. Furthermore, even though the swach bharat mission has created more than 10 million toilets in the rural and urban areas it has in itself many loopholes. The scheme had given the option to the recipients to build compost toilets, leach pits, bio toilets and septic tanks. What type of toilets are being built is merely left out of scrutiny. Even though there is a stress on building bio-toilets most people often build toilets with septic tanks. Safe designs and maintenance norms of these structures are something on which little stress is laid. There is no campaign to create awareness on how septic tank might lead to the problem of manual scavenging. Hence the practice still continues even if there are toilets. Thereby reducing the efficiency of this scheme. Hence this policy is dented because of unsafe sanitation work. These incomplete policies often create problematic responses. The schemes for compensation and other welfare measures are underperforming with no recipients. The government needs to bring out policy measures specifically targeting the issue of manual scavenging to bring an end to this problem.

8)The primary responsibility for ensuring the sanitation measures is on the local governments. A task forceThe local governments have proved their self-sufficiency in many areas. Stricter

²⁹⁶ A recent bill named he Prohibition of Employment as **Manual Scavengers** and their Rehabilitation (Amendment) **Bill, 2020**, which is yet to be introduced has provision for mechanisation of sewer cleaning.

measures must be taken to ensure that no household built dry latrines or employ people in such cleaning. The act to end manual scavenging only puts a responsibility on the employer. In such cases it becomes difficult to identify the manual scavengers. The individuals should not be allowed to build dry latrines or other structures that requires manual cleaning of the system. Strict penalty should be imposed on such cases. There has to be an overall understanding that sanitation facilities, in particular proper sanitation facilities are needed to sustain life on earth.

9)The he Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) 2005 can be linked to the Acts meant to curb all forms of unsafe cleaning process so that those people rehabilitated under the act can get job under MNREGA.

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കോഴിക്കോട് മുനിസിപ്പൽ കോർപ്പറേഷൻ

ബി.എ. ടൗൺ, കോഴിക്കോട് - 673 032
 ഫോൺ : 6485 - 2409040, ഫാക്സ് : 2346875

പ്രാപ്തി തീയതി : 4/04/2020/11

കോർപ്പറേഷൻ നമ്പർ : 4104/2020

പ്രാപ്തകർ : _____

പ്രാപ്തകർ : ANJUMMA VIJAYAKUMAR
 KA MOHAMMED AND KADEEJA
 MANJIL (13 FLOOR)
 KIZHAKKANGULY (H)
 VAD (PO) MANJAL MUKK
 EDATHALAKKARA

വിഷയം : കോഴിക്കോട് കോർപ്പറേഷൻ -
 റീലേബർ വിവരങ്ങൾ നിയമം - 2005 - അനുബന്ധം 30-ൽ തിരുത്തലുകൾ
 നടത്തപ്പെട്ടിട്ടുണ്ട്.

9/11/2019

PIN- 683563

തീയതി : _____

താങ്കളുടെ 12/03/2020 മുൻകൈയെടുത്ത
 നിയമാവകാശനിയമം 2005 പ്രകാരം താങ്കൾ സമർപ്പിച്ച സ്കീം
 അനുബന്ധം 30-ൽ തിരുത്തലുകൾ നടത്തപ്പെട്ടിട്ടുണ്ട്.

- 1) കോർപ്പറേഷൻ മുൻകൈയെടുത്ത കോർപ്പറേഷൻ പ്രൈവറ്റ് ലിമിറ്റഡ് 2-ആം ഘട്ടത്തിൽ
 പദ്ധതിയുടെ തുടർച്ചയായി തുടർച്ചയായി നടത്തപ്പെട്ടു.
- 2) കോർപ്പറേഷൻ മുൻകൈയെടുത്ത കോർപ്പറേഷൻ പ്രൈവറ്റ് ലിമിറ്റഡ് 63-ആം ഘട്ടത്തിൽ
 കോർപ്പറേഷൻ പ്രൈവറ്റ് ലിമിറ്റഡ്.
- 3, 4, 5, 6, 7, 8, 9, } N.A.
- 10) കോർപ്പറേഷൻ മുൻകൈയെടുത്ത ലിമിറ്റഡ്.



മുൻകൈയെടുത്ത തീയതി : 20 മെയ് 2020
 മുൻകൈയെടുത്ത സ്ഥലം : _____
 കോഴിക്കോട് കോർപ്പറേഷൻ

നിയമാവകാശനിയമം,

[Signature] 20/04/2020

മുൻകൈയെടുത്ത തീയതി : 20 മെയ് 2020
 മുൻകൈയെടുത്ത സ്ഥലം : _____
 കോഴിക്കോട് കോർപ്പറേഷൻ

CLMK 167/17

Mrs. Anushka Vijayakumar,
K.A.Mohammad And Kadeeja Manzil (1st Floor),
N.A.D. P.O.,
Manalimukku, Nochima,
Edathala Kara, PIN - 683 563.

Madam,

Sub: Thrissur Municipal Corporation - Health Section - Reply given under
RTI Act 2005 - reg.
Ref: Your application received on 16/03/2020.

As per your application, the details are given below.

- 1 & 2) There is no manual scavenging in our Corporation.
- 3) 126 permanent Sanitation Workers & 330 D.L.R. Workers.
- 4) Thrissur Corporation is declared ODF since 2018.
- 5) There is no sewerage and septage work employed by Corporation.
- 6) 20 Sanitation Workers died in past 10 years in Thrissur Corporation.
- 7) A few cases of illegal disposal of human waste. Septage waste reported in last 10 years. The fine imposed and remitted by them.

Appeal Authority : Mr. Madhavan.K.C,
Health Supervisor.
Period of Appeal : 30 days

Yours faithfully,



Ajitha
13/4/2020
AJITHA.A.K.
State Public Information Officer
& Superintendent, Health Section.

APPENDIX 2 : RTI REPLY FROM THRISSUR MUNICIPAL CORPORATION



കൊച്ചി മുനിസിപ്പൽ കോർപ്പറേഷൻ

ഫോൺ: 2369007, 2369190
2369113, 2369449
2369097, 2369669
ഫാക്സ്: 2369033

കെട്ടിടങ്ങൾക്ക് ഓഫീസ്
പി.ബി. റോഡ് 1916
എറണാകുളം, കെട്ടിട് 682 011

ISCT/WA/D/114/9955/2020 വിവരാവകാശനിയമം -2005

തീയതി : 20/05/2020

To,
Smt. Anushka Vijayakumar
K A Mohammed and Khadeeja Manzil
NAD P O
Manalimukku
Nochima
Edathala Kara, Pin-683563

സർ,
വിഷയം-കൊച്ചി മുനിസിപ്പൽ കോർപ്പറേഷൻ-ഹെൽത്ത് റിപ്പോർട്ട്-വിവരാവകാശനിയമപ്രകാരം
ലഭിച്ച അപേക്ഷയ്ക്ക് മറുപടി നൽകുന്നത് - സംബന്ധിച്ച്.

സൂചന-താങ്കളുടെ അപേക്ഷ നം 9956/20 തീയതി 11/03/2020

സൂചനയിലേക്ക് താങ്കളുടെ ശ്രദ്ധക്ഷണിക്കുന്നു.

സൂചിത അപേക്ഷയിൽ ആവശ്യപ്പെട്ട വിവരം താഴെ ചേർക്കുന്നു.

- 1) 23-09 ഡിവിഷൻ, ഗ്രാസിനഗർ
- 2) നഗരസഭയിലെ സാനിറ്റേഷൻ വീവനക്കരുടെ ഔദ്യോഗിക മേൽനോട്ടം ഉൾപ്പെടെയുള്ള രേഖകൾ
ഇത്രയും ഉണ്ടായിട്ടുണ്ട്.

ഹെൽത്ത് റിപ്പോർട്ട്
അപ്പീൽ അധികാരി - ഹെൽത്ത് ഓഫീസർ
അപ്പീൽ സമയപരിധി - 30 ദിവസം

പബ്ലിക് ഇൻ്റർ
JISHA JOHN
SUPERINTENDENT
KOCHI MUNICIPAL CORPORATION
കൊച്ചി മുനിസിപ്പൽ കോർപ്പറേഷൻ

ശ്രദ്ധിക്കുക

നഗരസഭയിൽ ജീവനക്കരുടെ വിവരങ്ങൾ