

White Paper – Are sanitation workers of our country protected?

Written for Citizens of Justice and Peace
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Abstract

This paper aims at highlighting the issues faced by sanitation workers in different situations, including when they are employed as contractual or casual labourers, or as manual scavengers, or hired in times of natural calamities and during the COVID-19 pandemic as well as critically examine the existing set of rights they have, in these situations. It further goes on to discuss the role of trade unions and commissions and of Courts in improving the conditions of the sanitation workers. Noting the laws already in place and the directions of the Court, it aims to set forth a list of recommendations to improve the conditions of the sanitation workers.

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I. INTRODUCTION

India has recognized the right to clean, healthy and safe environment as a fundamental right implicit under Article 21 of the Indian Constitution i.e. Right to Life. To ensure this right is available to one and all, no other than our sanitation workers do the toiling and put their health and safety at risk. It always remains a question to see whether they are provided with any protections or not. It has been a century long struggle to achieve a life of dignity and safety for them and yet the struggle is not fully successful. In India, the concern is not limited to their work conditions only, but also other factors such as caste discrimination, social ostracization and gender play a major role.

As per the World Health Organization (“WHO”), ‘sanitation work’ includes *emptying toilets, pits and septic tanks; entering manholes and sewers to fix or unblock them; transporting fecal waste; working treatment plants; as well as cleaning public toilets or defecation around homes and businesses*. The WHO has always expressed its concern regarding uplifting the standards of safety, dignity and health of the sanitation workers.¹ India, being a key signatory, has attempted to recognize the guidelines laid down by WHO. Post-Independence, there have been attempts by way of legislations, schemes and programmes for upliftment of the Dalits (forming approximately 90% of the sanitation workforce) and manual scavengers, yet it is saddening to see their poor implementation and lack of sensitization in the society for the work done by them. This paper addressed the issues existing regarding sanitation workers, the existing legislations and jurisprudence on the issue and thereby puts forth a list of recommendations for improvement of their conditions.

II. BACKGROUND

The statistics relating to workers employed and deaths caused by cleaning of septic tanks, drains, sewers or railway tracks, etc. are astounding. It is estimated that one manhole worker dies unblocking sewers by hand every five days in India (BBC 2018)². Further, an approximate five million people in India are engaged in sanitation work (that is, work relating to the cleaning and management of toilets and human excreta), of which two million are likely to be engaged in ‘high-risk’ work such as cleaning sewers and septic tanks.³ The NGO working for the rights of sanitation workers, Safai Karamchari Andolan has recorded close to 2000 sanitation worker deaths. The NGO further has recorded State-wise number of dry latrines and manual scavengers, the numbers of which are also dreadful and shameful.⁴

The practice of manual scavenging in India exists since centuries and finds recognition in the scriptures as well.⁵ The roots are deeply-embedded in the caste system of the country where the lowest caste (commonly referred to as Shudras in the caste hierarchy) is burdened with the task of cleaning toilets and picking up human fecal and waste with their own hands. Since earlier times did not have flush or water-based toilets,

¹ <https://www.who.int/news-room/detail/14-11-2019-new-report-exposes-horror-of-working-conditions-for-millions-of-sanitation-workers-in-the-developing-world>

² World Bank group, WHO, ILO and WaterAid’s report, ‘Health, Safety and Dignity of Sanitation Workers’

³ Dalberg Analysis, 2018, <http://sanitationworkers.org/wp-content/uploads/2018/04/Phase-1-Understanding-the-Problem-Part-I.pdf.%C2%A0>

⁴ <https://www.safaikaramchariandolan.org/>

⁵ Bindeshwar Pathak, Road to Freedom: A Sociological Study on the Abolition of Scavenging in India, 37 (Motilal Banarsidass Publisher, 1999).

the people belonging to the lower caste (now referred to as Dalits or Scheduled Castes) were told to clean the dry latrines or pick up waste from open grounds. An image of the “untouchables, dirty, poor, outcasts” is attached to these workers who are tasked with the menial job of cleaning the toilets and ensuring proper drainage system in every household and city.

The intent to bring an end to this practice was reflected in the Indian Constitution itself. Article 15 states that no person shall be discriminated on the grounds of his caste, sex, race, etc. It further confers the right to make special provisions for the upliftment of the minorities including Scheduled Castes. Thereafter, many legislations were enacted to protect their rights and safeguard them against discrimination including the Protection of Civil Rights Act, 1955⁶, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. Public health and sanitation being State subjects⁷, many States including Andhra Pradesh, Gujarat, Rajasthan, Maharashtra and Rajasthan passed special acts for banning manual scavenging and construction of dry latrines in the respective States. After noting that the municipal laws were not stringent enough and for the purpose of bringing a central, uniform law for abolishing manual scavenging and dry latrines, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was passed by the Central Government. The Act gave powers to the States to frame appropriate schemes, issue directions and appoint executive authorities at district levels to ensure implementation of the objects of the Act. However, States were required to adopt this Act by passing appropriate legislation and the punishment for contravention of the provisions were also not stringent enough.⁸

Seeing the continuing practice of manual scavenging, various NGOs carried on campaigns and filed petition in the Court for recognition of their right to dignity. Their efforts reaped results when the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (“**2013 Act**”) was passed by the legislature and brought to force on December 06, 2013⁹. The Act was brought in recognition of the right to live with dignity, a fundamental right of every person under the Indian Constitution. Its object was to fill in the lacuna in the previous acts which did not provide for stringent provisions and to provide for strict prohibition on the practice of manual scavenging and dry latrines and further to rehabilitate the manual scavengers. The Act was issued pursuant to Article 46 of the Indian Constitution which conferred the duty of providing protection to minorities including Schedule Castes and hence, applicable to all States and Union Territories. Besides laws, the Government has established the National Commission for Safai Karamcharis in 1994 to give suggestions to the Government and to take suo motu action on cases regarding safai karamcharis and the National Safai Karamcharis Finance & Development Corporation in 1997 which aims to uplift the safai karamcharis by making available loan and non-loan schemes to them. There are various NGOs working for their rights and to bring an end to the inhuman practice of manual scavenging and construction and existence of dry latrines including Safai Karamcharis Andolan.

⁶ The Act was toothless as the punishments prescribed were not proportional to the crime. For instance, Section 7A prescribed punishment up to 6 months and/or fine up to INR 500/- for compelling any person to do manual scavenging.

⁷ Seventh Schedule, List II, Point 5, Constitution of India, 1950

⁸ Section 14 prescribed maximum punishment of 1 year and fine up to INR 2000/-.

⁹ Effective from 06.12.2013 vide Notification No. SO2989(E) Dated 01.10.2013.

III. ISSUES

1. Sanitation workers as casual/ contract labourers

Sanitation workers are hired by municipalities or private companies either as permanent employees or as casual or contract labourers. The preferred route, as observed from common practice is to hire more workers as casual or contract labourers. Where the worker is hired for less than a period of 240 days in a year i.e. approximately 8 months, he is not treated as a permanent workman as per the provisions of the Industrial Dispute Act, 1947¹⁰ or even granted the temporary status under the Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training, Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1993. Thus, the practice of hiring them as casual labourers i.e. for less than a period of 240 days deprives them of rights under various labour laws including benefits of gratuity, provident fund, retrenchment and termination of employment related rights under the Industrial Dispute Act, Payment of Gratuity Act, etc. Further, the Employees' State Insurance Act, 1948 confers certain insurance benefits during sickness, illness and maternity to contractual labourers as well, employed in factories and establishments covered under the Act alone and not to those working with municipalities or hired on task bases by private persons. They are typically not even entitled to minimum wages under the Minimum Wages Act since casual labourers do not enter into any contract/ arrangement with their employers. Further, even if a contract/ agreement exists, the struggle for obtaining their minimum wages is a long legal process. A World Bank group, WHO, ILO and WaterAid's report, '*Health, Safety and Dignity of Sanitation Workers*' has noted that in India, permanent workers are typically better paid than their informal counterparts (receiving three times the salary of an informal sanitation worker).

Contract labourers are regulated under the Contract Labour (Regulation and Abolition) Act, 1970. In 2016, the Bombay High Court, in the case of *Municipal Corporation of Greater Mumbai vs. Kachara Vahtuk Shramik Sangh* granted permanent status to 2700 sanitation workers of Municipal Corporation of Greater Mumbai ("MCGM") who were employed on contract basis, after years of legal struggle. After questioning a few workers, the Court observed that they were denied their right to a decent pay, compensation in case of any medical injury, proper cleaning equipment, and had to work on all days without any leave under laborious work hours. No toilet, urinal or even drinking water facilities were available to such workers. It was also observed that majority of the contract labourers belonged to the minority community i.e. Scheduled Castes while the permanent sanitation workers under MCGM were majorly upper caste. The Hyderabad pattern was adopted by the MCGM where they issued tenders to contractors for sanitation work of the city. The Court analyzed the facts of the case and concluded that the contractual arrangement was a sham/ hoax and there was direct employment between MCGM and the contractual workers. The Court held that where an unfair labour practice was being committed by a public body, the courts has the right to grant an appropriate relief. It went a step ahead and held that the case of the sanitation workers could not be dealt as another contract labour dispute as the fundamental rights of the workers were being traversed. This turned out to be a landmark judgment as the case was upheld by the Supreme Court as well in a Special Leave Petition.

¹⁰ Section 25B, Definition of 'Continuous Service', Industrial Dispute Act, 1947

Although the Supreme Court in the case of Umadevi held that the 240-day requirement alone cannot grant permanent status to employees, the Court has in a later case held that where policies are created which deny a worker equal rights for the same work, they infringe their right to human dignity.¹¹ Hence, where the municipalities are employing workers on permanent basis to do the same job as their contractual workers do, this system can be struck down by the Courts.

Under Article 7 of the International Convention on Economic, Social and Cultural Rights 1966, to which India is a signatory, the right of every one to the enjoyment of just conditions of work, healthy working conditions, leisure, reasonable limitations of working hours, periodical holidays and pay is recognized. Under Article 42 and 43 of the Indian Constitution (*Directive Principles of State Policy*), it is recognized as the duty of the State to secure just and humane conditions of work and conditions of work ensuring a decent standard of life. Despite such recognition, the practice of engaging sanitation workers as casual/contractual labourers in huge numbers, depriving them of their rights is observed commonly. There is a need of a balance between the rights of such workers to be appointed as permanent employees in municipalities and the need to prevent their exploitation.

2. Situation of sanitation workers in times of natural calamities/ emergencies

The sanitation workers are among the frontline workers to handle situations whenever a natural calamity hits any part of the country. Since the damage caused is enormous, the efforts required to bring back normality in the situation is left to workers employed in the city as well as those brought from nearby places on contractual/ temporary basis. The task of cleaning cities hit by disasters is not void of its own set of dangers and predicaments. The hygiene level is extremely low and excessive caution is required to be exercised since the spread of contagious diseases, open manholes, polluted water and places, etc. is prevalent. It is commonly observed that they are not provided with the necessary safety gears and equipment to deal with such situations or if in special provisions even exists to protect them in such precarious circumstances. At most, what we see is honouring them with garlands. But is that enough for protecting them?

In the 2015 floods in Tamil Nadu, more than 2000 sanitation workers were brought to the city from nearby places to clean up the mess for the safety of other fellow citizens dwelling in the city, most of them being Dalits.¹² They were not even given basic safety gears including masks, gloves, soap, towels and no proper arrangements for their stay and food were made. The question that arises is – at what cost are these sanitation workers putting their life at risk? They are hired on contract basis and paid daily wages, in case they contract any disease or injury when they are on duty, no insurance amount or compensation is provided to their families or close relatives. The 2019 Chennai floods also failed to record any better situation for them. It was reported that the workers were transported to the city in the same lorries where garbage is carried devoid of any protective gears and exposed to such unhealthy surroundings, clearly in violation of their right to live with human dignity.

¹¹ Punjab & Ors. v. Jagjit Singh MANU/SC/1357/2016

¹²To read more: hindustantimes.com/analysis/flooded-chennai-s-dirty-secret-dalits-clean-rotting-mess/story-nyqoydzM32dnCoR9C1wZQI.html, <https://thewire.in/rights/2015-chennai-floods-krupa-ge-dalit-arunthathiyar>

In the year 1971, the WHO published a report written by M. Assar on '*Sanitation in Natural Disasters*'. The report recognized the need of proper protection gears and cleaning equipment for workers. It further emphasized that special arrangements for transport, living quarters and food should be provided for by the disaster relief division of the Government since proper food and rest are needed by them in such tough circumstances. It also noted that the sanitary rules applicable in normal circumstances fail to adequately deal with such emergency situations and hence, a framework to provide for such special circumstances recognizing their rights should rightly be framed by every country.

3. The consistent menace of manual scavenging despite legislation and active litigation

Manual scavengers are person engaged in the task of cleaning, carrying or disposing of human excreta, except those who have been provided with the requisite protective gear and devices as notified by the Central Government¹³. The problem of manual scavenging in India exists since centuries, with its roots deeply embedded in the caste system of the country. It is estimated that there are 7,70,000 sewer cleaners and 36,176 railway cleaners in India.¹⁴ These workers scrape human waste/ excreta from toilets, drains, tracks, carry them on their heads and dispose them. They have little choice but to continue with their traditional caste-based roles, leaving very few options for them to pursue any alternate employment owing to lack of proper implementation of laws and schemes.

The Protection of Civil Rights Act, initially known as Untouchability (Offences) Act, 1955 and The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, are the earliest legislations that made the practice of untouchability an offence. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, was formulated to prohibit the construction of dry latrines and employment of manual scavengers. Despite the Act, many States failed to issue appropriate notifications for proper implementation of the Act and thereafter, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was formulated to finally bring an end to the practice of manual scavenging making it punishable for anyone to hire a person for the practice of manual scavenging as well as prohibiting the construction of dry latrines. It also provides for rehabilitation of the workers who previously worked as manual scavengers.

The Courts have played a proactive role in a few cases including where the question of providing compensation to the families of the manual scavenger worker who died is concerned and have taken strict stance in ensuring the implementation of the Act and ordering the Government to do so.

Safai Karamchari Andolan & Ors. vs. Union of India & Ors.¹⁵ was one of the landmark decisions of the Supreme Court after the 2013 Act which laid down further guidelines on rehabilitation of manual scavengers and compensation payment of INR 10 lakhs to the family of the deceased. The case was filed by Safai Karamchari Andolan, an NGO working for the rights of manual scavenging and to bring an end to this practice. It was filed against the flouting of the provisions of the 1993 Act as well as to recognize the practice of manual scavenging as violative of Article 21 of the Indian Constitution.

¹³ Section 2(g), Defining of Manual Scavengers, Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

¹⁴ <https://www.safaikaramchariandolan.org/crisis>

¹⁵ (2014) 11 SCC 224

Despite legislation and litigation, the practice of manual scavenging persists. Workers can be seen digging near railway tracks and carrying human excreta in baskets or buckets over their head or scavenging out human excreta from sewers or blocked pipes. In the rural areas, there is caste-based discrimination as well as lack of proper water-based latrines, thus, requiring the workers to clean the human excreta with their own hands.

There are various reasons on the continued prevalence of the practice including:

(i) Lack of awareness of their right of refusal to do such work

The workers are uneducated and unaware of the laws framed for their protection and rehabilitation. Since the legislations are not uniformly implemented and executed, many are devoid of protection, not knowing that they have a right to refuse to do such work and the right to file for redressal in case a person forces them to do manual scavenging.

(ii) Fear among the scavengers of social ostracization and humiliation on refusal to work:

The manual scavengers belonging to the lower strata are threatened with social ostracization, for instance, being told by villagers (in some instances even Panchayats) to leave the village or abandon their land or house on their refusal to do the work. Non-action by authorities at the lowest levels and in some cases, complicity with the police and government officials, forces them to continue doing the work.

(iii) Non-implementation of the provisions of illegal employment and rehabilitation of such workers under the 2013 Act by the concerned authorities

The existence of manual scavengers despite legislation itself proves the failure to implement the 2013 Act. Many manual scavengers were not recognized under the Act and hence, their rehabilitation did not take place. The schemes for implementation of the Act were the same as under the previous acts and hence, not a lot of change could be brought in for better implementation of the Act.

(iv) Existence of dry latrines

One of the main reasons for the existence of manual scavenging is usage of dry latrines. According to the 2011 census, there are 26,07,612 dry latrines in India. Manual scavengers are employed in cleaning these latrines.¹⁶

4. Situation of sanitation workers during COVID-19, a public health emergency

The COVID-19 pandemic led to the emergence of a few invisible heroes including sanitation workers whose efforts although recognized are not honoured justifiably. The ones cleaning wards where COVID patients are admitted or quarantine centres or even picking up garbage from houses where COVID patients are self-quarantining or prospective COVID patients stay and the ones cleaning surfaces, are exposed to the

¹⁶ To read more: <https://www.safaikarmachariandolan.org/crisis>

risk of contracting with the disease. The city of Bangalore, New Delhi, Mumbai have recorded COVID positive cases as well as death of sanitation workers due to COVID.¹⁷ The workers in Bangalore demanded PPE kits, safety gears and health insurance, they being frontline workers in this fight against COVID. Although various schemes and notifications were frames, not much changed in order to ensure their safety from the pandemic.

(i). Health Insurance/ schemes

The Government issued a health insurance scheme for health workers fighting COVID-19 which provided for COVID-19 related death insurance of 50 lakh for ninety days. The scheme covers private hospital staff and public healthcare providers. The scheme, however, does not clarify whether it extends to sanitation workers not employed in a hospital. It also leaves out any benefits for those who collect solid waste from cities and towns, including quarantine areas. However, a few States and Municipalities themselves launched schemes which provided insurance cover to the sanitation workers as well. An Amnesty report¹⁸ reveals that Tamil Nadu announced one month of special pay to frontline health workers including sanitation workers at hospitals. Delhi, on 2 Apr, announced one crore insurance cover for COVID-19 related death of health care and sanitation workers. Punjab, on 4 April announced a special health insurance cover of 50 lakhs for police and sanitation workers. The Municipal Corporation of Greater Mumbai (MCGM) on 17 April, announced a compensation of 10 lacs for COVID-19 related death, for MCGM staff including contract workers, not covered under the Pradhan Mantri Garib Kalyan Package.

However, due to lack of a central-level scheme, not all sanitation workers are provided with similar level of benefits including an insurance cover on death caused due to COVID-19. Further, it is not enough to provide them with merely an insurance cover. There are cases to suggest that sanitation workers infected are not given health treatments properly and the cost that exists for such treatment is unaffordable for most of them and their families. It was reported that the Safai Karamchari Union in Delhi had requested the State Government to provide special quarantine centres dedicated to their workers and provide them free treatment.¹⁹ A major lacuna of most of the schemes is to cater to the sanitation workers employed in the hospitals/ quarantine centres and are ignorant of the danger to the sanitation workers on the streets and roads, or those collecting and disposing off waste from door-to-door. They are also exposed to the risk of touching any surface or waste material containing the virus.

(ii). Safety precautions and disposal of waste

India has a detailed law for disposal of bio-medical waste enlisted under the Bio-Medical Waste Rules, 2016. Further, the Central Pollution Control Board issued “*Guidelines for Handling, Treatment and*

¹⁷ To read more: <https://www.ndtv.com/bangalore-news/bengaluru-sanitation-worker-28-dies-of-covid-19-trade-union-demands-action-2264656>; <https://timesofindia.indiatimes.com/city/delhi/sdmcs-sanitation-worker-who-tested-positive-for-coronavirus-dies-at-aiims/articleshow/75386566.cms>; <https://thefactnews.in/bmc-sanitation-worker-tests-positive-for-coronavirus/>; <https://www.thenewsminute.com/article/twenty-three-sanitation-workers-bengaluru-test-positive-coronavirus-127506>

¹⁸ To read more: <https://amnesty.org.in/abandoned-at-the-frontline-indias-sanitation-workers-seek-immediate-help-from-the-government-amidst-covid-19/>

¹⁹ <https://www.hindustantimes.com/cities/sanitation-workers-union-demands-dedicated-quarantine-centres-for-staff-members/story-WP9zRiXLf128dR8wB9COHP.html>

Disposal of Waste Generated during Treatment/Diagnosis/ Quarantine of COVID-19 Patients – Revision 2” dated April 18, 2020. The guidelines have laid down segregation of waste in different colour bags for safe disposal as well as recognizes sanitation workers as an essential part of health infrastructure. The Solid Waste Management Rules, 2016 also lay down various rules for disposal of solid waste in houses, etc. However, the waste disposal law fails to provide any guideline for protection of the workers involved in the act of collecting, disposing or cleaning of waste.

A writ petition *Harnam Singh vs. Union of India & Ors.*, was filed in the Supreme Court praying for orders to the Government to follow the WHO guidelines issued for sanitation workers/ safai karamcharis. It was disposed by an Order dated April 15, 2020 where the Court recorded the statement made by the Solicitor General that the WHO guidelines were being followed. A similar writ petition was filed by the petitioner above and All Municipal Corporation Staff Union in the High Court of Delhi seeking protective gears for sanitation workers, carrying on testing of the workers and their families, installing sanitation cubicles and for adherence of guidelines issued for waste disposal, in Delhi. It was disposed of by Order dated June 09, 2020 where the Court noted the facts laid down in the affidavit filed by the Delhi Government indicating that proper safety gears including PPE kits were provided to those working in contaminated zones and that the WHO guidelines and waste disposal guidelines were followed.

In regards to provision for safety gears, the Central Government issued “*Guidelines on disinfection of common public places including offices*” according to which the worker has to wear disposable rubber boots, gloves (heavy duty), and a triple layer mask before starting any cleaning work. Further, the Ministry of Health affairs and Family Welfare issued “*Guidelines on Rational use of Personal Protective Equipment*” which require sanitation workers to be provided with N95 masks and gloves.

A proper comprehensive list of “*Do’s and Don’t’s for Sanitation Workers*” was issued by the New Delhi Municipal Corporation which *inter alia* includes providing them with Workers shall be provided with adequate PPEs including three layered masks, splash proof apron/ gown, heavy-duty gloves, gum boots and safety goggles.²⁰

However, despite the presence of appropriate laws, surveys indicate that the sanitation workers are not provided with safety wears including masks.²¹ They are sceptical to carry garbage bags from containment zones and households with COVID-19 patients as people are flouting the law and not segregating waste in different bags as required.

(iii). Wages and pay scales

The wages of sanitation workers are petty and dependent on various factors including whether they are permanent or contractual or casual workers. Keeping the risk factor in mind during the COVID-19 period, it is essential that they be adequately compensated for the risk undertaken by them during these times. For most of the sanitation workers, the lockdown did not affect them as work continued as usual. However, the risk factor did increase – they had to clean drains which contained used masks thrown by people, clean surfaces that were used by many people and pick up rubbish, usually from their bare hands.

²⁰ <https://www.ndma.gov.in/images/covid/do-dont-for-Sanitation-Workers.pdf>

²¹ <https://www.outlookindia.com/website/story/opinion-sanitation-workers-the-frontline-covid-warriors-india-doesnt-talk-about/353596>

From what can be noted of their right to wages during the COVID-19 lockdown, the Ministry of Home Affairs circular dated March 29, 2020 (“**MHA Circular**”) may be helpful to a few workers whose work was suspended due to the lockdown. The Circular provides that the employers have to make payment to their ‘workers’ during the period of lockdown despite closure of their establishments. The term, workers includes both contractual and casual workers. However, the above circular was opposed by employers and was suspended with effect from May 18, 2020.²² But the Supreme Court of India in the case of *Ficus Pax Private Ltd. & Ors. Vs. Union of India & Ors.* provided relief to the effect that for the 50-day period from 29.03.2020 to 18.05.2020, the workers shall be entitled to their wages and a settlement may be reached regarding the same between the workers and the employers.

The Courts have noted that the work done by sanitation workers and safai karamchahris cannot be compared to cases of other labourers. In light of this and the risk that they put themselves and their family exposed to, should be considered during this period of COVID-19 and a justifiable compensation should be bestowed to them in the form of higher pay scale.

IV. Commissions/ Unions/ NGOs Role in formulating policies/ improving conditions

Commissions and Unions play a fundamental role in advocating the rights of the workers and taking their struggles forward till the doors of the Court. Majority of judgments which have successfully been able to provide access to better rights to workers are fought through Unions. Labor union contracts create higher wage and benefit standards, working hours limits, workplace hazards protections, and other factors. Unions also promote well-being by encouraging democratic participation and a sense of community among workers. In fact, sanitation workers’ associations should be organized at city and state levels and their role must be recognized in formulating a sanitation policy, drafting welfare schemes and rehabilitation mechanisms and negotiating fair working conditions, specifically during widespread illnesses.

There are various other communities and NGOs working for uplifting the sanitation workers involved in the degrading, inhuman practice of manual scavenging. The organization include – The Sanitation Workers Project, WaterAid India, Movement for Scavenger Community, Dasra, Swasti, Educare, etc. Safai Karamchari Andolan initiated a 125-day long bus journey, ‘Bhim Yatra’ which aimed at sensitizing citizens and the Government of the menace of manual scavenging and the horrifying number of deaths caused due to it. The Yatris were family members of those who died due to inhalation of hazardous gases while scavenging sewers, septic tanks, etc. The Movement for Scavenger Community has established Community Resource Centers, providing a place for exchange of ideas among the members and to provide educational, recreational facilities and providing alternative career opportunities.

The efforts by these organizations are commendable. However, to eradicate the practice of manual scavenging all together, a nation-wide plan is required.

²² Ministry of Home Affairs order dated May 17, 2020

V. Role of the Courts: Evolving Jurisprudence on the Rights and Dignity of Sanitation Workers

Although the 2013 Act was in place, it is interesting to note how the Courts went a step ahead for ensuring justice for both manual scavengers and sanitation workers.

1. Going one step-ahead: Guidelines issued by Courts

The Supreme Court in its judgment in *Safai Karamchari Andolan & Ors. vs. Union of India & Ors.* noting the intent of the 2013 Act and for better protection of the community of manual scavengers, laid down further guidelines including:

- (a) For rehabilitation: State Governments to provide cash assistance, scholarships to the children of the workers, allot residential plots/ houses, provide training, concessional loan for alternate occupation, and legal assistance;
- (b) In case of sewer deaths, entering without safety gears even in emergency situation should be a crime and INR 10 lakhs compensation shall be payable to the family of the deceased;
- (c) Railways shall take steps to end manual scavenging on tracks;
- (d) Government to ensure less hurdles for persons to receive their legitimate dues under the law;
- (e) Women safai karamcharis to be provided support with their choice of livelihood schemes;
- (f) To identify deceased manual scavengers from 1993 and award 10 lakhs compensation to each of their families;
- (g) To ensure that rehabilitation is based on the principles of justice and transformation.

In the landmark case of *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*²³, the Supreme Court upheld the directions passed by the High Court of Delhi and in fact enhanced the compensation amount payable by the State bodies to the deceased manual scavengers' families. The directions include:

- (a) Free medical examination and treatment to be given to sewer workers and their wages not to be terminated during their period of illness;
- (b) Immediate ex-gratia amount of 1 lakh to be paid to the deceased's family;
- (c) State to provide modern protective equipment, soap, oil, restrooms, canteens, first-aid facilities, etc. to all workers;
- (d) All workers including contract workers to be provided with accident cum wage slip.

A landmark case that recognized the struggle of sanitation workers employed as contract labours was *Municipal Corporation of Greater Mumbai vs. Kachara Vahtuk Shramik Sangh*. Although the case has already been discussed above, it is worthy to note the following paragraph which not only recognizes the problems faced by the sanitation workers, but also confers special rights to them under labour laws:

²³ 2011 (8) SCC 568

“72. One does not have to go through years of such sub-human existence to complain of exploitation. The various ameliorative measures contemplated by the State for this class, their extreme backwardness tied up with the caste system, the lowly menial work they are forced to engage into by a public body which is bound to follow the ideals of the Constitution of India, makes the case of the concerned workers sui generis (meaning: unique, one of its kind) and cannot be compared to any other contract labour dispute.”

The Punjab and Haryana High Court in the case of *Court on its own motion vs. Union of India and Ors.* took suo motu cognizance of a news piece on a manual scavenger's death caused due to inhalation of hazardous gases in a drain and the inaction of the concerned authorities after the happening of the incident. The High Court took cognizance of the negligence on the part of the State Government and passed strict directions and orders including:

- (a) It is the responsibility of the States to ensure that the provisions of Environmental Protection Act, 1986 and the Rules, framed thereunder, are strictly followed. It is the duty of the Secretary, Executive Officers, Municipality/Panchayati Raj Institutions to ensure that the Solid Waste Management Rules, 2016 are implemented in letter and spirit;
- (b) The workers who are sweeping the roads at night should be provided with adequate protection equipment. Proper uniforms which have reflectors be provided with ID cards. They should also be provided with the brooms with sufficiently long handle and the length of the broom should be 80-85 cms. and the weight of the broom should not be more than 1 kilogram;
- (c) There should be proper disposal of solid waste in landfills. The municipal solid waste is also required to be treated by composting or by incineration and/or by deploying the bio-methanation process as well as Pyrolysis methodology;
- (d) Hazardous cleaning of sewers in the entire state was banned and it was held to be the duty of the State to ensure that no person is deployed for such tasks and sewer lines, manholes to be cleaned mechanically by use of latest technology;
- (e) Demolishment of all insanitary latrines and no such latrines should be constructed;
- (f) Declared all contracts, arrangements entered for purpose of manual scavenging to be invalid;
- (g) Provided for rehabilitation of manual scavengers recognized by State;
- (h) Provided for pension of INR 35,000/- every month to legal heirs of persons who died due to manual scavenging and deployed in private capacity;
- (i) Ordered for implementation of schemes relating to employment and loan sanction to manual scavengers.

The Madras HC in the case of *Secretary to the Govt of Tamil Nadu vs. Valaiyakka* directed all States and Union Territories to take appropriate action for implementation of the provisions of the Prohibition of Manual Scavengers Act, 2013, take action against violation of the Act and issued other guidelines to ensure rehabilitation of manual scavengers.

2. Issue of payment of compensation stipulated in the 2013 Act

In another case, *Rajesh and another vs. Delhi Jal Board and Others*, the Delhi HC held that the Government shall be 'strictly liable' for all deaths and injuries caused to any person due to manual scavenging. The facts of the case indicated that the Government was disclaiming its responsibility to pay

any compensation by citing that the deceased were not hired by them for cleaning the sewers and thus, were not their employees. The Court held that it a strict liability imposed under the 2013 Act on prohibition of practice of manual scavenging and if the State cannot ensure so, it will be held liable to pay compensation.

In another case, *Change India vs. Government of Tamil Nadu*, the Madras HC ordered payment of interest at 8% p.a. for the delay in payment of compensation by the State Government to the family of the deceased manual workers. The same was allowed in a similar case, *B. Panju Selvarani s. The Secretary to Government, Department of Home and Ors.*

The Karnataka HC in the case of *National Institute of Rock Mechanics vs. Assistant Commissioner and Executive Magistrate, Kolar Sub-Division and Ors.* held that even if a person is not recognized as a manual scavenger as per the provisions of the 2013 Act, it does not preclude such person or their Union to file complaint against the practice of manual scavenging.

3. Flouting of central/state directives by local municipalities

While the central government enacts laws, state representatives in panchayats, elected village councils, and municipal corporations too often not only fail to implement prohibitions on manual scavenging by private households, but also perpetuate the practice. As per the Human Rights Watch Report²⁴, in Maharashtra, panchayats had recruited people to manually clean toilets and open defecation areas on the basis of their caste, even denying them other jobs for which they are qualified within the panchayat. It was also reported that many workers were threatened by the panchayats that if they refuse the work, they will be thrown from the village.

It is to be understood that the end results for improvement in the conditions of manual scavengers/ sanitation workers can only be brought forth by amendments in the manner of functioning of the municipal corporations, local municipalities and panchayats in district, towns and villages. On the flouting of laws by Municipalities, the Kerala HC judgment in *Arumughan & Ors. vs State of Kerala & Ors.* may hold relevance. In this case, the municipality was found to be in breach of government orders issued in regards to appointment of sanitation workers. The Government Order prescribed that workers have to be appointed as per the list prepared by the employment exchange. However, the municipality was appointing new workers, otherwise than through the employment exchange. The workers that were shortlisted by the employment exchange filed a writ petition for their appointment as sanitation workers in the municipality. The court rightly held that the municipality has to adopt such procedure for appointment which is not violative of Art 14 and 16 of the Indian Constitution and in consonance with the Government Order. Further, the HC of Andhra Pradesh, in the case of *Dalitjathi Labour Contract vs. Commissioner, L.B. Nagar* also straightened up the municipality to order that directions issued by the Government have to be strictly followed by them.

The judgments above are indicative that the courts are sensitive of the issues faced by sanitation workers especially manual scavengers. The courts have taken a strict stance for implementation of the 2013 Act and ordered the Government and Municipalities to do so. The Supreme Court guidelines laid down in Re: Safai Karamchari Andolan are also ordered by the courts to be implemented to provide relief and rehabilitation

²⁴ <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>

to the sanitation workers. However, not all troubles, hardships and injustice faced by these workers reach their doors. The lacunas in the judicial system in terms of delay in serving justice and the cost and efforts required for filing and consistently following up on a case, deters many to take the legal route. Some of them are not even aware of their rights in the law and hence, continue to face discrimination or wrong doings by others.

VI. RECOMMENDATIONS

In light of the issues discussed above, a few recommendations for the way forwards are indicated below:

(a) In regards to hiring as contractual/ casual workers:

- (i). Abolish the practice of hiring as casual or contract labourers of sewerage cleaning, etc. by the municipalities;
- (ii). Provide for special protection in law in the form of a scheme/ programme for contract/ casual labourers employed as sanitation workers, to provide them with insurance cover, provident fund benefits and regulation of their wage scale.
- (iii). Lay down proper rules for contractors to providing minimum level of wages, safety gears, ensure fair working hours and leaves, maternity benefits, health benefits, etc. to their workers, with the principle to bridge the gap between the permanent workers and the contract workers, employed to do the same work. Those who fail to provide the same should be held responsible and face strict action.

(b) In regards to workers employed during natural calamities/ emergencies

There is need of sensitization of the Government and the people towards the condition of sanitation workers employed in calamity-hit areas in India and for special provisions for protection of their rights during such emergency times as a reparation for putting their lives at risk. This can be ensured by formulating a special policy as part of the National Disaster Policy or Plan of the Government dedicated to workers employed during these times by including the following points:

- (i) Provide for hygienic and decent housing and food arrangements for relief workers;
- (ii) Provide for wages and insurance cover which is at parity with the risk factor of their work;
- (iii) Setting up of proper medical camps and ensuring special treatment for the workers;
- (iv) No worker be allowed to work unless proper protective gears including gloves, boots, masks, head covers, etc. as well as cleaning equipment are provided;
- (v) Proper transportation facilities be provided from their home stay to the place of work.

(c) In regards to manual scavenging and dry latrines

The guidelines laid down by the Supreme Court and various High Courts are wide, adequate and provide benefits for manual scavengers. The need of the hour is proper execution of those guidelines to bring an end to this practice. However, the following may additionally be ensured to improve their conditions:

- (i). To take immediate steps for shifting to technological system for cleaning the sewerage system especially in rural and semi-urban areas;
- (ii). To establish special courts for redressal of compensation, rehabilitation and other related issues of manual scavengers
- (iii). To introduce stricter punishments for private parties for engaging in manual scavenging and construction of dry latrines;
- (iv). Regulation of municipalities, panchayats by introducing bi-monthly reports, proper follow-ups of cases of manual scavenging and demolishing of dry latrines, surprise checks by senior officers, etc. to be introduced;
- (v). Directives be issued to local authorities for strictly ensuring compliance of the 2013 Act and the directions issued by the Courts;
- (vi). Undertake educational programmes to sensitize people in rural and semi-urban areas on problems faced by manual scavengers and ending the caste-based and gender-based discrimination.

(d) In regards to trade unions

- (i). Establishment and recognition of fair and independent trade unions for sanitation workers to bargain and promote their ‘substantive rights’ – wages, hours of work, working conditions, leaves, maternity benefits, status of temporary workers, safety and protective gears, etc. by the Government;
- (ii). Trade unions to ensure minimal discrimination between different groups of labour, procedure followed by them to be transparent and democratic. Further, they should organize regular information dissemination and awareness generation sessions about the rights and entitlements of sanitation workers.

(e) In regards to COVID-19 situation

- (i). It is imperative that health facilities at free cost be ensured as well as immunity-boosting medicines be provided to all sanitation workers irrespective of them being contractual or temporary workers;
- (ii). Adequate provisions for providing Personal Protective Equipment (PPE) and other necessary safety gear to enable them to execute their jobs safely and without fear be ensured by not just the Government bodies but also for the sanitation workers hired by private parties;
- (iii). Ensure health-care benefits including central level scheme for insurance cover of minimum INR 50 lakhs for the sanitation workers and their family members, during and beyond the pandemic;
- (iv). Stricter penalties be imposed for hospitals, quarantine centers and containment zone residents for non-segregation of wastes as per guidelines laid down by the Government;
- (v). Proper, adequate cleaning equipment be made available for minimizing their risk exposure to COVID-19;
- (vi). Warnings and punishment be prescribed for those mis-behaving or ill-treating sanitation workers and obstructing their work.

(f) List of general recommendations for uplifting the condition of sanitation workers

- (i). A comprehensive set of guidelines to provide for entitlements including insurance cover for occupational diseases, wage pay scale, safety gears and cleaning equipment be laid down for both permanent and temporary workers.
 - (ii). Proper waste management be ensured and workers involved in collection, transportation and disposal of waste be provided with adequate safety equipment as per the requirement of their work
 - (iii). A fair wage scale be ensured for all kinds of workers including contractual, temporary workers.
 - (iv). Medical insurance or partial support must be initiated as a policy, keeping in mind the constant danger from physical injuries.
 - (v). Provisions of special facilities such as first aid kits, clean drinking water, resting centers, changing rooms, clean toilets, etc. be made for sanitation workers of municipalities and panchayats.
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VII. CONCLUSIONS

Most of the sanitation work performed is in disregard to safety and protection of the workers. Their pay scale is low, work is insecure and they face constant discrimination from the society. On a review of the laws and guidelines issued by the Court regarding evolving rights of sanitation workers, it is conclusive that they have many protections in law. However, the laws are failing to reach the downtrodden, poor, uneducated and unaware sanitation workers. It becomes the duty of the State to not only to have a law in place, but to make it accessible to everyone by targeted schemes and programmes, etc. Also, it is not the law which can change things alone, it is the collective effort of the municipalities, State Governments, staff and general public who need to clear the fog of stigma associated with the work done by sanitation workers especially manual scavengers. The basic fundamental right to live with dignity is to be ensured to them and the efforts and struggle should not stop until that has been done. As already noted, the Commissions and Union play an imperative role in putting forth their stands to achieve better working conditions for the workers.

The pandemic has brought new challenges in the lives of these workers requiring special laws to cater to their safety and protection. Treatment/ benefits at par with their recognition as forefront warrior should be conferred on them. Besides, it is time we also highlight the issues faced by them during natural calamities/ disasters and formulate a plan to protect their rights.

End
