



# Monthly BULLETIN

AUGUST - SEPTEMBER 2021 | Issue 04 |

## *Announcement*

Call for Articles, Op-eds, cartoons, book reviews and other submissions on recent matters related to the theme of social justice.

Call for contributions for ‘The Social Justice Blog’

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# COVER STORY

## IGNOMINIOUS PLIGHT OF SANITATION WORKERS

-Anchal Kathed\*



**Manual scavenging** is defined as:

*“The removal of human excrement from public streets and dry latrines, cleaning septic tanks, gutters and sewers”.*

In India, this conduct is still widespread, which is fuelled not only by economic and financial disparities, but also by prevalent caste and gender-based discrimination. Diarrhoea, skin infections, jaundice, anaemia, nausea, vomiting, and respiratory diseases are all side effects of this job, which impact not only the people who clean the septic tanks and sewers, but also the

women who handle uncovered heaps of faeces on their heads.

Musculoskeletal disorders, skin diseases, cardiovascular disease, varied infections, and breathing problems are all prevalent among these workers. In addition, these labourers are often underpaid, they experience severe from malnutrition and lack access to proper and quality healthcare care.

This article examines the facts on manual scavenging and then sheds light on the sanitation workers' situation and challenges, which needs immediate attention.

*\*The author is a second year law student at Institute of Law, Nirma University. All views are personal.*

## OBSERVATION OF COURTS

Recently, the [Bombay High Court](#) observed that the deplorable practise of manual scavenging continues in the country despite the legislative intent as per the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. The case concerned the death of scavenger workers who died in December 2019 while cleaning a septic tank in a housing society in Govandi. The court ordered the Mumbai suburban district collector to compensate the three widows of the scavenger labourers with Rs. 10 lakh per individual.

Orissa High Court in *Re: Deaths of Sanitation workers v. state of Orissa and ors [SUO MOTU W.P.(C) No.14589 of 2021-PIL]*., observed that the despicable exercise of forcing persons belonging to the impoverished, indigent and economically backward sections of Indian society undertake the dangerous manual cleaning of septic tanks and sewers persists despite the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

The sad and explicable position of cleaning septic tanks and sewers without any safety equipment shakes my nerves especially in a country where the preamble guarantees “*social justice, equality of status and opportunity, and fraternity assuring the dignity of the individual.*”

### **PATHETIC STATUS OF SANITATION WORKERS**

The occupational health risks have always been overlooked and those problems were never resolved. Health hazards sanitation workers face include noxious gas, cardiovascular degeneration, musculoskeletal diseases, infections, leptospirosis, skin problems, and respiratory problems.

India passed the Employing Manual Collection and Construction of Dry Toilets (Prohibition) Act in 1993, banning manual garbage collection for the first time. In 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (PEMSR), replaced this 1993 legislation.

In the *Safai Karmachari Andolan case [(2014) 11 SCC 224]*, SC ruled that manual waste collection violated international human rights obligations and further strengthened the authorization of PEMSAR 2013. Media sensitivity and societal attention happens only during unfortunate episodes of deaths while cleaning sewers or septic tanks, these deaths are just the tip of the iceberg.

The practice of exposing workers directly in contact with waste invites numerous health problems and diseases. Toxic gases in septic tanks and sewers, such as ammonia, carbon monoxide, and sulfur dioxide. It can result in workers losing consciousness. An estimated three health workers die every five days in India.

Due to the risks of daily work, countless people have been repeatedly infected and injured, and their lives have been shortened. Family members of health workers are also struggling, both because of the stigma of work and the loss of their lives or health.

### **SKETCHY POLICIES AND STRATEGIES**

There are inadequate calculations regarding number of toilets being built, construction of drainage pipelines, and development of treatment facilities, and little emphasis has been placed to design and maintenance of safety requirements. We even disregarded the range of services and the number of people tasked with

168,066	Rural manual scavenger households identified in 2011.
167,487	Manual scavenging households reported in February 25, 2016 government response in Lok Sabha.
182,505	Manual Scavenging households reported in July 28, 2016 government response in Rajya Sabha.
63,246	Manual Scavengers identified from national surveys 2013 and 2018.

maintaining the infrastructure, ultimately resulting in the deaths of sanitation workers. Au contraire, majority of the Indians while using toilets rely on leach pits and septic tanks for waste disposal, but little or no attention is paid on risk-free designing, upkeep and maintenance of those.

All frameworks for public investment and policy do not assess the consequences of these policies and investments. On the organizational level, things are in disarray. Mixing of rainwater, sewage, dirt, sediment and sewage sludge are all mixed together in these drains and sewers, requiring recurrent clogging that necessitates the need of sanitation workers.

On the legal side too, only the "employer" of the manual scavenger comes to spotlight, and not the owner of perilous infrastructure. In addition, in practice, the law is only relevant in the case of the death of a health worker. It is extremely difficult for an affected person to get compensation for any long-term ailment caused due to such practise.

## NO RELIABLE STATISTICS

At this stage a pertinent question arises as to whether it is possible to assess the problems of Sanitation workers with the available data. According to reports, these departments distributed hand gloves and masks to sanitary workers.

However, due to the poor quality of the equipment and inconvenience in usage, most workers rarely use this safety equipment. Furthermore, according to the 2011 census, India has 2.6 million filthy latrines, nearly a third of which were physically cleaned. As per 2011 Socio-Economic Caste Census (SECC), 168,066 rural manual scavenger families were recognized across India.

However, in February 2016, the administration informed the parliament that there were 167,487 manual scavenging families. There were 182,505 manual scavenging families recorded in July 2016.

The National Human Rights Commission has taken issue of counting the number of manual households/manual scavengers in the country with the lack of engagement. Recently, several states

"*make extravagant claim[s]*" that they don't have manual scavengers or feculent latrines, but such claims are "*far from the reality.*"

It is urgent to fix the responsibility in the event of erroneous reporting by the competent authorities, and the scope of the definition of manual scavenging must be broadened to encompass potentially dangerous scavenging also.



Source: sausociology.wordpress.com

### CRITICAL REVIEW OF PEMSR ACT, 2013

- As part of the study, most state and local governments denied the existence of artificial collectors and dry toilets in response to inquiries about the right to information. However, the baseline study as part of the project found that there were a large number of people in these locations.
- People involved in manual garbage collection have limited access to government program, benefits related to the rehabilitation, alternative employment and education of children.
- Ineffective execution of punitive actions for violations of PEMSR Act, 2013.
- PEMSR Act, 2013 lacked response to the changing nature of manual collection, including various forms of sanitation work.
- The Government of India allocated funds from the Self-Employment Program for the repair of manual garbage collectors from 2013-14 to 2018-19, which was affected by insufficient expenditure/poor use of the annual budget.

### SUGGESTIONS

**Firstly**, it is important to understand that the type of sanitary labour, as well as the method of vocation – governmental, commercial, or payment on daily basis – and the earnings, are all different. Therefore, any approach to enhance the position of sanitary workers must accommodate for such a heterogeneity, and any legislation or policy must cover all of the categories.

**Secondly**, a number of changes and new measures are required to undertake this challenge which would fall in four different buckets.

- Fixing entry and exit of sanitation workers: Inclusion of ID cards for the workers, improved contract designing etc.
- Targeting "*on the job*": making the work invulnerable, and more distinguished including improved safety gears, and modified redressal mechanisms.

**Thirdly**, ensure strict implementation of standard operating procedures and emergency sanitation response system in sewer pipelines and septic tanks to ensure the solemn commitment of and the health and safety of related staff.

**Fourthly**, there is need to review regulations regarding the formations of buildings so that management of sewage and wastewater can be done in a centralised way, and that they have all security systems, and establish clear responsibilities for owners of the deficient infrastructure. Further Fix accountability and responsibility of officials in implementation of the PEMSR Act, 2013.

**Finally**, there is need of extensive research regarding solutions for both rural and urban locations. It will also require to raise the public's awareness of the issue of manual garbage collection and the rights of environmental health workers, including the social review of the process of environmental health workers' participation and also considerable increase in budgets dedicated to safety innovation, as well as innovation among donors and charitable players. And, most importantly, it will necessitate constant people's attention through public appearances and community engagement.

## CONCLUSION

Sanitation workers have faced such severe societal persecution that the significance of their labour in preventing contamination, controlling the transmission of contagious diseases, and defending society's health has never been recognised. Implementing safety practises, workplace health monitoring and analysis, and a law that defines dangerous work practises and employment related health issues as suspected and damages recoverable should all be part of a campaign to achieve the health rights of these marginalised

people. The availability of medical assistance to scavengers and their family members through particular budgetary allocation and linkage to health care system like the Employees' State Insurance Scheme which will culminate in a protracted means of collective justice, which is their right. If not done a system like this will continue to stay a charade. Let's unite to recognize and to secure the dignity of all sanitation workers, ensuring that no one requires to do such job again and that those who have been compelled to perform such work must be granted productive employment in respectable conditions.

## 1) **T.V. Ramakrishna Reddy Vs. M. Mallappa & Anr.**

It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."

The issue with regard to title can be decided only after the fullfledged trial on the basis of the evidence that would be led by the parties in support of their rival claims.

## 2) **Sivasankaran Vs. Santhimeenal:**

The court is of the view that a decree of divorce dissolving the marriage between the parties be passed not only in exercise of powers under Article 142 of the Constitution of India on account of irretrievable breakdown of marriage, but also on account of cruelty under Section 13(1)(i-a) of the Act in light of the subsequent conduct of the respondent during the pendency of judicial proceedings at various stages.

The decree of divorce is, accordingly, passed. Marriage stands dissolved.

## 3) **S. Karthik & Ors. Vs. N. Subhash Chand Jain & Ors.**

This case is a classic example as to how an ingenious litigant, by taking recourse to a series of proceedings one after the other, has been successful in blocking the enforcement of a security interest, created in favour of a secured creditor, thereby defeating the very purpose for which the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') was enacted.

#### **4) Uflex Ltd. Vs. Government of Tamil Nadu & Ors.**

The enlarged role of the Government in economic activity and its corresponding ability to give economic 'largesse' was the bedrock of creating what is commonly called the 'tender jurisdiction'. The objective was to have greater transparency and the consequent right of an aggrieved party to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India (hereinafter referred to as the 'Constitution'), beyond the issue of strict enforcement of contractual rights under the civil jurisdiction.

In a sense the Wednesbury principle is imported to the concept, i.e., the decision is so arbitrary and irrational that it can never be that any responsible authority acting reasonably and in accordance with law would have reached such a decision. One other aspect which would always be kept in mind is that the public interest is not affected.

#### **5) Ram Manohar Lohia Joint Hospital and Ors. Vs. Munna Prasad Saini and Anr.**

The appellants, Ram Manohar Lohia Joint Hospital and two others, have filed this appeal taking exception to the order and judgment dated 15.11.2018 whereby Lucknow Bench of the High Court of Judicature at Allahabad has upheld the order dated 20.01.2010 passed by the Labour Court, Lucknow directing reinstatement of the first respondent herein, namely, Munna Prasad Saini along with compensation of Rs.20,000/- (rupees twenty thousand only) for the period of unemployment and entitlement to full pay from the date of the said order.

The appeal is, accordingly, partly allowed setting aside the direction for reinstatement, which is substituted with the direction of award of lump sum compensation of Rs.10,00,000/- (rupees ten lakhs only). The said amount would be paid within a period of ten weeks from the date of this order. In case payment is not made within the said period, the appellant would be liable to pay simple interest @ 0.5% per month from the date of this order till payment is made.



# NEWS & DEVELOPMENTS

-Muskan Deora

## 1) “Sign Language Day” celebrated by the Ministry of Social Justice and Empowerment.

The Indian Sign Language Research and Training Centre (ISLRTC), an autonomous body under the Ministry of Social Justice and Empowerment's Department of Empowerment of Persons with Disabilities (DEPwD), celebrated Sign Language Day on September 23, 2021, at the Dr Ambedkar International Centre in New Delhi.

The ISLRTC has observed International Sign Language Day every year since the United Nations established September 23 as International Sign Language Day. The program's goal is to raise public awareness about the importance of Indian sign languages, as well as the details regarding communication accessibility for people with hearing impairments.

## 2) **The case identification in the 2011 SECC exercise, according to the Centre, was *"fraught with inaccuracies."***

The Centre has informed the Supreme Court that the omission of any caste other than Scheduled Caste and Scheduled Tribe from the domain of Census is a cognizant policy decision made by the Central Government with respect to Maharashtra Government's petition for sharing census data of OBCs collected by the Centre in 2011-2013.

In an affidavit filed through the Ministry of Social Justice and Empowerment, the Centre contended that in such a scenario, any direction from the Court to the Census Department to include estimation of socioeconomic data to the extent relating to Backward Class Of Citizens (BCCs) of Rural India in the upcoming Census 2021, as requested by Maharashtra, would be directly analogous to getting involved in a policy decision.

**3) The government of Tamil Nadu has vowed to commemorate Periyar's birth anniversary every year as a symbol of his egalitarian values.**

Chief Minister M K Stalin said in the Assembly that the Tamil Nadu government has decided to mark the birth anniversary of reformist pioneer E V Ramasamy Periyar on September 17 each year as "Social Justice Day." Periyar's worldview was based on social justice, self-respect, rationalism, and egalitarianism, which Stalin claimed lay the groundwork for Tamil society's development during the last millennium and would continue to do so in the upcoming years.

As a result, the administration has chosen to commemorate the leader's birth anniversary every year as a sign of his egalitarian beliefs, according to the Chief Minister, who spoke amid thumping benches.

**4) Between FY 2018-19 and FY 2020-21, the budget allocated for the Department of Social Justice and Empowerment has reduced by 16 percent.**

According to data presented in the Lok Sabha by Minister of State for Social Justice and Empowerment A Narayanaswamy, most states do not use the budget allotted for the benefit of SC/ST, minorities, and economically disadvantaged sections of society in the country.

The data show a number of difficulties with fund distribution, use, and scheme execution across the country. Despite the fact that a question was asked about it, the minister did not provide any explanations for the lack of use of funds. The number of students from the SC and ST communities who have benefited from various welfare schemes has remained unchanged over the last three years, according to the data.

5) ***“The Ministry Of Social Justice And Empowerment Is Committed To Develop An Inclusive Society For The Divyangs”*: Dr Virendra Kumar**

Divyangs, according to the Minister, are an important aspect of human resources. He stated that the ministry is working on the Prime Minister's goal of *"Sabka Saath Sabka Vikas"* and has established many social initiatives aimed at creating a more inclusive society and empowering people with disabilities. In describing the Ministry's activities over the previous seven years, the union minister stated that the government is making every effort to give Divyang with increased rights and benefits by envisioning an integrated and seamless environment. The union minister highlighted the importance of skill training programmes for Divyang empowerment in order to integrate them into society for the country's general growth and to enable them become self-reliant and independent.

6) **The state of Tamil Nadu has shifted its focus to social justice.**

The death of a Scheduled Caste temple priest in Tamil Nadu's Pudukkottai district a month ago had just a little impact on the state's collective consciousness. The cold-blooded murders purportedly committed by a group of Caste Hindus have long been forgotten. However, the investigation is still ongoing.

This is not an isolated incident of caste-based violence. In recent years, there has been an exceptional increase in such incidents. During the period 2016-2020, 300 people from SC/ST communities were killed in caste murders across the state, according to RTI-based data collected by an NGO. What's even more startling is the dismal conviction rate of 4.3%. The state's rate of crime against women has risen in the state, from 15.6 % in 2019 to 17.4 % in 2020, according to a recent national crime report. After walking backwards for a while, Tamil Nadu appears to have now launched a long, laborious road towards equality.

## **National Human Rights Commission**

- *Sanya Bhutiani*

The National Human Rights Commission was set up as a Statutory public body under the Protection of Human Rights Act, 1993. It was constituted on 12 October 1993. The NHRC is responsible for the promotion and protection of human rights in the country. It has been established in conformity with the Paris Principles.

Human rights have been defined as “rights relating to Life, Liberty, Equality and Dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India” in section 2(1) of the Act.

The commission consists of five members other than the chairperson and other ex-officio members. The chairperson is the former Chief Justice of India or Supreme Court judge. The other members must include at least one woman with relevant experience and one Judge of the Supreme Court of India or Chief Justice of High court. Sitting Judges of the Supreme Court or the sitting Chief Justice of any High Court can be appointed only after the consultation with the Chief Justice of the Supreme Court.

**The key functions of the NHRC are stated in section 12 of the Protection of Human Rights Act.**

**These include –**

- Inquiry into human rights violation by the Government of India or negligence of such violation by a civil servant.
- Ensure the protection of human rights in the country and recommendation of measures to ensure effective implementation.
- To review factors that inhibit the enjoyment of human rights and recommend appropriate measures.

- Research and study on treaties and international instruments relevant to human rights and make recommendations for their effective implementation.
- Encourage the efforts of Non-governmental organizations and other institutions that operate voluntarily in the field of human rights.
- Conduct and promote research in the field of human rights.
- Visit jails and study the conditions of inmates in prisons.
- Promote awareness on the safeguards available for the protection of human rights through and engage in human rights education.



## **CSJ ILNU MONTHLY BULLETIN**

August- September 2021 Highlights

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Anchal Kated  
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Sanya Bhutiani  
Saumya Singh**



**Contact us at**  
[\*\*csj.il@nirmauni.ac.in\*\*](mailto:csj.il@nirmauni.ac.in)