

The background of the cover features a close-up, high-angle view of several books and stacks of papers. The books have various colored spines, including blue and black. The pages are mostly off-white or cream-colored, showing some signs of age. The lighting is dramatic, with strong highlights and deep shadows, creating a sense of depth and texture. The overall composition is centered and balanced, with the text overlaid on a dark, semi-transparent rectangular area.

2019

VOLUME 2 ISSUE 1 & 2  
APRIL & NOVEMBER

FIMT  
LAW JOURNAL

**THE RIGHT TO SANITATION IN INDIA****Ashwin Singh\***

*The paper is a brief insight into the 'right to sanitation' in India. Firstly, the author delves into the concept of water and sanitation as mutual rights, focussing also on international commitments, specifically of the United Nations General Assembly, towards the cause of access to basic sanitation. Furthermore, the author looks into the constitutional basis of the right to sanitation in India, specifically, under Part III and Part IV of the Constitution while understanding the 'transformative' nature of the Constitution and briefly tracing the relation of the Supreme Court vis-a-vis social action litigations. Finally, the author highlights a few landmark cases on the topic, which have helped understand the contours of the right and the actions taken by the Constitutional courts, in achieving the realisation of the same.*

**WATER AND SANITATION AS MUTUAL RIGHTS**

Water and sanitation have been interlinked since antiquity, as has been seen, amongst the ancient Romans, who used vast quantities of water for excreta removal. Similarly, discoveries have also revealed a network of toilets with flushing systems, in palaces built by the ancient Minoan and Mycenaean civilizations of the island of Crete, in Greece.

The nexus between water and sanitation, received impetus, with the 'sanitary revolution' in mid-19<sup>th</sup> century Britain, when water the waste removal was joined on a grand and universal scale, to ameliorate the unsanitary conditions, in the populous city of London.

The newly devised culture of 'flushing and draining' was based on the understanding that disease-carrying vapours, were the main causes of health problems and hence, only a 'large and constant' supply of water, could ameliorate the populace from epidemics like typhoid, cholera, and dysentery.

The nexus between the two was widely supported by vast segments of English society, which *inter alia* was riddled with a rigid class system and a burgeoning 'labouring population'. The architects of this novel sanitation system belonged to the upper echelons, and many experts even point out, that the entire

---

\* Mr. Ashwin Singh is a II-year undergraduate student pursuing BBA LL.B.(Hons.) from Symbiosis Law School, Pune.

network, was designed to raise support for the ‘*poor law*’ which was specially designed to keep the labouring population working in abysmal conditions, for inadequate wages, hence, it is argued that the ‘*dignity and good health of the masses*’ were not the inherent goals of the sanitation system.

Apart from grappling with class inequalities, the position of women, in 19<sup>th</sup>-century Britain, was dismal. The public support of women and children were factored in the entire sanitation system, to keep their patriarchs, in good health. As premature deaths owing to unsanitary conditions and consequent financial destitution were commonplace in English society at that time. Hence, while the ‘*sanitation revolution*’ was *prima facie* gender-inclusive, it was surely not a gender-based approach.

Ever since, Britain ushered in sanitation technology, since the 19<sup>th</sup> century, the ‘*flush and drain*’ system has assumed a central position in sanitation systems around the world, so much so that it has, unconsciously become a measure of a society’s development of sanitation facilities and found reflection in the sanitation systems of Chicago, Tokyo and Philadelphia for instance.

By the latter half of the 20<sup>th</sup> century, the world witnessed a steady and alarming rise in population and urbanization. The limited means of the metropolis was unable to find a meeting ground with the exponential needs of the populace, and hence, the daily sanitation needs of people were becoming difficult, resulting in adverse consequences on their health. The current system of ‘*flush and drain*’ which found a universal application, was becoming inconsistent with the times. A new global crisis emerged and in the late 20<sup>th</sup> century, the concept of a human right to sanitation began to emerge. Owing to the proliferation of the aforesaid ‘*flush and drain*’ sanitation system in the public health domain, the right to water and the right to sanitation have been conceptualized as fundamentally inseparable co-rights.

International legal systems have attributed very broad spectrums to rights. Article 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, for instance, makes it legally binding for states to afford “*an adequate standard of living . . . including . . . continuous improvement of living conditions*”<sup>1</sup> and guarantees to every human being, the “*right to the enjoyment of the highest attainable standard of physical and mental health*”<sup>2</sup>. However, it does not explicitly mention the right to sanitation. Scholars and activists soon began propagating a simple argument that, inadequate disposal of faeces contributes to diseases

---

<sup>1</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

<sup>2</sup> Ibid.

and epidemics, as was foreseen, and inhibits maintenance of physical wellbeing. Furthermore, adequate sanitation does not only have a nexus with physical wellbeing but also mental health, as it is inextricably linked with the dignity and privacy of the individual, hence, it is the *sine qua non* that the right to sanitation, not only deserves recognition as a human right but also be made, more free-standing, making commitments towards it more intensive and inactions towards the same, subject to organizational scrutiny and reproach.

For a greater part of the 20<sup>th</sup> century, the right to sanitation played second fiddle, often dissolving into an afterthought right, appearing as a ‘tag on to water’<sup>3</sup>, however, a major development occurred at the 2002 World Summit on Sustainable Development [“WSSD”], when the *Plan of Implementation* recognized and discussed the role of sanitation access as a means to poverty eradication, and “*improving human health, and reducing infant and child mortality*”<sup>4</sup>. Furthermore, the Plan of Action paired sanitation with water in the MDG-7, as an indicator of the international community’s progress.<sup>5</sup>

International recognition towards sanitation, received a radical change when in the year 2008, the United Nations declared the year as the ‘*International Year of Sanitation*’, yet the right to sanitation, was an ‘*institutional orphan*’<sup>6</sup> to the right of water, with international commitments being funnelled more actively for ensuring access to water than to sanitation, even though the two rights have been historically interlinked.

Instead, discussions circulated, to revamp the definition and scope of the term ‘*sanitation*’ from that of ‘*basic sanitation*’ i.e. excreta removal,<sup>7</sup> to ‘*complete sanitation*’ i.e. ‘*environmental cleanliness, hand washing, garbage removal, and wastewater disposal*’<sup>8</sup>.

However, two significant developments took place in the international community, concerning the right to sanitation. Firstly, **RESOLUTION 64/292, UNGA** (2010) tabled by the United Nations

---

<sup>3</sup> Rose George, *The Big Necessity: The Unmentionable World of Human Waste and Why It Matters* (Picador Paper 2014) 23.

<sup>4</sup> United Nations, *Plan of Implementation of the World Summit on Sustainable Development 4* (2002).

<sup>5</sup> Rose George (n 3)

<sup>6</sup> U.N. Secretary-General, *International Year of Sanitation, 2008: Report of the Secretary General*, U.N. GAOR, 1 5, U.N. Doc. A/64/169 (2009).

<sup>7</sup> COHRE *Manual on the right to water and sanitation*, (2007).

<sup>8</sup> UN Water, ‘*Tackling a Global Crisis: International Year of Sanitation*’ (2008) <<https://worldtoilet.org/wp-content/uploads/2014/02/the-international-year-of-sanitation.pdf>> accessed 26 September 2020

General Assembly understood the right to sanitation as a human right.<sup>9</sup> This was in furtherance of previous commitments to the cause, by the Human Rights Council,<sup>10</sup> the Committee on Economic, Social and Cultural Rights, the United Nations High Commissioner. The resolution also called upon states and international organizations to provide financial resources, capacity-building, and technology transfer, to provide safe, clean accessible, affordable drinking water, and sanitation to all. Secondly, **RESOLUTION 70/169, UNGA**, (2015), **which**, *inter alia*:

- a) Recognized the relation b/w the right to safe drinking water and right to sanitation, however, the two were distinctly recognized, warranting special attention and treatment, as they emanate from the right to life and human dignity and the right to attain the highest standard of physical and mental health.
- b) Expressing concern over the inability of the UN to meet the goals of MDG 7 as at that time, almost 2.4 billion still did not have access to improved sanitation facilities, and almost 946 million people still practice open defecation.
- c) The Resolution went to the extent of also correlating sexual and gender-based attacks, and the practice of open defecation amongst women.
- d) The lack of sanitation facilities for menstrual hygiene management, was also a cause of concern, as it added to the stigma around women and girls, and impeding gender equality.
- e) The Resolution also called upon States to eliminate gender, rural-urban, and income discrepancies, in ensuring the realization of the human rights to sanitation and called upon the States to extend the mechanisms surrounding these rights, to marginalized groups, and individuals belonging to groups at risk.
- f) The Resolution also stressed the promotion of women's leadership and participation, ensuring a **gender-based** approach to the right to sanitation and the right to water and called upon the States to tackle the issue of 'open defecation' on a war footing, while providing effective accountability measures for all water and sanitation providers, to prevent any human right abuse on their part.

---

<sup>9</sup> United Nations, 'The Human Right to Water and Sanitation' <<https://undocs.org/A/RES/64/292>> accessed 26 September 2020

<sup>10</sup> Official Records of the General Assembly, Sixty-third Session, Supplement No. 53 (A/63/53), chap. II. 13 A/HRC/12/50 and Corr.1, part one, chap. I.

Interestingly, the aforementioned obligations were also extended to non- State actors, business corporations, etc.

### **RIGHT TO SANITATION IN INDIA**

India's tryst with sanitation efforts can be compressed into the factoid released by the United Nations, "*Indians have greater access to cell phones than to a toilet or improved sanitation.*"<sup>11</sup>. Although India has been on a promising projectile of economic growth, it hasn't ushered in a period of '*economic development*', i.e an "*increase in output coupled with improvement in the social and political welfare of the people within the country*". India suffers from non-access to basic sanitation.

- a) According to the 2011 Census, the national sanitation coverage has been **46.9%**, and a total of **626 million** (**56%** of the total population) practices open defecation. Marginalized communities like Dalits and tribal have a sanitation coverage of **23%** and **16%** respectively.<sup>12</sup>
- b) Additionally, the rate of toilet usage too, is abysmal, for instance, in states like Madhya Pradesh, Bihar Jharkhand, Odisha, and Chhattisgarh, the usage ranges from **13.6% to 22% only**.<sup>13</sup>
- c) Around 794,390 dry latrines are present in India, Human excreta is removed from these by Human beings themselves, the majority of which is done by Dalit women.<sup>14</sup>
- d) India has approximately **1 million** sewage workers, who are exposed to occupational hazards and accidental deaths owing to inadequate protective gear.<sup>15</sup>

### **THE CONSTITUTIONAL BASIS OF 'RIGHT TO SANITATION':**

The Indian Constitution is the most verbose in the world.<sup>16</sup> The diversity of the Indian subcontinent, in the form of its languages, dialects, cultures, religions, customs, etc, made it all the more imperative for the Constituent Assembly to incorporate all these anomalies into a symbiotic document, which would soon assume the basis of a living, breathing democracy.

---

<sup>11</sup> News Release, United Nations Univ. Inst. for Water, Env't and Health [UNU-INWEH], Greater Access to Cell Phones than Toilets in India (Apr. 14, 2010), available at [http://www.inweh.unu.edu/News/2010-04\\_UNU-INWEHNews-Release-Sanitation.pdf](http://www.inweh.unu.edu/News/2010-04_UNU-INWEHNews-Release-Sanitation.pdf).

<sup>12</sup> Sujith Koonan, "Right to Sanitation in India: Nature and Scope" [2016].

<sup>13</sup> Ibid.

<sup>14</sup> Ibid

<sup>15</sup> Ibid.

<sup>16</sup> Ramchandran Guha, *India after Gandhi: The History of the World's Largest Democracy* (Picador, 2008) 87.

The Constitution was framed over a period of three years, from December 1946 and 1949, during which the drafts were discussed clause by clause by the Assembly.<sup>17</sup> The ‘*conscience of the constitution*’<sup>18</sup>, however, is contained in Part III and Part IV, of the Constitution, which outlined a series of Fundamental Rights and Directive Principles of State Policy.<sup>19</sup>

While the Fundamental Rights, which are justifiable in a court of law, are negative obligations on the State, to not stifle personal liberty. Furthermore, Part III of the Constitution is a potpourri of rights to religion<sup>20</sup>, equality<sup>21</sup>, cultural rights of minorities<sup>22</sup>, and prevention of untouchability<sup>23</sup> and forced labor<sup>24</sup>. *Per contra*, the Directive Principles under Part IV were not justifiable in a court of law, and were “*derived from the positive obligations of the state to provide for a more fulfilling life for the citizen.*”<sup>25</sup>

However, the Constitution does not explicitly recognize the right to water and right to sanitation, the Indian judiciary has translated the same from time to time under Part III & IV of the Constitution of India.

Article 124(1), Indian Constitution, mandates the establishment of the Supreme Court of India [“**SCI**”]. The SC is tasked with the responsibility of interpreting the laws,<sup>26</sup> and “*any law declared by the Supreme Court is binding on all other courts within the territory of India*”.<sup>27</sup>

Keeping this in mind, we proceed to the interpretative capacity of the SC and it impacts on actuating social change, how this has been incorporated into the arena of ‘*right to sanitation*’.

Article 21, when positively read, guarantees to every person, a *right to life and personal liberty*, which can only be deprived according to ‘*procedure established by law*’. The only caveat to the enjoyment of this right, as seen is ‘*procedure established by law*’. Remembering the landmark dissent of Justice Faiz Ali, in

---

<sup>17</sup> Ibid.

<sup>18</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford, 1999) 50.

<sup>19</sup> Ramchandran Guha, (n 16) 90.

<sup>20</sup> Constitution of India, Articles 25-28.

<sup>21</sup> Ibid. Art 14.

<sup>22</sup> Ibid. Art 29(1).

<sup>23</sup> Ibid. Art 17.

<sup>24</sup> Ibid. Art 23.

<sup>25</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford, 1999) 56.

<sup>26</sup> Fali S. Nariman, *The Indian Constitution: Dimensions and Perspectives* (1999).

<sup>27</sup> Constitution of India, Article 141.

*A.K. Gopalan v. the State of Madras*,<sup>28</sup> the phrase ‘*procedure established by law*’, means ‘*procedural due process*’, where the right to life and personal liberty could be eschewed only if it were preceded by the principles of natural justice.

The aforesaid view was affirmed in the case of Maneka Gandhi which was decided by the Honourable Supreme Court of India,<sup>29</sup> wherein a 7 Judge Bench of the SC, redrew the boundaries of the term ‘*procedure established by law*’ as being “*fair, just and reasonable*” and **not** “*fanciful, arbitrary, oppressive*”. The law should not be assessed only with regards to its object but based on its effect and impact on the fundamental rights. The SC, officially, and in essence, imported the American concept of substantive due process,<sup>30</sup> a concept towards which the Constituent Assembly, and the Central Government, in its erstwhile socialistic gusto, refrained from incorporating into the *dicta* of governance.<sup>31</sup>

However, this was not the sole import into the stream of Indian judicial thought. Legal experts have time and again expounded on the ‘*transformative*’ nature of the Constitution. At the time of framing the Constitution, Dr. B.R Ambedkar, faced considerable scorn, for “*simply copying the 1935 Act, into the Constitution*”, however, as Dr. Ambedkar would point out, such an argument was unfair, as it was only the “*details of administration, that had been borrowed*”<sup>32</sup>. In sum and substance, the Constitution has possessed an inherent transformative capacity. As Constitutional Law expert, Gautam Bhatia points out, the Indian Constitution “*firstly, transformed the legal relationship between the individual and the State*”<sup>33</sup>, “[*replacing*] *the colonial logic of governing and administering a population with the democratic logic of popular sovereignty, public participation, and limited government*”<sup>34</sup>. Furthermore, the “*transformation was expressed through, fundamental rights .... the right to life and personal liberty; and the right to equality before the law*”<sup>35</sup>. Additionally, the transformative avatar of the Constitution is also expressed by its provision of ‘*horizontal rights*’<sup>36</sup>.

---

<sup>28</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

<sup>29</sup> *Maneka Gandhi v. Union of India*, 1978 SCC (1) 248.

<sup>30</sup> Justice M. N. Venkatachaliah, *Human Rights: Role of the National Human Rights Commission of India*, JOURNAL OF THE 43RD CONG. OF THE UNION INTERNATIONALE DES AVOCATS (Union Internationale Des Avocats, New Delhi, India), Nov. 3-7, 1999, [25] [27].

<sup>31</sup> Ramchandran Guha, (n 16) 91.

<sup>32</sup> Parliament of India, Constituent Assembly Debates, Vol. VII, 4 November 1948 (Speech of Dr B.R. Ambedkar).

<sup>33</sup> Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts*, (1<sup>st</sup> ed., Harper Collins India, 2019) 10.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Constitution of India, Arts 15(2), 17, 23 (solely indicative, not exhaustive).

Such an enactment recognizes and combats not only the struggle for self-determination *vis-a-vis* the State but also against the colonial order which constitutes a multi-layer feudal structure<sup>37</sup>.

Hence, it is sufficiently clear from the aforesaid musings, that the Indian Constitution as we know of it, possesses a capacity to transform ‘*legacies of injustice*’, retrospective as well as prospective.

In its 70 glorious years of operation, the SC has assumed a significant role in invoking and enabling the ‘*transformative capacity*’ of the Constitution of the Republic of India. Since the inception of the Institution, this was not the case. As the popular argument goes, “*for the first 25 years, the Supreme Court was a conservative institution, aligning with landed and propertied interests, to thwart the ambitious reform agenda of successive governments*”<sup>38</sup>. This ideological sentiment reached its acme, with the infamous judgment of the SC, in *ADM Jabalpur v. Shiv Kant Shukla*<sup>39</sup> (the ***Habeas Corpus*** case), wherein the independence of the SC, kowtowed, to the might and caprice of the State. The lifting of the Emergency on **21<sup>st</sup> March 1977**, not only awakened public conscience towards the political caprice of the State but also served as a wake-up call to the SC, to undo its past wrongs. The SC retrograded from a *conservative institution* and ushered in a *transformative outlook* towards its responsibilities. One of the most notable jurisprudences, floated by the SC, in furtherance of this transformative lens, was the concept of Public Interest Litigations, [“**PIL**”] or “*social action litigations*”<sup>40</sup>, which, essentially, relaxed *locus standi* requirements, and procedural constraints, with the aim of “*ensuring responsive governance*”<sup>41</sup>. Most notably, PILs are attributed to even expanding, the ambit of Article 21, to include within its ambit, a “*host of socio-economic rights, (many of them incorporated from the DPSPs)*”<sup>42</sup>. Hence, even though the right to sanitation has not been mentioned in India’s Constitution, the Supreme Court has interpreted the *right to life*,

---

<sup>37</sup> Anupama Roy, *Gendered Citizenship: Historical and Conceptual Explorations* ix (Revised edn, Hyderabad: Orient Black Swan 2013).

<sup>38</sup> Gautam Bhatia (n 33) 15.

<sup>39</sup> *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521.

<sup>40</sup> Upendra Baxi, ‘Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India’, (1985) 4 (6) *Third World Legal Studies* 107.

<sup>41</sup> Gautam Bhatia (n 33) 15

<sup>42</sup> *Ibid.*

under Article 21, to include the *right to adequate sanitation*.<sup>43</sup>, for, the “*interpretation of Article 21 to mean life with dignity and not mere animal existence has the effect of increasing the worth of human beings.*”<sup>44</sup>

Sanitation has not only been a subject matter under Part III of the Constitution. Part IV of the Constitution too, better known as Directive Principles of State Policy [“**DPSPs**”] too, hints at ensuring adequate sanitation to the citizens, as a policy prerogative. Article 47, for instance, provides that it is the ‘*duty of the State to raise the standard of living*’. Furthermore, Article 48A provides that it is the ‘*duty of the State to protect and improve the environment*’. Adequate sanitation facilities without a doubt, serve as a vehicle for the holistic realization of the aforesaid principles.

### CASES ON ‘RIGHT TO SANITATION’

***Municipal Council, Ratlam v. Shri Vardichand & Ors [(1980) 4 SCC 162]:*** One of the foremost cases, involving the *right to sanitation*, that reached the doors of the SC, in the summer of 1980. The crux of the case involved the municipality of Ratlam’s failure to provide sanitary facilities, resulting in open sewage emitting an unbearable stench. While the citizens sought the assistance of the Apex Court, to mandate the municipal corporation, to fix the situation, the municipal authorities, *per contra*, cited ‘*insufficiency of funds*’ as the reason for the inability to make amends to the sanitation crisis. The SC, after referring to the relevant provisions of the Municipalities Act, was quick to point out, that the municipality had a statutory duty to provide sanitary facilities, and could not cite insufficiency of funds, as a defense, to get away with the crisis. The municipality’s failure to provide sanitation facilities was a derogation of the “*decency and dignity*” which are “*non-negotiable facets of human rights*” The municipality was ordered to rectify the problem within six months, along with a shift in budgetary allocation, to meet expenditures, for the sanitary facilities and greater, public health measures.

***L.K. Koolwali v. State of Rajasthan & Others [(1988) AIR (Raj.) 2]:*** The present case was brought to the attention of the Rajasthan HC [“**Raj HC**”] in furtherance of a suit filed by a resident of Jaipur city, claiming that the sanitation problem in Jaipur was hazardous to the life of the citizens, the aforesaid claim was “*backed by affidavits filed by the citizens of each locality referred to in the present writ petition*”<sup>45</sup>

<sup>43</sup> *Municipal Council, Ratlam v. Shri Vardichand & Ors*, (1980) 4 SCC 162.

<sup>44</sup> Justice J. S. Verma, *Constitutional Obligations of the Judiciary*, JOURNAL OF THE 43RD CONG. OF THE UNION INTERNATIONALE DES AVOCATS (Union Internationale Des Avocats, New Delhi, India), Nov. 3-7, 1999, at 32, 35.

<sup>45</sup> *L.K. Koolwal v. State of Rajasthan*, AIR 1988 Raj 2, [1].

to show the acute sanitation problem in Jaipur, which leads to a “*slow poisoning*”<sup>46</sup> and “*invited death at an earlier date than natural death*”<sup>47</sup>.

The court, interpreted **Chapter VI, S. 98, Rajasthan Municipalities Act, 1959** and opined that it was the *primary duty* of the Municipality, to remove filth, dirt, any bad odour from the environment<sup>48</sup> and the same cannot be bypassed by the Municipality, of insufficiency of funds or staff,<sup>49</sup> and the same is “*mandatory and obligatory to perform.*”<sup>50</sup>

The Raj HC directed that the dirt, filth should be removed by the municipality. within a period of six months,<sup>51</sup> and further appointed “*five eminent advocates as Commissioners to inspect the city with the petitioner and Administrator of the Municipality and submit a report*”<sup>52</sup>.

The present case *is* a creative interpretation of the Constitution and sagacious reasoning, possesses a ‘*transformative avatar*’, which is the *sine qua non* of modern democracy and fulfilment of basic human rights of the constituents of that democracy.

Firstly, the Raj HC, opined that the citizen has a complete right to know about the various actions & activities of the state, the departments, and the various other agencies of the state<sup>53</sup>. The erstwhile colonial ‘*privilege of secrecy*’ cannot survive in a democratic framework, which, India, now assumes.<sup>54</sup> While the right under Article 19(a) of the Constitution, every citizen, has the right of freedom of speech, the same, is not absolute, however, while the right is limited when interpreted *vis-a-vis* the affairs surrounding sanitation and ‘*other allied matter*’, every citizen of the Republic of India has the absolute right to know which information the states is withholding and how the state is functioning.<sup>55</sup>

---

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid. [6].

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid. [10]

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. [3]

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

Secondly, the Raj HC affirmed the views of the SC in *Ratlam Municipal Council* opening that the Maintenance of health and the preservation and development of the environment falls within the purview of article 21 of the Constitution of India.<sup>56</sup>

Interestingly, in this case, the Raj HC, interpreted Article 51-A, Constitution, which ordinarily casts fundamental duties on the citizens, as the “*right of the citizens*”<sup>57</sup>. Article 21, has hence been creatively interpreted to also render to the citizens *inter alia*, the fundamental ‘*right to ask for affirmative action*’.<sup>58</sup>

Furthermore, the Raj HC, affirmed the ‘*transformative*’ nature of the Constitution, as has been aforesaid, by highlighting, that, before independence, Indians used to be subjected, but we have ceased to be subjects of an empire, now we are citizens of a country<sup>59</sup>

***Delhi Jal Board V. National Campaign for Dignity and Rights of Sewerage and Allied Workers & Ors [(2011) 8 SCC 568]:*** An appeal was filed by the Delhi Jal Board, for setting aside an interlocutory order of a Division Bench of the Delhi HC, whereby it was directed to deposit Rs 79,000 with the Delhi HC Legal Services Committee in addition to the Rs 1.71 Lakhs paid to the family of a deceased sewage worker.

The present appeal has been a continuation of the multitude of PILs filed before the Delhi HC, by the National Campaign for Dignity and Rights of Sewerage and Allied Workers [“**NCDRSAW**”].

Delhi generates large quantities of sewage. At present, the total quantity of sewage generated is 2871 million liters/day.<sup>60</sup>

Delhi Jal Board is responsible for the treatment and disposal of wastewater. In a good estimate, almost 5500 workers are working in the sewage for the Delhi Jal Board, concerning the maintenance of the sewage system which also includes other related work. These sewage workers work in very bad working conditions, these workers are not only exposed to maximum risk including numerous toxics

---

<sup>56</sup> Ibid.

<sup>57</sup> Ibid. [2]

<sup>58</sup> Ibid. [4].

<sup>59</sup> Ibid.

<sup>60</sup> *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*, (2011) 8 SCC 568 [4].

and harmful substances, but a large number of these workers also face suffocation and deaths while working.<sup>61</sup>

Considering the abject conditions under which the sewage workers have been forced to work, the SC, recognized and opined on the plight of the ‘*sewage workers*’. This is an extremely important recognition, for the traditional international definitions of ‘*right to sanitation*’ do not focus much on the rights and empowerment of sewage workers, which is a peculiarity of Indian society. As has been aforementioned, many of the sewage workers employed in dry latrines are the marginalized castes of the erstwhile Indian caste system, to be more specific, Dalits<sup>62</sup>. Even amongst Dalits, it is the Dalit women who are specifically employed to clear up the ‘*dry latrines*’.

It is an unfortunate reality that these workers, are employed on a contractual basis, even by the State, probably the greatest contradictions of the great Indian democracy is that the very individuals and groups, that the Constitution mandates the State to protect, are engaged in this demeaning practice, by the State and its instrumentalities too, and this observation was also made by the SC in this case. The 3 Judge Bench, opined that sewage workers, owing to their illiteracy and historical destitution,<sup>63</sup> and reach out to these individuals.

In the vacuum of implementation, the third wing of the State, i.e. the judiciary, which has been entrusted as the “*vanguard of Fundamental Rights*” ought to fill the gap, this according to the SC, has occurred, through, first “*relaxation of the rule of locus standi*”<sup>64</sup>, followed by the relevant guideline and directions in the matter, *vide* Article 32, read with Article 142, Constitution,<sup>65</sup> to ensure that *justice is not only done but is seen to be done*. The court’s inability to commit to the aforesaid values, in the case, of sewage workers, was termed by the Court, as a “*failure of their constitutional duty*”<sup>66</sup>

The SC upheld the interlocutory directions of compensation to the family of the sewage workers, made by the Delhi HC and taking the cue of the concept of ‘*reasonable compensation*’, from their erstwhile

---

<sup>61</sup> Ibid.

<sup>62</sup> *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224 [2].

<sup>63</sup> Ibid.

<sup>64</sup> *State of Uttaranchal v. Balwant Singh Chauhan*, (2010) 3 SCC 402.

<sup>65</sup> *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241; *Vineet Narain v. Union of India*, (1998) 1 SCC 226; *Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294.

<sup>66</sup> *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*, (2011) 8 SCC 568 [31].

judgment in *Railway Board v. Chandrima Das*<sup>67</sup>, remitted the case to the HC, for an ‘*enhanced compensation*’<sup>68</sup>, while at the same time, *vide* their powers under Article 142, Constitution, directed payment of **Rs 3.29 Lakhs** (in addition to the payment of Rs 1.71 Lakhs) to the family of the sewage workers, through the Delhi HC State Legal Services Committee.

The appellant was also directed to ensure compliance with the impugned Delhi HC order, which lays down, *inter alia*:<sup>69</sup>

- a. Free medical examination and treatment to sewage workers, found ailing from an occupational disease, ailment, or accident until the workman is cured or until death.
- b. Immunity should be given to workers from termination by the contractors while they are sick or on medical leave.
- c. Payment should be given to the worker’s family in case of the death of the worker.
- d. All other kinds of payments such as provident fund, gratuity, and bonus should be provided to the worker.
- e. Modern Protective gear should be provided to the workers in consultation with NCDRSAW.
- f. Protective soap and necessary protection gear should be provided to all the workers.

Another important duty of the act is to provide all the workmen along with contract workmen with an accident card set as under the ‘**CPWD/PWD(DA)/DELHI JAL BOARD CONTRACTORS LABOUR REGULATIONS**’.

Delhi Jal Board has also been directed to provide compensation to the workers in case of death of the worker while on duty if the same should be provided within 8 weeks.

Furthermore, the appellant was directed to make the aforesaid directions made by the Delhi HC order, part of all agreements which may be executed with contractors/private enterprises for doing work relating to the sewage system.<sup>70</sup>

---

<sup>67</sup> *Railway Board v. Chandrima Das*, (2000) 2 SCC 465.

<sup>68</sup> *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*, (2011) 8 SCC 568 [51].

<sup>69</sup> *Ibid.* [7], [53].

<sup>70</sup> *Ibid.* [53].

***Safai Karamchari Andolan V. Union of India [(2014) 11 SCC 224]***: In December 2003, the Safai Karamchari Andolan [“SKA”] along with six other civil society organizations, as well as seven individuals belonging to the ‘community’ of manual scavengers, filed the present Writ Petition, *vide* Article 32, Constitution.

The fundamental averment of the petitioners was that the of ‘manual scavenging’ as well as of ‘dry latrines’ was *illegal* and *unconstitutional* as it violated **Articles 14, 17, 21, 23**, Constitution of India, and the **‘EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION) ACT, 1993’** [“the 1993 Act”]. Furthermore, the petitioner sought the court’s assistance, in giving directions to the Union of India for *complete eradication of the practice and rehabilitation of the persons engaged in the practice*.

In a 2002-2003 survey conducted by the Ministry of Social Justice and Empowerment, the total number of manual scavengers in the country was quipped at **over 6 million**,<sup>71</sup> and **95%** of these numbers, belong to the **Dalit** community.<sup>72</sup> Since the practice involves removal of human excrements from dry toilets with bare hands, brooms, or metal scrapers, the “*manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.*”<sup>73</sup>, allowing the perpetuation of rigid caste hierarchies.

Interestingly, the 1993 Act was enacted, in 1993, receiving Presidential assent on 5-6-1993. However, it was not in operation for about 3.5 years, receiving a layered application, first in the Indian states & Union Territories. Other states were expected to have the implementation of the same, *vide Article 252* of the Constitution, however, the National Commission for Safai Karamcharis constituted under the 1993 Act, reported, ineffectual implementation.

Furthermore, in a 2003 report of the Comptroller and Auditor General of India [“CAG”] it was noted that funding, ‘*liberation*’ and *rehabilitation* schemes towards manual scavengers and the committees constituted therein, were suffered, from the “*most serious lapse in the conceptualization and*

---

<sup>71</sup> *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224 [2].

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

*operationalization*<sup>74</sup> stemming from the failure of the Schemes, to apply the contents of the '93 Act, in the first place.

A combined reading of Article 17, Constitution and **Article 1, 2 and 23(3)**, Universal Declaration of Human Rights [**“UDHR”**] categorically lays down the inconsistency of the practice of manual scavenging with the principles of *‘abolition of untouchability’*, *‘equality’* and *‘existence worthy of human dignity’*.

After receiving Presidential assent on 18-6-2013, the Parliament replaced the '93 Act, with the **‘THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013’**, the provisions of which in the opinion of the SC, expressly understood and acknowledged Article 17 and 21 rights provided under the constitution to the persons engaged in cleaning human excreta on railway tracks<sup>75</sup>

The crux and main aim of this legislation were to stop manual scavenging and in case a person is seriously injured or died due to manual scavenging then the family of the deceased should be taken care of.

- a. No person, local authority, or any other government body shall after the commencement of this act employ any person in the task of manual scavenging<sup>76</sup>
- b. Local Authorities are required to make sure that all the dirty and insanitary latrines are listed and the same list needs to be published after two months from the commencement of this act<sup>77</sup>
- c. Furthermore, the occupier is required to be given a notice by the authority, within 15 days from the date of publication, to demolish the latrine or convert it within 6 months from the enactment of the act.<sup>78</sup>
- d. Any contract or agreement entered into before the commencement of this act for the aim of manual scavenging shall be held as void ab initio.<sup>79</sup>

---

<sup>74</sup> *Safai Karamchhari Andolan v. Union of India*, (2014) 11 SCC 224 [10].

<sup>75</sup> *Ibid.* [21].

<sup>76</sup> The 2013 Act, s 5(1)(b),

<sup>77</sup> *Ibid.* s 2(e),

<sup>78</sup> *Ibid.* s 4(1)(b),

<sup>79</sup> *Ibid.* s 6(1).

- e. Under Section 23 of the Act, if any ‘company’, which, for the Act, refers to a general company, and if it was found that the company whether knowingly or unknowingly was allowing people to do such kind of work then the company and/or its managers/directors, etc will be faced with the suitable term for their crimes.

Public memory is still fresh, with the unfortunate deaths of 4 sewage workers, involved in cleaning a septic tank, at the premises of India’s largest private developer, the DLF Gardens in New Delhi.<sup>80</sup> This incident is just one of the many incidents, which highlights how corporations also partake in this inhuman practice and assume the role of silent spectators in the vortex of this layered injustice. The Act, has, normatively, recognized and penalized, the perpetuation of the practice of manual scavenging even amongst corporations. However, there always lies a gap b/w theory and application, and many times, the corporations play a blame game and wriggle themselves out, as was seen in the *DLF case*, wherein, the corporation claimed that they outsourced the premises management to a real estate firm and hence claimed no responsibility for any actions arising on the premises. The police even arrested the director and supervisor of the company responsible for maintaining the plant, but did not have DLF prosecuted.

The Honourable Supreme Court has through Chapter IV of the act directed that the manual scavengers should be rehabilitated. This includes *inter alia*.<sup>81</sup>

- a. One-time case assonance to be provided.
- b. Enrolling the children of the manual scavengers for Government-funded scholarships.
- c. Giving a readily available plot of land to the person, this is given as per the willingness of the person.
- d. A person from the family of the concerned is trained in a specific skill set to make sure that that person can work for the family, at the same time such a person is given a monthly stipend also.
- e. A subsidized loan is to be given to a member of the family to make sure that the family could start up another enterprise.
- f. Criminalize entering sewer lines, without safety gears. Death occurring in place of such work shall be met with a single time payment of Rs. 10 Lakh to the family.

---

<sup>80</sup> Kunwar Singh, ‘A Lone Survivor Recalls How His Five Colleagues Died in a Delhi Sewage Tank’ *Quartz India* (India, 24 September 2018) <https://qz.com/india/1397995/sewage-worker-recalls-deaths-inside-drain-delhis-dlf-building/> accessed 7 September 2020

<sup>81</sup> *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224 [23.1].

**CONCLUSION**

The recent outbreak of the Covid-19 pandemic has made public health a topic of primacy and concern. To achieve a holistic and efficient public health system, it is the *sine qua non*, that sanitation facilities be made available to the citizens. As has been read before, sanitation is the means to a dignified and healthy existence, any interference with a person's right to sanitation results in a curtailment of his existence. The contours of the *right to sanitation*, in India, not only include the right of the citizens to access basic sanitation facilities but also address the rights of those, involved in the 'process' i.e. the '*manual scavengers*' which, as has been foreseen has been addressed and dealt with by the Constitutional courts extensively.

The author would like to acknowledge and extend his humble gratitude to the research publications written by **Rebecca M. Coleman** (*The Human Right of Sanitation for All: A Study of India*), **Keri Ellis**, **Loretta Ferris** (*The Right to Sanitation: Time to delink from the Right to Water*) and the **Forum for Policy Dialogue on Water Conflicts in India** (*Right to Sanitation in India: Nature, Scope and Voices from the Margin*). The aforementioned research publications have served as a beautiful guide, in helping the author better understand and formulate his paper.