

## WHAT AN ATTI-PITY: THE JUDICIAL STANCE ON MANUAL SCAVENGING IN 2021

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### *Abstract*

*The practice of manual scavenging- the manual cleaning, disposing of and handling of human excreta- prevails in India as an extant form of ancient social oppression and forced labour, rooted inadvertently in the caste system. Manual scavengers are to this day forced by virtue of birth and caste, to partake in this dehumanizing practice and are, by virtue of the very work forced on them, treated as “untouchable”. The Indian legislature and judiciary have over the years, attempted to curb this practice and aid the rehabilitation of manual scavengers through various legislations and judgements, notably Article 17 of the Indian Constitution which proscribes untouchability, the Protection of Civil Rights Act, 1955, and more recently, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and the The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.*

*Through this short comment, the authors aim to examine the extent to which the judiciary has succeeded in eradicating this appalling practice and enforced the various legislations and judicial decisions pertaining to manual scavenging; paying particular heed to the case of Baisil Attippety versus Kerala Water Association, as it is the judiciary’s most recent effort in expiating this atrocity.*

*Despite many progressive landmark judgements, the aforementioned case being a prime example, not a lot has changed to improve the lot for manual scavengers. This begs certain questions: How active have the Honourable Courts of this land been in tackling this problem and what more can be done to alleviate the situations of the so oppressed?*

**Keywords:** Manual Scavenging, Judicial Remedies, Compensation, Rehabilitation, Liability

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**BAISIL ATTIPPETY v. KERALA WATER AUTHORITY AND OTHERS**  
WP(C).No.11185 of 2014(S)

**FACTS OF THE CASE**

On 13.04.2014, two workmen, Madhav and Raju, were engaged in cleaning work inside the manhole of a Kerala Water Authority (KWA) sewerage pipeline wherein they were trapped.

The workers lacked sufficient gear and tools such as oxygen masks.

Police and Fire and Rescue personnel that reached the scene lacked the necessary equipment to conduct a proper rescue operation. Resultantly, the two workmen died inside the sewerage pipe. A sum of ₹4,00,000 was paid to the wives of the deceased as compensation by the contractor.

Consequently, instant public interest litigation is filed by the petitioner, Baisil Attippety, a renowned public interest lawyer, in order to provide sufficient compensation to the families of the deceased workmen.

**Issues**

- 1. WHETHER and to what extent the Kerala Water Authority is liable for the payment of compensation to the families of the workmen***
- 2. WHETHER the amount of 4 lakh paid as compensation by the contractor affects the liability of the State***

**ARGUMENTS ADVANCED**

***By the Petitioner***

The Petitioners submitted that when the employees were engaged in manhole of sewerage pipelines, adequate and necessary safeguards ought to have been employed by KWA officials, so as to avoid any accident. It was the lack of these safeguarding measures that led to the two employees' death.

The Petitioner further submitted that the Hon'ble SC in their judgement in *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & Others*<sup>1</sup> had issued guidelines and orders to be followed while workers are engaged inside the manholes of

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<sup>1</sup> (2011) 8 SCC 568

sewerage pipelines for cleaning. These guidelines included providing adequate gears and tools like oxygen masks to the workers engaged in such activity. Additionally, it was contended that ‘at least an Assistant Engineer of the Kerala Water Authorities’ be present at the workplace.

In light of these contentions, the instant writ petition was filed, seeking the following reliefs:

- ₹5 lakh as ex-gratia payment to the family members of each of the deceased, to be paid by the KWA;
- ₹25 lakh to be paid to each of the families of the deceased;
- An amount of ₹2 lakh each to meet the immediate expenses of the families, from the Chief Minister's Relief Fund.

Additionally, the petitioner, grounding their contentions on the judgement in the case of *People's Union For Civil Liberties v. Union Of India & Anr.* (Night Shelter Matters)<sup>2</sup>, also prayed for directions to be issued by the Court to the 12<sup>th</sup> respondent, Chief Secretary, Government of Kerala as well as the 6<sup>th</sup> respondent, the Cochin Corporation, to set-up night shelters for the benefit of migrant workers in the state of Cochin and throughout the state of Kerala.

### ***By the Respondents***

The Respondents contended that a payment of ₹4 lakh had already been made by the contractor as compensation to the bereaved families.

Further, it was submitted that nothing in the directions issued by the Hon'ble SC in *Safai Karamchhari Andolan & Others v. Union of India & Others*<sup>3</sup>, indicates that the compensation amount must be paid by the KWA or the Kerala State Government.

Finally, learned counsel for the Kerala Water Authority prayed that a direction be issued, enabling the State of Kerala, or the Kerala Water Authority, to recover the payments to be made by them.

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<sup>2</sup> (2010) 14 SCC 604

<sup>3</sup> (2014) 11 SCC 224

### ***Decision of the Court***

The Hon'ble HC of Kerala, in pursuance of the writ of mandamus issued by the Hon'ble SC in the case of *Safai Karamchari Andolan v. Union of India*<sup>4</sup> mandating the strict implementation of the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*<sup>5</sup>, inter alia seeking enforcement of the fundamental rights as guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India, relied upon the directions provided by the Hon'ble SC in said case, and directed the Kerala State Government to pay an amount of ₹10 lakh to the families of the deceased in addition to the compensation of ₹4 lakh already paid to them by the contractor, within a period of two months.

The Hon'ble HC held that the directions given in *Safai Karamchari Andolan*<sup>6</sup> were issued against the Union and State Governments only<sup>7</sup>, making them liable to compensate for any and all loss of life suffered while engaged in manual scavenging and manhole cleaning work performed under state authority, and that the judgement of the Hon'ble SC was to be honored in letter and spirit, without allowing for further litigation.

Regarding prayer for directions with regard to enabling the KWA or the State Government to recover the payment made by them, the Hon'ble HC decided not to express an opinion, stating that it was for the two bodies to work out the modalities thereof.

### ***Comments***

The stance taken by the Hon'ble HC is without doubt progressive and in tune with the Constitutional principle of social justice. The barbaric reality of manual scavenging presents a stark reflection of entrenched caste disabilities and the evil of untouchability that plague India. It has been deprecated severely by our Constitution makers, most notably by Dr. B. R. Ambedkar. Accordingly, the practice has been abolished and protections against the same have been guaranteed under Article 17 of the Constitution. This was brought into effect

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<sup>4</sup> *Ibid* at para 8

<sup>5</sup> Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46, Acts of Parliament, 1993

<sup>6</sup> *Supra* note 3, at para 14.

<sup>7</sup> *Ibid* at para 15

through the enactment of the *Protection of Civil Rights Act, 1955*<sup>8</sup>. Section 7A of the Act provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability, which is punishable with imprisonment.

The Act of 1993<sup>9</sup> was specifically enacted for this purpose: to outlaw the employment of manual scavengers and eradicate dry latrines. However, the Act remains abysmally ineffective, and the practice continues unabated.<sup>10</sup>

The *Safai Karamchari Andolan* case continued as a mandamus since 2003, until *The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013*<sup>11</sup> was enacted. It expanded the scope of available legislation with respect to manual scavenging and included within its ambit “hazardous cleaning”, “insanitary latrines”, and “manual scavenger”.<sup>12</sup> It also contained legal mandates to identify and rehabilitate workers engaged in the practice of manual scavenging, and to mechanise sanitation work.

A perusal of the *Safai Karamchari Andolan*<sup>13</sup> judgement reflects the crude ignorance and unwillingness of the State to implement the Acts of 1993 and 2013. In the landmark judgement, the Hon’ble SC issued directions<sup>14</sup> for the purpose of rehabilitating persons included in the “final list”<sup>15</sup> of manual scavengers. The Hon’ble Court further elaborated on the scope of “rehabilitation” for the purposes of the Act. The definition of rehabilitation is to include the families of the workers who die while engaged in manual scavenging or “hazardous cleaning” activities. It is explicitly mentioned that-

*“(ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include :-*

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<sup>8</sup> Protection of Civil Rights Act, 1955, No. 22, Acts of Parliament, 1955

<sup>9</sup> *Supra* note 5.

<sup>10</sup> Annual Report, National Commission for Safai Karmachari, Ministry of Social Justice and Empowerment, Government of India, Available at: <https://ncsk.nic.in/annual-report/> (Accessed on: 25 March 2021)

<sup>11</sup> Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, No. 25, Acts of Parliament, 2013.

<sup>12</sup> *Id.* at § 2(1)(d),(e),(g).

<sup>13</sup> *Supra* note 3, at para 8.

<sup>14</sup> *Ibid* at para 14.

<sup>15</sup> *Supra* note 11 at § 11,12.

*(a) Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of ₹10 lakhs should be given to the family of the deceased.”*<sup>16</sup>

Paragraph 6 of instant judgement clarifies that the task of rehabilitation has been taken up as a responsibility of the State. The fact that the State of Kerala, through the principal employer KWA, was held accountable for the demise of the two poor workers and was directed to pay ₹10 lakh as compensation, in line with the directives issued in *Safai Karamchari Andolan* by the Hon'ble SC, is unquestionably deserving of plaudits; as is the fact that the amount of ₹4 lakh paid by the contractor was not considered while deciding the quantum of compensation due by the State Government.

This decision of the Hon'ble HC to hold the amount paid by the contractor as irrelevant insofar as the compensation due by the State Government is concerned, could well be a landmark judgement as far as compensation for deaths due to manual scavenging work is concerned.

In *Dr. K.M. Ravichandran v. The Commissioner*<sup>17</sup>, the Hon'ble Madras HC affirmed the modalities to be followed for the disbursement of the compensation amount of ₹10 lakh as decided by the relevant government authority. *“On behalf of the occurrence engaged by the ULBs, compensation has to be initially paid by the ULBs from their General fund and action has to be initiated against the contractors to recoup the amount.”*<sup>18</sup>

The stance of the Madras HC clarifies how the flow of payment of compensation goes in cases where the deceased worker was not engaged directly by the State but rather through a contractor. If the contractor fails to provide the necessary protections, resulting in death of the worker, the liability to make initial payments to family members rests with the state, but is recoverable from the contractor.

It is pertinent to note that the “final list”<sup>19</sup> as defined under Sections 11 and 12 of the 2013 Act does not include the names of deceased sanitation workers. The provisions of

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<sup>16</sup> *Supra* note 6.

<sup>17</sup> 2017 SCCOnline Mad 21839.

<sup>18</sup> *Ibid*

<sup>19</sup> *Supra* note 15.

rehabilitation under *Section 13*<sup>20</sup>, and for the purposes of the Act as interpreted by the Hon'ble Courts, have been extended to affect family members as well. This particular question of law was settled in the case of *Smt. Chinnamma & Ors. v. State of Karnataka*<sup>21</sup> wherein the Hon'ble HC of Karnataka observed that in case of death of a sanitation worker due to lack of safeguards, "*the Courts are not only entitled but under the constitutional obligation to take cognizance of the issues relating to the lives of people who are forced to undertake jobs which are hazardous and dangerous to life*" and also held in the same case that "*Just as development is inclusive, justice has also got to be inclusive. The dependents of the deceased manual scavenger cannot be perennially left to their fate.*"<sup>22</sup> Following this, the Hon'ble Karnataka HC issued orders to the State to grant to the dependents of the deceased manual scavenger the compensation due to them and to grant them relief under Section 13. The Kerala HC gave due consideration to the relevant directions issued by the Hon'ble SC in the *Safai Karamchari Andolan* case, specifically, Paragraph 14<sup>23</sup> of the judgement, which includes, beyond the aspect of monetary compensation, other rehabilitative remedies such as;

- a) Scholarships to the children of manual scavengers;
- b) A ready-built house or a plot of land with financial assistance to build a house;
- c) Training in livelihood skills to at least one family member of the deceased along with a monthly stipend;
- d) Subsidized loans to a single adult member of the family to aid the taking up an alternative occupation on sustainable basis;
- e) Other legal and programmatic assistance, as notified by the Central or State Governments.

The Hon'ble SC further opined that "*If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include :-*

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<sup>20</sup> *Supra* note 11.

<sup>21</sup> ILR 2016 KAR 2116

<sup>22</sup> *Ibid* at para 9, 13

<sup>23</sup> *Supra* note 6.

- (a) *Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.*
- (b) *Railway authorities must undertake time-bound strategies to eradicate manual scavenging on railway tracks.*
- (c) *Persons released from manual scavenging should not have to struggle to receive legitimate recompense due under the law.*
- (d) *Provisions to support the dignified livelihood to Safai Karamchari women in accordance with their choice of livelihood schemes.*
- (e) *Identification of the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs to family members in case of death.*
- (f) *Rehabilitation must be based on the principles of justice and transformation.*<sup>24</sup>

It can be noted from the above extract that the Hon'ble High Court of Kerala in the instant case awarded the prescribed remedy in terms of financial compensation to the families of the deceased workers. However, the court declined to include in their order, any of the other remedies listed out by the Apex Court in the *Safai Karamchari Andolan* case.

While the importance of financial compensation cannot be understated, it is imperative that the aid offered to them does not conclude merely at monetary compensation but also extends to proper rehabilitation. The rehabilitative remedies as mentioned in the above judgement would undoubtedly assist in overcoming the social evil of manual scavenging. It becomes increasingly clear upon further reading of the landmark *Safai Karamchari* case, that the Apex Court envisions a proactive role of our collective State machinery in the effective implementation of the Acts, which include complete eradication of the practice of manual scavenging, along with speedy and effective rehabilitation of affected citizens for the meaningful realization of Fundamental Rights and equitable development.

The State must take urgent cognizance of this heinous caste disability and actively work to improve the conditions of the most downtrodden in its quest to realize the Constitutional

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<sup>24</sup> *Ibid*



goals of equality, fraternity, dignity, social justice, and freedom from all forms of exploitation.

## **CONCLUSION**

The instant judgement by the Hon'ble Kerala HC prompts cautious optimism for the precedent it sets in awarding compensation to the bereaved families of manual scavengers who have died in the course of their employment.

However, it must be criticized on the grounds that it does not provide the utmost that the law offers, i.e., proper rehabilitation and transformation of conditions, as prescribed by the authority of law.

Thus, it may well be considered a small step in the right direction along the long road ahead in the integral battle of Indian society against the social evil of manual scavenging.