

IN THE SUPREME COURT OF INDIA
EXTRAORDINARY WRIT JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2019

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

CRIMINAL JUSTICE SOCIETY OF INDIA

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

(PAPER-BOOK)

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ADVOCATE FOR THE PETITIONER: FUZAIL AHMAD AYYUBI

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SYNOPSIS LIST OF DATES

The Petitioner has preferred the instant Public Interest Litigation vide a Criminal Writ Petition to affix the liability and accountability on the Government office bearers & officers pertaining to their dereliction of duty and negligent role in failing to curb the employment of Manual Scavengers in the country. Despite a prohibition on employment of persons as manual scavengers, this age-old banished tradition continues. The Manual Scavengers are thus subjected to inhuman working conditions by being exposed to diseased sewages and pits; wherein the said scavengers are forced to work without any protective gears. The aforementioned unsafe working conditions result in either the manual scavengers contracting chronic or acute diseases or suffering injuries, for which no medical-care facilities are in place; or may result in the unfateful and untimely demise of the manual scavengers, wherein in majority of the cases even compensation by the concerned State is not awarded to the next of kin. The Petitioner, in public spirit has approached this Hon'ble Court with bonafide intentions, praying for an order or direction by this Hon'ble Court for ascertaining the actual number of manual scavengers employed in the country since 1993; to estimate the number of dry/insanitary latrines existing or constructed since 1993; number of manual scavenger deaths in the country actual number of manual scavengers who met with an

untimely death since 1993; and to investigate into the aforementioned deaths and initiate criminal proceedings by registration of First Information Reports (F.I.Rs) against the erring officials and contractors under Section 304 of the Indian Penal Code, 1860.

In India, it is often found that the laws for ensuring social transformation lack social conscience. On the issue of manual scavenging, the nation has always lacked the political will and hence, the legislations to abolish this practice could not be converted to social justice for millions of manual scavengers. The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal, cleaning septic tanks and sewers is not only diabolic but is perhaps the highest degree of human rights violation. A plethora of legislations were enacted for ensuring an equitable and casteless society, but the conditions of the scavenging communities have remained deplorable. It is an irony that after decades of independence; it was in the year 1993 that Manual Scavenging was declared as illegal by way of *The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*. It was drafted by the Ministry of Urban Development as an issue under item 6 “Public Health and Sanitation” of the state list. As a result, the act

gave importance to public sanitation and placed only marginal emphasis on the objective of liberating persons employed as manual scavengers. Another reason was the narrow definition of a manual scavenger did not cover scavengers other than those cleaning dry latrines. It excluded manhole workers (sewer workers), scavengers cleaning septic tanks, open defecation, and railway tracks. The act also lacked a clause on rehabilitation of manual scavengers. The law could have instead been legislated under “human dignity” in the union list. Since the 1993 act was a state subject and not mandatory, several states refused to adopt it, while others framed their respective acts. Several states such as West Bengal, Kerala, Jammu and Kashmir, and Chhattisgarh refused to adopt it while others like Bihar and Rajasthan framed their own acts. In fact, the legislation would have had weightage if the central government had rooted the act in the problem of caste instead of merely addressing it as an issue of sanitation. Since its implementation, not a single case was registered across India under the act and the government had no option but to bring in a new law in the ambit of human dignity and thus, the Parliament enacted *The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013* introduced by the Ministry of Law and Justice which came into effect from September 19th, 2013 thereby overriding the provisions of the Act of 1993.

Moreover, keeping in mind the hazardous and inhumane conditions that the Manual Scavengers are subjected to, the Department of Social Justice and Empowerment (Ministry of Social Justice and Empowerment) vide gazette notification dated 12th December, 2013 brought into effect the Prohibition of Employment as Manual Scavengers Rehabilitation Rules, 2013 which provided for protective gear and equipment to be made available to the persons engaging of septic tanks and sewers (Rule 4) and cleaning equipment to be made available by the local authorities for the same (Rule 5). The same was done with the intent to prevent the increased number of casualties that the manual scavengers are subjected to.

Moreover, it is pertinent to note that the definitions of SafaiKaramchari (Section 2(h) of National Commission for SafaiKaramchari Act, 1993 and Rule 2(h) Prohibition of Employment as Manual Scavengers Rehabilitation Rules,2013) and that of Manual Scavengers (Section 2(j) the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and 2(g) of The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013) overlapt to a certain extent as both the abovementioned definitions deal with human excreta. However, the manual published in 2013 by Ministry of Social Justice and Empowerment stated that “SafaiKaramcharis, per se, are not manual scavengers. All manual scavengers are safa

ikarmcharis but all safai karmcharis are not manual scavengers.”

Hence, the term Safai Karamchari is the genus and the term Manual Scavenger is the species.

As of 2018, it is estimated that India still has 26 lakh dry latrines and the Safai Karmachari ndolan, which has campaigned for the eradication of manual scavenging since 1995 estimates that between 2014 and 2016, nearly 1,500 people have died while cleaning septic tanks across India. Astonishing, between 1993 and 2013, no convictions were recorded for violation of the Act of 2013. Recently, in an article published by The Indian Express it was reported that 1 manual scavenger persons dies while cleaning sewers and sceptic tanks every five days sincethe beginning of 2017. At least 300 people have died doing such work since 2017. The National Commission for SafaiKaramchari said that as per their records at least 123 people have died in sewer deaths and estimated at least another 612 people have died since 1993.Karnataka, which has over 15,000 manual scavengers, recorded 60 deaths related to manual scavenging, between 2008 and 2016. In July 2016, a meeting was convened by the National Commission for Scheduled Castes (NCSC), where representatives of States and Union Territories were asked to share data related to the number of dry latrines and manual scavengers. The data submitted however, showed a severe mismatch. As of

December 2015, Telangana reported 1,57,321 dry latrines but zero manual scavengers, a barely believable figure. Himachal Pradesh declared 854 dry latrines in the state but zero manual scavengers, while Chandigarh reported 4,391 dry latrines but only 3 manual scavengers. The numbers clearly show the reluctance of State Governments to identify the existence of manual scavenging as a prevalent practice. Rajasthan, Punjab and West Bengal were the only states which reported an increase in the number of manual scavengers in the last two years. Even worse, there appears to be a discrepancy in the data as provided by the States with regard to the number of deaths recorded. Despite over 1500 deaths in the last 5 years, as per the data collected by the Rashtriya Garima Abhiyan which is in no way complete and conclusive of the actual number of deaths, no convictions has been recorded in relation to these deaths, showing how lightly the problem was looked at by the state administration. Furthermore, the Indian Railways is the largest employer of manual scavenger, yet, astonishingly no data pertaining to the number of persons engaged or employed directly or indirectly and consequent deaths has been provided by them.

In March 2017, Byappanahalli police in Bengaluru registered a case of culpable homicide not amounting to murder under Section 304 of the Indian Penal Code, against a contractor for employing 3 manual scavengers who died during cleaning of sewers. On

25.09.2018, the Hon'ble Chief Minister of Delhi held a meeting with the State Level Monitoring Committee on manual scavenging which was directed to set Standard Operating Procedures (SOPs) for monitoring private housing complexes/societies where hiring of people for sewer cleaning is concerned and informed that in case of death of a person employed as a manual scavenger, the District Magistrate of the said area would be held responsible and could be penalized u/s 304 of the Penal Code. Furthermore, the person in-charge for cleaning of the septic tank or sewer will face charges u/s 304 and not 304A, 1860.

That the Apex Court in the Case of ***Safai Karmachari Andolan And Ors. v. Union of India And Ors. (2011) 11 SCC 224*** also held that the states must work towards rehabilitation of manual scavengers which in tune means to reduce the number of Manual Scavengers in the Country. Furthermore, directing that in the event of death of a manual scavenger, the next of kin is entitled to a compensation of Rs.10,00,000/- (Rupees Ten Lakh Only) which has to be borne by the State Government.

The present petition draws largely from the incidents of manual scavenger casualties widely reported in electronic and print media. In light of the gravity of the situation, the National Commission has been callous in addressing the present grave situation by failing to implement prohibition of employment of manual scavengers, in the

truest sense; proposing and implementing alternate methods of sanitation of the septic tanks, sewers, dry latrines, etc; rehabilitating the persons incumbently employed as manual scavengers and more importantly taking criminal action against the concerned authorities on whose negligence the aforementioned casualties ensued.

The pertinent object of this Petition is to ensure the Right of Safety of the persons engaging in the works of Manual Scavenging and this Hon'ble Court in a plethora of judgments has upheld the 'Right to Safety' and 'Right to Dignity' as a Fundamental Right guaranteed by the Constitution of India under Article 21. This Hon'ble Court in the matter of ***Avishek Goenka vs Union Of India & Anr. (2012) 5 SCC 321*** held that whatever are the rights of an individual, they are regulated and controlled by the statutory provisions of the Act and the Rules framed thereunder. The citizens at large have a right to life i.e. to live with dignity, freedom and safety. This right emerges from the Constitution of India. In ***Mahadeo Savlaram Shelkar v. Pune Municipal Corporation., (1995) 3 SCC 33***, this Hon'ble Court held that the Courts should necessarily consider the effect on public purpose and should suitably mold the relief. Furthermore, in *Cooper v. Union of India*, this Hon'ble Court observed that the right to personal liberty in Article 21 must be read with Article 19 and Article 14, whenever necessary with a view to strengthen the right to personal liberty.

It is the humble submission of the Petitioners that despite the provisions under Articles 14,17,21,38,39,42,43 and 46 in the Constitution of India; neither the cause of deaths of Manual Scavengers has been investigated into nor adequate precautionary and protective measures have been implemented in order to curb the fatalities. Inaction on part of the Respondents tantamount to gross and willful negligence and is contrary to constitutional scheme which has caused irreparable damage to the Manual Scavengers and their families.

It is imperative to note and thus stoutly emphasized thereupon that the Respondents are duty bound towards the safety and security of the Manual Scavengers as embodied under the Fundamental Rights in the Constitution of India. The onus to rehabilitate the manual scavengers and implement the existing legal framework of the country is upon the Respondents. The negligence of the legal authorities upon whom this liability is affixed has absented from taking prompt and necessitated and action, thereby resulting in untimely deaths of these manual scavengers. Hence, in larger public interest the burden to act expeditiously in the said manner rests upon their shoulders.

In light of the above submissions this court may direct the Respondents to take prompt and adequate steps thereof *Ad Cautelam* behavior. It is the humble submission of the Petitioner that the instance of death of persons under circumstances wherein the number of fatalities are on the rise, the liability affixed cannot be of mere negligence as these contractors, officials, agencies or any other persons are engaging or employing persons either directly or indirectly to carry out acts which are prohibited under the law and have deemed knowledge that they are exposing the said persons to deplorable and hazardous conditions which is likely to result in death and has in fact proved to be fatal in numerous instances. Hence, it is the plea of the Petitioner that the said contractors, officials, agencies or any other persons shall face criminal proceedings u/s 304 of the Penal Code including the cases of agency wherein vicarious liability applies.

LIST OF DATES

08.05.1955 The Protection of Civil Rights Act, 1955 was enacted with an aim to restore civil rights of all persons referred as 'untouchables' and prohibiting compelling any person to practice manual scavenging thereby aimed specifically at putting manual scavenging to an end. Section 7A of the Act provides to punish the violator who forces manual scavenging on the notion of untouchability.

- 1994 The Hon'ble Apex Court in the case of *N.Nagendra Rao & Co. V State of Andhra Pradesh.*, 1994 AIR 2663 held that when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and object of the Act, then it being an exercise of such State function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously.
- 05.06.1993 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, introduced by the Ministry of Urban Development prohibits the hiring or employing an individual for cleaning and carrying human excreta. Furthermore, the construction of latrines without proper drainage and sewage systems, and the maintenance of dry latrines by manual scavengers, too, was prohibited.
- May–Dec 2009 The 5th Committee of the National Commission for Safai Karamcharis (Ministry of Social Justice & Empowerment) Government of India in its annual report recommended to stop exploitation and abolish the contract system, proper training to be given for such work, provide medical and educational facilities, and provide other welfare programmes for manual scavengers.
- 03.09.2012 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012 was

introduced in the Lok Sabha by the Ministry of Social Justice and Empowerment.

- 21.12.2012 In light of the aforementioned much-acclaimed Bill, a National Round Table (NRT) Discussion was organized by the United Nations Development Programme (UNDP) India in collaboration with the Solution Exchange for Gender Community and the Water Community and thereafter published a report titled '*Social Inclusion of Manual Scavengers*'. The Round Table was meant to further draw attention to the plight of manual scavengers with specific focus on their rehabilitation including alternative livelihoods, efforts at ensuring a dignified life and propose tangible policy solutions to help alleviate the plight of manual scavengers.
- Feb 2013 At page 21 of the Manual Issued by the Ministry of Social Justice and Empowerment differentiated between SafaiKaramcharis and Manual Scavengers which specifies that the term 'SafaiKaramchari' is the genus and the term 'Manual Scavenger' is the species.
- 19.09.2013 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was enacted with the objective of prohibiting the employment of manual scavengers and the rehabilitation of existing manual scavengers as well as their families; thereby ensuring the dignity of the

individual, enshrined as a Fundamental Right under Article 21 of the Constitution of India.

- 28.03.2014 This Hon'ble Court in the case of SafaiKaramchari Andolan v. Union of India., (2014) 11 SCC 224 filed for praying for an action against the Centre and State Governments for the strict enforcement and implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act. It held that **Manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation. Dry latrines have not only continued to exist till date in several States, but have increased to 96 lakh and are still being cleaned manually by scavengers belonging to the Scheduled Castes.** Also, ordered that Rs. 10,00,000 shall be given as compensation for each instance of death of a manual scavenger.
- 20.10.2015 An article by The Hindu brought out the issue of Conservancy workers asphyxiated in Madurai. The workers claimed never having received such gear from the appropriate authorities and that there were no sustained efforts to provide the protective gear to the workers.
- 23.07.2016 An article published in The Hindu shows a mismatch in the numbers of dry latrines and manual scavengers. For instance, Telangana reported

1,57,321 dry latrines, but zero manual scavengers. The survey results submitted by Himachal Pradesh, too, showed 854 dry latrines but again zero manual scavengers. Chhattisgarh reported 4,391 dry latrines but only 3 manual scavengers. A manual scavenger can at the most clean 30 or 40 latrines, the idea of 3 scavengers cleaning 4,391 latrines is a physical impossibility.

- 25.06.2017 An Article published by Scroll.in stated that even though there have been attempts to rehabilitate manual scavengers, the practice continues, due to the high illiteracy of manual scavengers, lack of confidence in running projects, and the hesitancy of banks in providing loans.
- 1.09.2017 An Article published by Scroll. in stated that in Delhi, deaths of 10 manual scavengers occurred in 4 different accidents in the period between July 15, 2017 and August 20, 2017, as the scavengers were devoid of requisite safety equipment required to clean sewers and tanks.
- 4.09.2017 An article published in NDTV reported that there have been deaths of 39 manual scavengers in a period of 100 days. It further reported that states like Karnataka, West Bengal, Punjab and Andhra Pradesh had failed to rehabilitate even the identified number of manual scavengers.

- 18.09.2017 An article published in Daily stated that 60% of the safaikaramcharis belonged to the Scheduled Castes.
- 15.11.2017 An article published in Indian Express provided that as per estimates by the Safai Karamchari Andolan, a minimum of 1,560 instances of deaths have taken place since 1993. It further stated that as per data, only 7 states have reported paying a fraction of compensation for deaths in the last 25 years but not even a single prosecution under the Act, till date. States have accounted for merely 13,000 manual scavengers, with 80 per cent in Uttar Pradesh and most states like Maharashtra, Gujarat, Haryana, Jharkhand, Jammu & Kashmir maintained that they have none at all.
- 22.01.2018 The Hon'ble Madras High Court in the case of *A. Ravichandaran v. The Zonal Officer* directed all state and Union Territories to implement action for non-implementation of the 2013 Act and take action against the violators.
- 15.06.2018 An article published by The Wire which reported that Central Government Task Force counted 53,236 manual scavengers in only 121 out of 600 plus districts. In Addition, they reported that there were major discrepancies in the numbers of manual scavengers revealed by the State and the number of Manual Scavengers Registered.

20.06.2018 An article published in The Indian Express reported that as of 2017 against the actual number of 53,236 manual scavengers, the states had reported only 6,650 persons employed for the same. Moreover, of the 7 Lakh reported Manual Scavengers (as of 2004), 4 Lakh are yet to be rehabilitated.

02.06.2018 An article published in Engage reported a study conducted by the Tata Institute of Social Sciences(TISS) which stated that some of the common health problems faced by motor loaders and manhole workers are skin and respiratory tract infections, malaria, dengue, back and knee pain, paralysis, hypertension, asthma, tuberculosis and noise pollution causing hearing impairment. About 31.1% (10,122) workers reported being ill during the period of the survey (2014–15) but BMC hospitals are not concerned. Once the BMC hospital staff comes to know that the person in front of them is a conservancy worker, then they treat the worker very badly. The Municipal Corporation of Greater Mumbai (MCGM) lost 2,614 conservancy workers between 2004 and 2013. This means that an average of 261 workers die every year (Makne 2014). Almost one-fourth (8,003) of the workers who were interviewed reported that a family member had died during service as a conservancy worker. Basic compensation is also not paid to the workers if they are injured during work. Moreover, MCGM is touted as the richest civic body in India, and its annual budget crosses Rs 30,000 crore (*Financial*

Express 2017). However, in 2016–17, the civic body could spend only Rs 69.7 crore (43%) of the total Rs 122 crore allocated for SWD by the third quarter (Pinto 2017). It is unfortunate that a civic body with such a large budget spends meagrely on improving the working conditions of conservancy workers. This money could also be utilised for laying better infrastructure and acquiring new machinery.

16.08.2018

An article published in *The CSR Journal* stated that for the reported 26 Lakh dry latrines, the figures from 2017 estimate 50,000 persons engaged in manual scavenging whereas the actual figure is much higher and majorly employing Dalit women. The states of Bihar, Jammu & Kashmir, Jharkhand, Karnataka, Telangana and West Bengal are yet to participate in the survey. Less than 150 out of a total of 600 districts have provided substantial data for this survey. Statistically impossible for 50,000 persons to clean 26 Lakh dry latrines. Moreover, according to a reply given by the Ministry of Social Justice and Empowerment to the Lok Sabha in December 2017, 300 deaths were reported due to manual scavenging.

04.09.2018

A report published by NDTV stated that while the incumbent Government has claimed to eradicate the practice of manual scavenging by 2019, the ground reality is starkly different since as per the 2011 Socio-economic and case census, 1,82,505 rural households were dependent on manual scavenging for income. Many states claimed

having zero manual scavengers, which is entirely untrue as India still has 26 lakh dry latrines. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is a comprehensive legislation which prohibits employment of manual scavengers, terming it as a non-bailable offence and offenders could be imprisoned for up to five years. Despite being a stringent legislation, the utilization of the Act has not been impressive. Safai Karmachari Andolan, which has campaigned for the eradication of manual scavenging since 1995 estimates that between 2014 and 2016, nearly 1,500 people have died while cleaning septic tanks across India. Between 1993 and 2013, no convictions were recorded for violation of the Manual Scavenging Act. This shows the apathy of State Governments and Local Authorities towards the practice. Karnataka, which has over 15,000 manual scavengers, recorded 60 deaths related to manual scavenging, between 2008 and 2016. Even worse, no convictions were recorded in relation to these deaths, showing how lightly the problem was looked at by the state administration. Despite allocating *Rs.* 8 crore to states in 2015, the Centre is yet to receive a report from states on the status of manual scavengers and how many have been rehabilitated. Among states, only Uttar Pradesh has rehabilitated 5,252 manual scavengers of 10,016, between 2014-16 and spent an amount of *Rs.* 21 crore in doing so. The states of Karnataka, West Bengal, Punjab and Andhra

Pradesh failed to rehabilitate even the officially identified number of manual scavengers. Moreover, these scavengers are employed at low wage rates of *Rs.* 150 to *Rs.* 200 per day, that too for excruciating toiling lasting for nearly 10 to 12 hours. The 2013 Act directs State Governments to provide a one-time rehabilitation package of *Rs.* 40,000 to identified manual scavengers. In March 2017, Byappanahalli police in Bengaluru registered a case of culpable homicide not amounting to murder under Section 304 of the Indian Penal Code, against a contractor for employing 3 manual scavengers who died during cleaning of sewers. In the Delhi incident last week, a similar charge was levied on two men held responsible for employing the workers. The Madras High Court also issued a directive to the Centre and states to ensure that the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was duly implemented.

11.09.2018

An article published in Down To Earth stated that an inter-ministerial task force this year counted a number as high as 53,236, four times the number reflected in 2017 official records, still is a gross underestimation as the actual numbers as the data was collected only from 121 of more than 600 districts in the country and not inclusive of data from the largest employer of manual scavengers—the Railways. The www.safaikarmachariandolan.org/crisis (SKA), found that 1,470 people have died

cleaning sewer lines and septic tanks in the past few years. In fact, the Ministry of Social Justice and Empowerment itself told the Lok Sabha in 2017 that the country saw 300 manual scavengers deaths. Of these, 12 deaths occurred in Delhi and 140 in Tamil Nadu, which was the highest. Even the first week of 2018 saw 7 manual scavengers die. While 4 died fixing a sewer line in Mumbai, 3 died in Bengaluru while cleaning a choked manhole.

18.09.2018

That an article was published in Indian Express reported that as per the official data there is 1 manual scavenging death every 5 days. Further as reported, as per the Socio-Economic Caste Census (SECC) 2011, rural Maharashtra alone has 65,181 households where at least one person is employed as a manual scavenger, accounting for 35 per cent of the total 1.82 Lakh such households in rural India. Second highest manual scavengers are found in Madhya Pradesh at 23,105.

18.09.2018

An article published in News 18 reported that according to reports, the official numbers collated by the National Commission for Safai Karamcharis (NCSK), the statutory body that was set up by an Act of Parliament for the welfare of sanitation workers, show that 123 people employed as manual scavengers lost their lives. Though the data is mostly based on newspaper reports, it is one of the first such statistics released, tallying up the deaths of sewer and septic tank cleaners. However, the

latest data released by the Safai Karamchari Andolan states that from 2016 to 2018, there were 429 deaths due to manual scavenging, whereas 96 were reported due to sewer cleaning in 2017 and 13 in 2018. But the huge gap in the official and NGO data becomes glaring once the area under consideration is paid attention to. While the 123 deaths stated by the NCSK reveal an all-India figure, the NGO says 429 such deaths occurred in Delhi-NCR alone. So far as the all-India figure is considered, there have been 83 sewer deaths in 2018 and the organisation is still collating the rest of the data. In the past one week itself, Delhi saw six such deaths in the National Capital Region.

18.09.2018

An article published in The Week reported the statements of an official who stated that there is no specific figure for those employed in manual scavenging. The contractors who hire people for such jobs do not comply with law. Manual scavenging was banned in the country in 1993," the official said. Furthermore, More than 600 people have died while cleaning septic tanks and sewers across the country in the past 25 years, according to data collated by the National Commission for Safai Karamcharis (NCSK).According to the official, the figure may change as the statutory body is in the process of collecting details from states and updating the data. The exercise, the first undertaken by a government body to account for such deaths, gained momentum following the deaths of six men

while cleaning sewers in the national capital in two separate incidents in the past week. According to the data, there have been 634 deaths related to manual scavenging since 1993, with Tamil Nadu reporting the highest number of such deaths at 194, followed by Gujarat 122, Karnataka 68 and Uttar Pradesh 51.

19.09.2018 An article published in The Guardian reported that every 5 days, there occurs death of 1 manual scavenger Indian worker while cleaning sewers and septic tanks every five days since the beginning of 2017. At least 300 people have died doing such work since 2017. The National Commission for Safai Karamchari said that as per their records at least 123 people have died in sewer deaths and estimated at least another 612 people have died since 1993.

24.09.2018 An Article published by Bloomberg Quint reported that according to NCSK annual report, which showed discrepancies in the data provided by the State and that even though there are numerous judgments of this Hon'ble Court abolishing the inhumane practice, it is still continued.

25.09.2018 An article published in The Huffington Post India stated that in August, 2018, 11 manual scavengers died over a short span of 7 days in Delhi, despite a ban by the State Government. The article further reports the horrific incidents suffered by these

workers.

- 25.09.2018 An article published by The India Times reported that under the Standard Operating Procedures (SOPs) for monitoring private housing complexes/ societies where hiring of people for sewer cleaning is concerned, in an event of death, the District Magistrate of the area would be held responsible and could be penalized u/s 304 IPC. Furthermore, the person in-charge for cleaning of the septic tank or sewer will face charges u/s 304 and not 304A, 1860.
- 26.09.2018 An article published in the ED Times reiterated a Times of India report, the Delhi Government said that contractors will be booked for culpable homicide in case of the death of sewers facing charges under IPC Section 304 pertaining to culpable homicide not amounting to murder contrary to Section 304A which stated death due to negligence.
- 04.10.2018 An article published in The Indian Express reported that a study conducted by Rashtriya Garima Abhiyan on 51 cases carried out in 11 States involving the deaths of 97 manual scavengers and minor to serious injuries to 70 surviving manual scavengers across the country. The report states that 37 per cent of those who died were in the age group of 15-25, another 35 per cent were between

25 and 35 years of age while 23 per cent was in the age group of 35-45 years. That only in 18 cases (35%) an FIR u/s 304A IPC, 1860 was filed but no arrest except one case was made. Moreover, mandatory compensation of Rs. 10 Lakh was awarded in only 16 cases. Likewise, not one child from these families has received the government's pre-matric scholarships meant for them. 94 per cent of families of the deceased belong to the Scheduled Caste category (mostly Valmikis) while the remaining 4 per cent and 2 per cent are from Other Backward Classes and Scheduled Tribes, respectively.

05.10.2018

An article published in The Asian Age reiterated the report submitted by the Rashtriya Garima Abhiyan (RGA) based on a research between March and July, 2018 stating that over 600 deaths ensued in the last 1.5 years across the country. Whereas, the National Commission for Safai Karamchar is reported that 39 deaths have occurred in Delhi since 93; which the aforesaid NGO says that the said figures are underestimated. Furthermore, cases involving manual scavengers' deaths should be booked under this act but most of these cases are being registered under SC and ST (Prevention of Atrocities) Act or Section 304A of IPC (causing death by negligence), non implementation of the Act resulting in denial of justice and compensation to the victims' families despite this Hon'ble Court's verdict. The report was based on a research

between March and July 2018 on manual scavengers who succumbed to death while cleaning septic tanks in 11 states across India since 1992. Interviews of family members and survivors in the 51 cases in 11 states also revealed that compensation was paid to the affected families in only 16 cases.

15.11.2018

An article published in The Centre for Equity Studies reported that in 11 states of India, among them total 51 incidents were covered and 97 deaths were reported. The study identified a total 140 incidents and 302 deaths from 1992 to 2018 in which 97 deaths were reported. According to National Commission for Safai Karamchari (NCSK) data, Tamilnadu reported highest number of deaths (194) followed by Gujarat (122), Karnataka (68) and Uttar Pradesh (51). In this report, Gujarat reported 62 deaths followed by Maharashtra and Uttar Pradesh reporting 29 deaths each and Madhya Pradesh and Tamil Nadu reporting 24 deaths each. Out of the total case interview, in 35% of the incidents the FIR was filed whereas in 59% of the incidents FIR were not filed and in 6% of incidents respondents do know if FIR had been filed. In the total number of cases where the Fir had been filed (18 cases), the research team was able to furnish copies of the FIR for 13 cases during the investigation. The report also highlights that the highest death rate of 37% was recorded in the age

group of 15-25 followed by 35% and 23% in the age group of 25-35 and 35-45 respectively. 67% of the total deceased were married. Valmiki, Arunthutiyar, Dom, Mehtar, Rukhi, kumbhar, Matang, Meghwal, Chambar, Rai Sikh and Hela are the communities engaged in cleaning and sanitation related work in the different states covered by the research. 94% of the families of the deceased belong to the Scheduled Caste category, 4% to the Other Backward Classes and 2% to the Scheduled Tribe. Out of the 94% Scheduled Caste families of the deceased, 65% of the families' interviewed belong to the Valmiki caste. 49% of the deceased were found to have studied below the 10th standard whereas another 45% were uneducated.

24.11.2018

An article published in The Wire reported that despite an increasing focus by the government and programs such as Swachh Bharat Abhiyan, unsafe sanitation work, loosely captured under the catch-all phrase 'manual scavenging' still exists in India. There are over 5 million people employed in sanitation work of some sort, with about 2 million of them working in 'high risk' conditions. The article further reported the Nine Different kinds of manual scavenging existing in India.

09.01.2019

Hence, this Petition.

THE SUPREME COURT OF INDIA AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION

WRIT PETITION(CRIMINAL) NO._____ OF 2019

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

CRIMINAL JUSTICE SOCIETY OF INDIA
THROUGH GENERAL SECRETARY

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.....PETITIONER

VERSUS

1. UNION OF INDIA
THROUGH THE HOME SECRETARY,
CABINET SECRETARIAT,
RASHTRAPATI BHAWAN
NEW DELHI – 110004
2. MINISTRY OF LAW AND JUSTICE
THROUGH SECRETARY,
GOVERNMENT OF INDIA
SHASTRI BHAWAN,
NEW DELHI-110001
3. MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT
THROUGH SECRETARY,
GOVERNMENT OF INDIA
SHASTRI BHAWAN,
NEW DELHI-110001
4. MINISTRY OF DRINKING WATER AND SANITATION
THROUGH SECRETARY,
GOVERNMENT OF INDIA
PANDIT DEENDAYAL ANTYODAYA BHAWAN, CGO
COMPLEX LODHI ROAD,
NEW DELHI- 110003

5. NATIONAL COMMISSION FOR SCHEDULED CASTES
THROUGH CHAIRMAN,
GOVERNMENT OF INDIA,
LOK NAYAK BHAWAN, KHAN MARKET,
NEW DELHI- 110003
6. NATIONAL COMMISSION FOR SAFAI KARAMCHARIS
THROUGH CHAIRMAN,
GOVERNMENT OF INDIA,
LOK NAYAK BHAWAN, PRITHVIRAJ LN, SUJAN SINGH
PARK, NEW DELHI- 110003
7. INDIAN RAILWAYS
THROUGH CHAIRMAN RAILWAY BOARD,
RAISINA ROAD, RAJPATH AREA, CENTRAL SECRETARIAT,
NEW DELHI- 110001
8. STATE OF NCT OF DELHI
THROUGH SECRETARY,
NORTH BLOCK, CENTRAL SECRETARIAT,
NEW DELHI- 110001
9. STATE OF JAMMU & KASHMIR
THROUGH SECRETARY
CIVIL SECRETARIAT, JAMMU- 180001,
CIVIL SECRETARIAT, SRINAGAR- 190001,
JAMMU & KASHMIR
10. STATE OF MAHARASTRA
THROUGH SECRETARY,
MANTRALAYA, DR. MADAME CAMA ROAD,
MUMBAI- 400032
11. STATE OF GUJARAT
THROUGH SECRETARY,
NEW SACHIVALYA,
GANDHINAGAR- 382010
12. STATE OF MADHYA PRADESH
THROUGH SECRETARY,
BHADBHADA ROAD, SHASTRI NAGAR,
BHOPAL,
MADHYA PRADESH- 462003
13. STATE OF KARNATAKA

THROUGH SECRETARY,
VIDHANA SOUDHA, BANGALORE,
KARNATAKA- 560001

14.STATE OF KERELA
THROUGH SECRETARY,
PUNNEN ROAD, THIRUVANANTHAPURAM,
KERALA- 695001

15.STATE OF PUNJAB
THROUGH SECRETARY,
PUNJAB CIVIL SECRETARIAT,
CHANDIGARH- 160001

16.STATE OF RAJASTHAN
THROUGH SECRETARY,
TILAK MARG SECRETARIAT, JAIPUR,
RAJASTHAN- 302005

17.STATE OF BIHAR
THROUGH SECRETARY,
OLD SECRETARIAT,
PATNA- 8000015

18.STATE OF HIMACHAL PRADESH
THROUGH SECRETARY,
HP SECRETARIAT,
SHIMLA- 171002

19.STATE OF TELANGANA
THROUGH SECRETARY,
OPPOSITE LUMBINI PARK,
HYDERABAD,
TELANGANA- 500022

20.STATE OF ARUNACHAL PRADESH
THROUGH SECRETARY,
CIVIL SECRETARIAT,
ITANAGAR- 791111

21.STATE OF CHHATTISGARH
THROUGH SECRETARY,
CIVIL LINES, RAIPUR,
CHHATTISGARH- 492001

- 22.STATE OF ASSAM
THROUGH SECRETARY,
ASSAM SACHIVALAYA,
GUWAHATI- 781006
- 23.STATE OF ANDHRA PRADESH
THROUGH SECRETARY,
A.P SECRETARIAT, VELAGAPUDI,
ANDHRA PRADESH- 522503
- 24.STATE OF HARYANA
THROUGH SECRETARY,
HARYANA CIVIL SECRETARIAT, SECTOR- 1,
CHANDIGARH- 160019
- 25.STATE OF GOA
THROUGH SECRETARY,
SECRETARIAT, PORVORIUM,
GOA- 403521
- 26.UNION TERRITORY OF CHANDIGARH
THROUGH SECRETARY,
UT SECRETARIAT, SECTOR-9,
CHANDIGARH
- 27.STATE OF JHARKHAND
THROUGH SECRETARY,
PROJECT BUILDING, DHURWA,
RANCHI- 834004
- 28.STATE OF MANIPUR
THROUGH SECRETARY,
SOUTH BLOCK, OLD SECRETARIAT,
IMPHAL- 795001
- 29.STATE OF MIZORAM
THROUGH SECRETARY,
NEW SECRETARIAT COMPLEX,
AIZWAL- 796001
- 30.STATE OF NAGALAND
THROUGH SECRETARY,
CIVIL SECRETARIAT,
KOHIMA- 797004
- 31.STATE OF ODISHA

THROUGH SECRETARY,
ODISHA SECRETARIAT,
BHUBANESWAR- 751001

32.STATE OF SIKKIM
THROUGH SECRETARY,
NEW SECRETARIAT,
GANGTOK- 737101

33.STATE OF TAMIL NADU
THROUGH SECRETARY,
NAMAKKAL KAVIGNAR MAALIGAI,
FORT St. GEORGE,
CHENNAI- 600009

34.STATE OF UTTAR PRADESH
THROUGH SECRETARY,
LOK BHAWAN, UP SECRETARIAT,
LUCKNOW- 226001

35.STATE OF UTTRAKHAND
THROUGH SECRETARY,
SUBHASH ROAD, UTTRAKHAND SECRETARIAT,
DEHRADUN- 248001

36.STATE OF WEST BENGAL
THROUGH SECRETARY,
SARAT CHATTERJEE ROAD, MANDIRTALA,
HOWRAH- 711102

37.STATE OF TRIPURA
THROUGH SECRETARY,
NEW SECRETARIATE COMPLEX SECRETARIAT- 799010,
AGARTALA, WEST TRIPURA

38.UNION TERRITORY OF ANDAMAN AND NICOBAR ISLANDS
THROUGH SECRETARY,
PORT BLAIR- 744101

39.UNION TERRITORY OF DADRA AND NAGAR HAVELI
THROUGH SECRETARY,
SECRETARIAT, 66 KVA ROAD, AMLI
SILVASSA-396230

40. UNION TERRITORY OF DAMAN AND DIU
THROUGH SECRETARY,
SECRETARIAT, MOTI,
DAMAN- 396220

41. UNION TERRITORY OF LAKSHWADEEP
THROUGH SECRETARY,
LAKSHADWEEP,
KAVARATTI- 682555

42. UNION TERRITORY OF PUDUCHERRY
THROUGH SECRETARY,
CHIEF SECRETARIAT, GOUBERT AVENUE,
PUDHUCHERRY- 605001

... RESPONDENTS

A WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA IN THE NATURE OF PUBLIC INTEREST LITIGATION FOR ISSUANCE OF A WRIT IN THE NATURE OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT AGAINST THE RESPONDENTS THEREBY SEEKING AN ORDER OR DIRECTION OF THIS HON'BLE COURT TO ASCERTAIN THE ACTUAL NUMBER OF PERSONS EMPLOYED OR ENGAGED, EITHER DIRECTLY OR INDIRECTLY AS MANUAL SCAVENGERS SINCE ITS PROHIBITION IN 1993;

AND THE ACTUAL NUMBER OF DEATH OF SUCH PERSONS SINCE 1993; CONSEQUENTLY DIRECTING THE RESPONDENTS TO INITIATE AN INVESTIGATION AND SUBSEQUENT CRIMINAL PROCEEDINGS U/S 304 OF THE INDIAN PENAL CODE, 1860 AGAINST THE ERRING OFFICIALS, AGENCIES, CONTRACTORS OR ANY OTHER PERSONS AS THE COURT MAY DEEM FIT AND PROPER.

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. That the Petitioner abovenamed has preferred the instant Public Interest Litigation vide a criminal writ petition seeking an appropriate order or direction of this Hon'ble Court to initiate criminal proceedings against the negligent officials by the way of registering FIRs u/s 304 of the Indian Penal Code. The Petitioner is acting bonafide for the welfare and benefit of the society as a whole in filing the present PIL before this Hon'ble Court. The Petitioner has no vested personal interest in the subject-matter of the petition. This PIL has been filed with no ulterior or malafide motive other than public interest.

- 1A. That the present Petitioner is a society acting as a voice for criminal justice led by advocates and registered in the year 2009. The Petitioner recently filed a Public Interest Litigation challenging the vires of Section 375 of the Indian Penal Code, 1860 as being arbitrary and ultra vires for infringing Articles 14,

15 and 21 of the Constitution of India as men and transgender persons are presently sequestered from the existing rape laws of the country. The said petition titled 'Criminal Justice Society of India v. Union of India &Ors., W.P. (C) No. 1262/2018 was disposed of with directions to seek appropriate remedy under law by making a representation to the Parliament of India to bring about the necessary amendments. The details of the General Secretary of the Petitioner Organization are as under:

Name : Mr. Ahmed Faraz Khan
S/o : Mr. L.U. Khan
Age : 31
Address : 11B, Mathura Road, Jangpura, New Delhi - 110014
Number : 9910353757
Email : faraz437@gmail.com
ID Proof : Aadhaar Card

2. FACTS:-

2.1. That on 26th January, 1950, the Constitution of India came into force, with this the grundnorm of civil rights protection and the source of caste and caste annihilation i.e. Article 17 (Abolition of Untouchability) also came into force. Unfortunately, the spirit of Article 17 was followed in principle rather than practice. A plethora of legislations like Protection of Civil Rights Act, 1955; Scheduled Castes and Scheduled Tribes (Prevention from Atrocities) Act, 1986, etc. were enacted to ensure an equitable and casteless society, but

the condition of weaker sections has failed to show satisfactory signs of amelioration.

2.2 That 05.06.1993, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (hereinafter referred to as the 'Act of 1993') was enacted by the Parliament of India. According to the provisions of this Act, hiring or employing an individual for cleaning and carrying human excreta was prohibited. The construction of latrines without proper drainage and sewage systems, and the maintenance of dry latrines by manual scavengers, too, was prohibited.

True Copy of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 is marked and annexed as **ANNEXURE P-1 Pg.**

2.3 However, the said Act suffered on account of non-implementation of the provisions, moreover, as per the report of the UNDP dated 21.12.2012 titled 'Social Inclusion of Manual Scavengers', stated that the census data of manual scavengers in India is not accurate and that over a period of 19 years, under the Act of 1993 not a single person was punished. Moreover, the said Act was criticized for failing to deal with the human dignity aspect.

True Copy of the Report of the United Nations Development Programme, India dated 21.12.2012 titled 'Social Inclusion of Manual Scavengers' is marked and annexed as **ANNEXURE P-2 Pg.**

2.4 That the 5th Commission Annual Report (May-December, 2009) of the National Commission for Safai Karamcharis under the Ministry of Social Justice & Empowerment, Government of India made the following recommendations for safai karmacharis/ manual scavengers: (i) to abolish of the Private Contractor system; (ii) to stop exploitation of Safai Karamcharis on contract basis ; (iii) to provide for and improve civic facilities, including better living conditions, welfare and rehabilitation schemes, healthcare provision, education facilities, and other welfare programs.

2.5 That on 19.09.2013 the Parliament of India vide Gazetted notification enacted the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter referred to as the 'Act of 2013') which prohibits the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines. Moreover, the Act penalizes construction of insanitary latrine and direct or indirect employment of persons as manual scavengers; demolition of existing unsanitary latrines or conversion to sanitary latrines (section 5), and non-termination of any contract, instrument or agreement for employment of manual

scavenging executed before the commencement of the Act (Section 6) with punishment on first contravention with imprisonment upto 1 year or with fine which may extend to fifty thousand rupees) or with both, and on any subsequent contravention, imprisonment upto 2 years or with fine which may extend to one lakh rupees or with both (Section 8). Furthermore, the Act u/s 7 provides penal provisions for local authority or agency engaging or employing a person directly or indirectly for hazardous cleaning of a septic tank or sewer, one year after the commencement of the Act with punishment on first contravention with imprisonment for a term which may extend to 2 years or with fine which may extend to two lakh rupees or with both, and on subsequent contravention imprisonment which may extend to 5 years or with fine which may extend to five lakh rupees or with both. Additionally, the Act aims to provide rehabilitation of manual scavengers as well as their families ensuring the dignity of the individual, which is enshrined as one of the goals in the Preamble to the Constitution.

True Copy of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is marked and annexed as **ANNEXURE P-3 Pg.**

2.6 That the terms 'manual scavengers' and 'safaikaramcharis' are not synonymous, even though there exists an overlap in the nature of works carried out by both the aforementioned job profiles. The

definition of manual scavengers as provided under **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993** and **Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013** is produced hereunder:

Section 2(j) of the Act of 1993:

2 (j) "manual scavenger" means a person engaged in or employed for manually carrying human excreta and the expression "manual scavenging" shall be construed accordingly;

Section 2(g) of the Act of 2013:

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

On the other hand, that definitions of SafaiKaramchari is provided under the National Commission for SafaiKaramchari Act, 1993;

Prohibition of Employment as Manual Scavengers Rehabilitation Rules,2013:

Section 2(h) of the Act of 1993 is produced as under:

h) "SafaiKaramchari" means a person engaged in, or employed for, assisting in disposal of human excreta, or any sanitation work;

Rule 2(h) of the Rules of 2013 defined SafaiKaramchari as:

h) SafaiKaramchari or Sanitation Worker means any person engaged in or employed for any sanitation work other than domestic work.

2.7 That the Ministry of Social Justice and Empowerment further differentiated between SafaiKaramcharis and Manual Scavengers at page 21 manual issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, February 2013::

"SafaiKaramcharis normally include persons engaged as 'sweepers' or 'sanitation/cleaning workers' in municipalities, government and private offices. They may be direct employees of these bodies (municipalities, government/private sector organizations) or may be contract employees who happen to be working for these organizations. However, SafaiKaramcharis, per se, are not manual scavengers. All manual scavengers are safaikarmcharis but all safaikarmcharis are not manual scavengers." Hence, the term

SafaiKaramchari is the genus and the term Manual Scavenger is the species.

Hence, while manual scavengers are limited to manually carrying human excreta, the definition of safaikaramachari is wider, not limited to human excreta but includes sanitation work (other than domestic work) as under 2(h) of the National Commission for SafaiKaramchari Act, 2013 and Prohibition of Employment as Manual Scavengers Rehabilitation Rules,2013. Therefore, the difference in definition seems more textual than practical.

True Copy of the Page 21 Manual issued by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, February 2013 is marked and annexed herein as **ANNEXURE P-4 Pg.**

2.8 That consequent to the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and National Commission for Safai Karamchari Act, 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, the Department of Social Justice and Empowerment (Ministry of Social Justice and Empowerment) vide gazetted notification dated 12th December, 2013 brought into effect the Prohibition of Employment as Manual Scavengers Rehabilitation Rules, 2013. The said Rules under Rules 2(g), 4 and 5 provide for the definition of

protective gear[Rule 2(g)], the protective gear and equipment to be made available to the persons engaging in septic tanks and sewers (Rule 4) and cleaning equipment to be made available by the local authorities for the same(Rule 5). The same was done with the intent to prevent the increased number of casualties that the SafaiKaramcharis were subjected to.

True Copy of relevant provisions of Prohibition of Employment as Manual Scavengers Rehabilitation Rules, 2013 is marked and annexed herein as **ANNEXURE P-5 Pg.**

2.9 That on 28.03.2014 The Hon'ble Supreme Court in Safai Karamchari Andolan v. Union of India &Ors.2014(4) SCALE 165 held that the duty pertaining to strict enforcement is upon all States and Union Territories to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,1993. The Court found that there are about 96 lakh Dry latrines in the country which are still being cleaned manually by scavengers mostly belonging to Scheduled Castes. In 1993, a new scheme was adopted to eradicate dry latrines and rehabilitate manual scavengers. Therefore, this Hon'ble Court directed to constitute a set up a committee to give reports for accountability of number of manual scavengers and that Rs.10,00,000/-(Rupees Ten Lakh)in compensation should be awarded to the families of the deceased and that at the first instance the relevant authorities must be approached

and directed the State Governments and Union Territories to appropriate steps to implement the Act of 2013 Act which has not been adopted by many states. It further left the responsibility of the District Magistrates of the districts to direct the subordinates and officers to rehabilitate such Manual Scavengers.

2.10 That on 20.10.2015 an article was published by The Hindu brought out the issue of Conservancy workers asphyxiated in Madurai. The workers never receive such gear from the appropriate authorities and that there are no sustained efforts to provide the protective gear to the workers.

True Typed Copy of the Article published in The Hindu dated 20.10.2015 is marked and annexed as **ANNEXURE P-6 Pg.**

2.11 That on 23.07.2016 an article was published by the Hindu which clearly shows a mismatch in statistics of numbers of dry latrine and manual scavengers. According to the survey they reported, Telangana reported 1,57,321 dry latrines, but zero manual scavengers. The survey results submitted by Himachal Pradesh, too, showed 854 dry latrines but zero manual scavengers. Chhattisgarh reported 4,391 dry latrines but 3 only workers.

True Typed Copy of the Article published in The Hindu dated 23.07.2016 is marked and annexed as **ANNEXURE P-7 Pg.**

2.12 That 25.06.2017 an Article published by Scroll.in stated that even though there have been attempts to rehabilitate manual scavengers, the practice continues, due to the high illiteracy of manual scavengers, lack of confidence in running projects, and the hesitancy of banks in providing loans.

True Typed Copy of the article published in Scroll.in dated 25.06.2017 is marked and annexed as **ANNEXURE P-8 Pg.**

2.13 That an article published in Scroll.in on 01.09.2017 stated that in Delhi alone, 10 persons died in 4 separate accidents between July 15 and August 20, as they were not provided with safety equipment to clean sewers and tanks.

True Typed Copy of the article published in Scroll.in on 01.09.2017 is marked and annexed herein as **ANNEXURE P-9 Pg_____**.

2.14 That an article published in NDTV on 04.09.2017 stated that there have been 39 deaths of manual scavengers in duration of 100 days. Further it reports that states such as Karnataka which has more than 15,000 manual scavengers, and 60 deaths between 2008 and 2016 has not reported any convictions in this regard in regard to get compensations for the same. It further states that the states of Karnataka, West Bengal, Punjab and Andhra Pradesh failed to rehabilitate even the officially identified number of manual scavengers. 2.22 That on 04.09.2017 a report published by NDTV

stated that while the incumbent Government has claimed to eradicate the practice of manual scavenging by 2019, the ground reality is starkly different since as per the 2011 Socio-economic and case census, 1,82,505 rural households were dependent on manual scavenging for income. Many states claim that they have zero manual scavengers, which is entirely untrue. India still has 26 lakh dry latrines. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is a comprehensive legislation which prohibits employment of manual scavengers, terming it as a non-bailable offence and offenders could be imprisoned for up to five years. Despite being a stringent legislation, the utilisation of the Act has not been impressive. Safai Karmachari Andolan, which has campaigned for the eradication of manual scavenging since 1995 estimates that between 2014 and 2016, nearly 1,500 people have died while cleaning septic tanks across India. Between 1993 and 2013, no convictions were recorded for violation of the Manual Scavenging Act. This shows the apathy of state governments and local authorities towards the practice. Karnataka, which has over 15,000 manual scavengers, recorded 60 deaths related to manual scavenging, between 2008 and 2016. Even worse, no convictions were recorded in relation to these deaths, showing how lightly the problem was looked at by the state administration. The process of identifying and rehabilitating manual scavengers is still a distant

dream. Despite allocating *Rs.* 8 crore to states in 2015, the Centre is yet to receive a report from states on the status of manual scavengers and how many have been rehabilitated. Among states, only Uttar Pradesh rehabilitated 5,252 manual scavengers of 10,016, between 2014-16 and spent an amount of *Rs.* 21 crore in doing so. The states of Karnataka, West Bengal, Punjab and Andhra Pradesh failed to rehabilitate even the officially identified number of manual scavengers. Manual scavengers are employed at low wage rates of *Rs.* 150 to *Rs.* 200 per day, that too for excruciating toiling for nearly 10 to 12 hours. For states, the points of focus should be on identifying manual scavengers and rehabilitating them, as per the 2013 Act. Speedy disbursal of the rehabilitation package of *Rs.* 40,000 is a must. The 2013 Act directs state governments to provide a one-time rehabilitation package of *Rs.* 40,000 to identified manual scavengers. Further, the practice of employing manual scavengers, which has been deemed illegal, should be strictly dealt with. In March 2017, Byappanahalli police in Bengaluru registered a case of culpable homicide not amounting to murder under Section 304 of the Indian Penal Code, against a contractor for employing three manual scavengers who died during cleaning of sewers. In the Delhi incident last week, a similar charge was levied on two men held responsible for employing the workers. Last week, the Madras High Court also issued a directive to the Centre and states to ensure that

the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was duly implemented. But above all, it is also up to general public to realize the de-humanising nature of manual scavenging and become aware of the implications of employing workers in such a derogatory profession.

True Typed Copy of the article published in NDTV dated 04.09.2017 titled '39 Deaths in 100 days : How Manual Scavenging Continues To Exist In India Despite It Being Illegal' is marked and annexed as **ANNEXURE P-10 Pg.**

2.15 That an article was published in DailyO on 18.09.2017 which reported the death of three safaikaramcharis who were asphyxiated to death. The Delhi Jal Board had refused to take any responsibility for their deaths claiming that the workers were not their staff. It was only later that the Junior Engineer of the Delhi Jal Board, was suspended for not ensuring the use of jetting machines at the site. This article further stated that 60% of the safaikaramcharis belonged to the Scheduled Castes.

True Typed Copy of the article published in Daily on 18.09.2017 is marked and annexed herein as **ANNEXURE P-11 Pg.**

2.16 That on 15.11.2017 an article published in Indian Express reported that conservative reports by Safai Karmachari Andolan put a minimum body count of 1,560 since 1993. It further stated that as per

data provided by Central Monitoring Committee, only 7 states have reported paying compensation for deaths in the last 25 years. States such as Uttar Pradesh, Maharashtra, Delhi, Karnataka, Punjab have reportedly identified 270 death cases, for which only a fraction are compensated, with many paying only half of the compensation amount.

True Typed Copy of the article published in Indian Express on 15th November, 2017 is marked and annexed herein as **ANNEXURE P-12**
Pg.

2.17 That on 22.01.2018 in the case of A.Ravichandaran v. The zonal officer the court, stated: *“We hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act”*. The court casted the duty on all the States and Union Territories in India to take action against the violators of the Act, to prosecute the violators and get relief/compensation for such death of a manual scavenger.

2.18 That an article published by the Wire on 15.06.2018 which reported that the Central Government task force has counted 53,236 manual scavengers in India which only accounts for 121 out of 600-plus districts. They have reported that there is major discrepancies in number of manual scavengers reported by the State and number of

manual scavengers registered. Furthermore, they report that the number of manual scavengers in the country have increased 4 times from the last count.

True Typed Copy of the article published in the Wire on 15.06.2018 is marked and annexed as **ANNEXURE P-13 Pg.**

2.19 That on 20.06.2018 an article published in The Indian Express reported that as of 2017 against the actual number of 53, 236 manual scavengers, the states had reported only 6,650 persons employed for the same. Moreover, of the 7 lakh reported manual scavengers (as of 2004), 4 Lakh are yet to be rehabilitated.

True Typed Copy of the article published in The Indian Express dated 20.06.2018 is marked and annexed as **ANNEXURE P-14 Pg.**

2.20. That on 02.06.2018 an article published in Engage reported a study conducted by the Tata Institute of Social Sciences (TISS) which stated that the Civic bodies in India are required to conduct health check-up of the workers at regular intervals but never do so. Some of the common health problems faced by motor loaders and manhole workers are skin and respiratory tract infections, malaria, dengue, back and knee pain, paralysis, hypertension, asthma, tuberculosis and noise pollution causing hearing impairment. About 31.1% (10,122) workers reported being ill during the period of the survey (2014–15).

There are so many cases of injury on a daily basis, but BMC hospitals are not concerned. Once the BMC hospital staff comes to know that the person in front of them is a conservancy worker, then they treat the worker very badly.

Conservancy workers have been given the responsibility of keeping the city clean. They do their job, but the price they pay is the damage to their own health. The MCGM lost 2,614 conservancy workers between 2004 and 2013. This means that an average of 261 workers die every year (Makne 2014). Almost one-fourth (8,003) of the workers who were interviewed reported that a family member had died during service as a conservancy worker. Basic compensation is also not paid to the workers if they are injured during work.

Meenal, a scavenger working at Khar Bridge Chowki, met with a train accident. She lost one leg and sustained fractures in her other leg and her waist. The BMC hospital that she had approached referred the case to a private hospital.

The cost went up to Rs 5.5 lakh. The physiotherapist charges Rs 300 for one sitting. I had to discontinue my treatment as I couldn't afford it. There was no medical compensation.

MCGM is touted as the richest civic body in India, and its annual budget crosses Rs 30,000 crore (*Financial Express* 2017). However,

in 2016–17, the civic body could spend only Rs 69.7 crore (43%) of the total Rs 122 crore allocated for SWD by the third quarter (Pinto 2017). It is unfortunate that a civic body with such a large budget spends meagrely on improving the working conditions of conservancy workers. This money could also be utilised for laying better infrastructure and acquiring new machinery.

Perhaps the MCGM can learn from the Kerala Water Authority which recently announced that a fully equipped robot called “Bandicoot” would soon be used for cleaning the sewers in the state, relieving manual scavengers from this menial job.

True Typed Copy of the article published in Engage dated 02.06.2018 titled ‘Manual Scavengers: A Blind Spot in Urban Development Discourse’ is marked and annexed as **ANNEXURE P-15 Pg.**

2.21 That on 16.08.2018 an article published in The CSR Journal stated that for the reported 26 Lakh dry latrines, the figures from 2017 estimate 50,000 persons engaged in manual scavenging whereas the actual figure is much higher and majorly employs Dalit women. The states of Bihar, J&K, Jharkhand, Karnataka, Telangana and West Bengal are yet to participate in the survey. Less than 150 out of a total of 600 districts have provided substantial data for this survey. Statistically impossible for 50,000 persons to clean 26 Lakh dry latrines. Moreover, According to a reply given by the Ministry of Social

Justice and Empowerment to the Lok Sabha in December 2017, 300 deaths were reported due to manual scavenging.

True Typed Copy of an article published in The CSR Journal dated 16.08.2018 titled 'CSR: Manual Scavenging in India' is marked and annexed as **ANNEXURE P-16 Pg.**

2.22 That on 11.09.2018 an article published in Down To Earth stated that an inter-ministerial task force in 2017 year counted a number as high as 53,236, four times the number reflected in 2017 official records. The said data still is a gross underestimation as the actual numbers as the data was collected only from 121 of more than 600 districts in the country and not inclusive of data from the largest employer of manual scavengers—the Railways. The Safai Karmachari Andolan (SKA), a national movement committed to total eradication of manual scavenging and rehabilitation of all scavengers with dignified occupations, collated data and found that 1,470 people have died cleaning sewer lines and septic tanks in the past few years. In fact, the Ministry of Social Justice and Empowerment itself told the Lok Sabha in 2017 that the country saw 300 manual scavengers deaths. Of these, 12 deaths occurred in Delhi and 140 in Tamil Nadu, which was the highest. Even the first week of 2018 saw 7 manual scavengers die. While 4 died fixing a sewer line in Mumbai, 3 died in Bengaluru while cleaning a choked man hole.

True Typed Copy of the article published in Down to Earth dated

11.09.2018 titled 'Manual Scavenging: Non-existent for govt, yet people die 30-ft under ground' is marked and annexed as **ANNEXURE P-17 Pg.**

2.23 That an article was published in Indian Express on 18.09.2018 reported that as per the official data there is one manual scavenging death every five days. Further as reported, as per the Socio-Economic Caste Census (SECC) 2011, Rural Maharashtra alone has 65,181 households where at least one person is employed as a manual scavenger, accounting for 35 per cent of the total 1.82 lakh such households in rural India. Second highest manual scavengers are found in Madhya Pradesh at 23,105.

True Typed Copy of the article published in the Indian Express on 18.09.2018 is marked and annexed herein as **ANNEXURE P-18 Pg.**

2.24. That on 18.09.2018 an article was published in News 18 which reported that 18.09.2018 An article published in News 18 reported that according to reports, the official numbers collated by the National Commission for Safai Karamcharis (NCSK), the statutory body that was set up by an Act of Parliament for the welfare of sanitation workers, show that 123 people employed as manual scavengers lost their lives. Though the data is mostly based on newspaper reports, it is one of the first such statistics released, tallying up the deaths of

sewer and septic tank cleaners. However, the latest data released by the Safai Karamchari Andolan states that from 2016 to 2018, there were 429 deaths due to manual scavenging, whereas 96 were reported due to sewer cleaning in 2017 and 13 in 2018. But the huge gap in the official and NGO data becomes glaring once the area under consideration is paid attention to. While the 123 deaths stated by the NCSK reveal an all-India figure, the NGO says 429 such deaths occurred in Delhi-NCR alone. So far as the all-India figure is considered, there have been 83 sewer deaths in 2018 and the organisation is still collating the rest of the data. In the past one week itself, Delhi saw six such deaths in the National Capital Region.

True Typed Copy of the article published in News 18 dated 18.09.2018 titled "As Govt Data Pegs Manual Scavenging Deaths at 123, NGO Says Over 400 Killed in Delhi Alone" is marked and annexed as **ANNEXURE P-19 Pg.**

2.25 That on 18.09.2018 An article published in The Week reported the statements of an official who stated that there is no specific figure for those employed in manual scavenging. The contractors who hire people for such jobs do not comply with law. Manual scavenging was banned in the country in 1993," the official said. Furthermore, More than 600 people have died while cleaning septic tanks and sewers across the country in the past 25 years, according to data collated by the National Commission for Safai Karamcharis (NCSK).According to

the official, the figure may change as the statutory body is in the process of collecting details from states and updating the data. The exercise, the first undertaken by a government body to account for such deaths, gained momentum following the deaths of six men while cleaning sewers in the national capital in two separate incidents in the past week. According to the data, there have been 634 deaths related to manual scavenging since 1993, with Tamil Nadu reporting the highest number of such deaths at 194, followed by Gujarat 122, Karnataka 68 and Uttar Pradesh 51.

True Typed Copy of the article published in The Week dated 18.09.2018 titled '634 deaths related to manual scavenging recorded in 25 years NCSK' is marked and annexed as **ANNEXURE P-20**
Pg.

2.26 That on 19.09.2018 an article was published in the Guardian which reported that one Indian worker has died while cleaning sewers or septic tanks every five days since the beginning of 2017, according to the first official government statistics on the work, considered one of country's deadliest jobs and most insidious form of caste discrimination.

True Typed Copy of the article published in the Guardian on 19.09.2018 is marked and annexed herein as **ANNEXURE P-21**
Pg.

2.27 That on 25.09.2018 an article published in The Huffington Post India stated that in August, 2018, 11 manual scavengers died over a short span of 7 days in Delhi, despite a ban by the State Government. The article further reports the horrific incidents suffered by these workers.

True Typed Copy of the article published in the Huffington Post India dated 25.09.2018 titled 'Manual Scavenger Deaths : 4 stories that reveal the horrifying lives sewer workers lead in India' is marked and annexed as **ANNEXURE P-22 Pg.**

2.28 That on 25.09.2018 an article published by the India Times reported that under the Standard Operating Procedures (SOPs) for monitoring private housing complexes/societies where hiring of people for sewer cleaning is concerned, in an event of death, the District Magistrate of the area would be held responsible and could be penalized u/s 304 IPC, 1860. Furthermore, the Social Welfare Minister clarified that in case of a death of an individual entering a sewer line or septic tank, the person-in-charge of the cleaning will face charges u/s 304 not 304A of the Penal Code, 1860.

True Typed Copy of the article published in the India Times dated 25.09.2018 titled 'Manual Scavenging Is Illegal, Sewer Deaths Can Land You In Jail For 10 Years' is marked and annexed as **ANNEXURE P-23 Pg.**

2.29 That on 26.09.2018 in the ED Times reiterated a Times of India report, the Delhi Government said that contractors will be booked for culpable homicide in case of the death of sewers facing charges under IPC Section 304 pertaining to culpable homicide not amounting to murder contrary to Section 304A which stated death due to negligence.

True Typed Copy of an article published in The ED Times dated 26.09.2018 titled 'This Pic Of Boy Crying Next To The Dead Body Of His Father Prompts Talk On Manual Scavenging Deaths In India is marked and annexed as **ANNEXURE P-24 Pg.**

2.30 That on 04.10.2018 an article published in The Indian Express reported that a study conducted by Rashtriya Garima Abhiyan on 51 cases carried out in 11 states involving the deaths of 97 manual scavengers and minor to serious injuries to 70 surviving manual scavengers across the country . The report states that 37 per cent of those who died were in the age group of 15-25, another 35 per cent were between 25 and 35 years of age while 23 per cent was in the age group of 35-45 years. That only in 18 cases (35%) an FIR u/ s304A IPC, 1860 was filed but no arrest except one case was made. Moreover, mandatory compensation of Rs. 10 Lakh was awarded in only 16 cases. Likewise, not one child from these families has received the government's pre-matric scholarships meant for them.

94% of families of the deceased belong to the Scheduled Caste category (mostly Valmikis) while the remaining 4 and 2 per cent are from Other Backward Classes and Scheduled Tribes, respectively.

True Typed Copy of the article published in The Indian Express dated 04.10.2018 titled 'In most manual scavenging deaths, no FIR filed, no compensation to kin Study' is marked and annexed as **ANNEXURE P-25 Pg.**

2.31 That on 05.10.2018 an article published in The Asian Age reiterated the report submitted by the Rashtriya Garima Abhiyan (RGA) which was based on a research between March and July, 2018 stating that over 600 deaths ensued in the last 1.5 years across the country. Whereas, the data reported by the National Commission for SafaiKaramcharis under the Ministry of Social Justice and Empowerment stated that 39 deaths have occurred in Delhi since 93; which the aforesaid NGO says that the said figures are underestimated. Furthermore, cases involving manual scavengers' deaths should be booked under this act but most of these cases are being registered under SC and ST (Prevention of Atrocities) Act or Section 304A of IPC (causing death by negligence). In fact, there is no implementation of the act at all and that is why the victims' families are not getting justice and compensation despite the Supreme Court's verdict. The report was based on a research between March and July 2018 on manual scavengers who succumbed to death while

cleaning septic tanks in 11 states across India since 1992. Interviews of family members and survivors in the 51 cases in 11 states also revealed that compensation was paid to the affected families in only 16 cases.

True Typed Copy of the article published in The Asian Age dated 05.10.2018 titled 'Manual Scavenging : Over 600 deaths in last 1.5 years is marked and annexed as **ANNEXURE P-26 Pg.**

2.32. That on 15.11.2018 an article published in The Centre for Equity Studies reported that the survey was carried out in 11 states of India, among them total 51 incidents were covered and 97 deaths were reported. The event also included screening of a documentary titled, "The Cost of Cleanliness". In the event, 400 members of the family members of the deceased people participated. According to the main findings of the research, the study identified a total 140 incidents and 302 deaths from 1992 to 2018. Out of 140 incidents a total of 51 incidents were covered by the study in which 97 deaths were reported.

According to National Commission for Safai Karamchari (NCSK) data, Tamilnadu reported highest number of deaths (194) followed by Gujarat (122), Karnataka (68) and Uttar Pradesh (51). In this report, Gujarat reported 62 deaths followed by Maharashtra and Uttar Pradesh reporting 29 deaths each and Madhya Pradesh and

Tamilnadu reporting 24 deaths each. Out of the total case interview, in 35% of the incidents the FIR was filed whereas in 59% of the incidents FIR were not filed and in 6% of incidents respondents do not know if FIR had been filed. In the total number of cases where the FIR had been filed (18 cases), the research team was able to furnish copies of the FIR for 13 cases during the investigation. The report also highlights that the highest death rate of 37% was recorded in the age group of 15-25 followed by 35% and 23% in the age group of 25-35 and 35-45 respectively. 67% of the total deceased were married. Valmiki, Arunthutiyar, Dom, Mehtar, Rukhi, kumbhar, Matang, Meghwal, Chambar, Rai Sikh and Hela are the communities engaged in cleaning and sanitation related work in the different states covered by the research. 94% of the families of the deceased belong to the Scheduled Caste category, 4% to the Other Backward Classes and 2% to the Scheduled Tribe. Out of the 94% Scheduled Caste families of the deceased, 65% of the families interviewed belong to the Valmiki caste. 49% of the deceased were found to have studied below the 10th standard whereas another 45% were uneducated.

True Typed Copy of the Centre for Equity Studies dated 15.11.2018 titled 'Justice Denied: Stories of manual scavenging deaths from the margins' is marked and annexed as **ANNEXURE P-27 Pg.**

2.33 That on 24.11.2018 an article published in The Wire reported

that as per a study conducted by the Sanitation Workers Project conducted by Dalberg Advisors over 5 million people are employed in sanitation work of some sort, with about 2 million working in high-risk conditions. Furthermore classification of 9 different categories of manual scavengers was provided for:

1. Sewer cleaning is the process of unblocking and cleaning sewer and wastewater drains. The work is usually complaint-based, seasonal (rainy season) and occasionally for preventive maintenance. Since sewers are only in urban areas, a large percentage of the work takes place there. It is estimated that there are around 1,53,000 sewer cleaners – all of them men;

2. Latrine cleaning is the process of emptying dry/single-pit latrines – primarily in rural areas. The process involves daily collection and transport/emptying of faecal matter. There are 7,70,000 latrine cleaners, 90% of whom are in rural areas and 95% of them are women;

3. Faecal sludge handling is the process of emptying, collecting and transporting human waste from septic tanks. The work is usually carried out on demand, while de-sludging frequency varies greatly ranging anywhere from 6 months to 10 or 15 years. 80% of faecal handling is carried out in urban unplanned localities. There are currently around 22,000 workers – all of them men;

4. Railway cleaning involves cleaning faecal matter from railway tracks and platforms as well as cleaning out railway toilets. Both activities need to be carried out several times a day. There are approximately 95,000 railway cleaners – approximately 80% are women and the rest are men;

5. Treatment plant work requires workers to maintain and operate sewage and faecal sludge treatment plants on a daily basis. Workers are mostly in urban areas spread across India – working in the 527 STPs/FSTPs. There are around 6,000 male workers and no women;

6. Community and public toilet keeping is the process of maintaining these bathrooms on a daily basis. Workers are usually from both rural and urban areas (mostly slums and public convenience shelters). There are approximately 2,0,2000 cleaners – 75% of them are men;

7. School toilet cleaning is the process of operating and maintaining school toilets on a daily basis. There are over 8,00,000 cleaners in both, rural and urban schools; 80% of them are in rural schools and over 90% of them are women. We noticed that women preferred working as school toilet cleaners due to an emotional attachment with children and assured monthly income;

8. Sweeping and drain cleaning requires workers to clean open drains and road sweeping. Though not traditionally associated with

scavenging, they should fall under the category of scavengers because they often encounter faecal matter due to open defecation and unsanitary latrines connected to drains in urban settings. There are over 4,10,000 drain cleaners where men and women are equally employed;

9. Domestic work is the process of cleaning toilets in middle-high income households and institutions. These workers are all in urban areas and over 2 million are employed all over the country.

True Typed Copy of the article published in The Wire dated 24.11.2018 is marked and annexed as **ANNEXURE P-28 Pg.**

3. QUESTIONS OF LAW:-

3.1 Whether the direct or indirect employment of manual scavengers despite a prohibition on the same and non-termination of the previous engaged manual scavengers pursuant to the commencement of the Act of 1993 and Act of 2013 amounts to violation of the statutory law of the land?

3.2 Whether the construction of dry/insanitary latrines and failure to demolish the existing dry/insanitary latrines amounts to violation of the statutory law of the land as in light of Act of 1993 and Act of 2013?

3.4 Whether the death of the manual scavengers resulting from exposure to hazardous conditions tantamount to violation of Right

to Safety, Right to Dignity and Right to Life as enshrined under Article 21 of the Constitution of India?

3.5 Whether the inability of the Respondents to eliminate manual scavenging in totality despite existing legislations and instances of fatal accidents tantamount to violation of the State's duty to promote welfare of persons (Article 38), policies towards health of workers (Article 39), provision for just and humane conditions of work (Article 42), provision for a decent standard of living (Article 43), and protection of weaker sections of the Society (Scheduled Castes and Scheduled Tribes from social injustice (Article 46) of the Constitution of India?

3.6 Whether in light of the hazardous conditions that manual scavengers are exposed to, the local authorities, officials, agencies, contractors or any other person engaging a manual scavenger either directly or indirectly is deemed to have knowledge that death is a likely consequence?

3.7 Whether in view of the aforementioned the erring official, agency, contractor or any other person who either directly or indirectly engages a manual scavenger whose untimely death is resultant of the same, thereby the erring official, agency, contractor or any other person is liable to be charged u/s 304 of the Indian Penal Code, 1860?

4. That the source of knowledge of facts of the present case have been obtained by the Petitioner through media, newspaper reports and reportable precedents of this Hon'ble Court.

5. That the present petition is being filed in the interest of justice for, fundamental and statutory rights, safety and security of the public at large. Some of the people being represented in the present PIL may not be aware of their legal rights being infringed and may not have the economic means to approach this Hon'ble court.

6. That for the sake of brevity and keeping in mind the precious time and resources of the court, the present petition is being filed to avoid plethora of suits that may be filed against the respondents for the same relief.

7. That the Petitioner hereby undertakes to bear costs, if any, imposed by this Hon'ble Court arising out of this Petition.

8. That the present petition is being filed before this Hon'ble Court because of the large-scale safety and security issue involved in the matter. This Hon'ble Court being empowered under Article 142 to pass any order or decree as is necessary for doing complete justice for any cause or matter pending before it, and the said decree shall be enforceable throughout the territory of India.

9. That the Petitioner has preferred the present petition on the following amongst other grounds:-

GROUND

- A. **BECAUSE** the present Petition is in the interest of Right to Dignity, Right to Life, Right to Safety as enshrined under Article 21 of the Constitution of India, of the manual scavengers in light of the increasing number of accidents and fatalities consequently posing an unwarranted life hazard in an employment which is strictly prohibited by Law.
- B. **BECAUSE** the Act of 2013 Act penalizes construction of insanitary latrine and direct or indirect employment of persons as manual scavengers; demolition of existing insanitary latrines or conversion to sanitary latrines (section 5), and non-termination of any contract, instrument or agreement for employment of manual scavenging executed before the commencement of the Act (Section 6) with punishment on first contravention with imprisonment upto 1 year or with fine which may extend to fifty thousand rupees) or with both, and on any subsequent contravention, imprisonment upto 2 years or with fine which may extend to one lakh rupees or with both (Section 8). Furthermore, the Act u/s 7 provides penal provisions for local authority or agency engaging or employing a person directly or indirectly for hazardous cleaning of a septic tank or sewer, one year after the commencement of the Act with

punishment on first contravention with imprisonment for a term which may extend to 2 years or with fine which may extend to two lakh rupees or with both, and on subsequent contravention imprisonment which may extend to 5 years or with fine which may extend to five lakh rupees or with both; and yet as per the data, not a single prosecution has been effected till date.

C. **BECAUSE** despite the prohibitory ban on employment as manual scavengers and ban on construction of insanitary latrines under the 2013 Act, as evidenced by the abovementioned articles published in The Wire dated 15.06.2018 (ANNEXURE P/ Pg.), The Indian Express dated 20.06.2018 (ANNEXURE P/ Pg.), The CSRJournal dated 16.08.2018 (ANNEXURE P/ Pg.) and Down To Earth publication dated 11.09.2018 (ANNEXURE P/ Pg.) reported that as of 2017 in about 121 districts out of 600 districts, barring the largest employer, the Indian Railways, over 50,000 persons were reportedly engaged as manual scavengers, whereas in reality the figure is much higher. Similarly, there exists approximately 26 Lakh dry latrines in the country. The same is in contravention to sections 5,6 and 7 of the Act of 2013 and liable for punishment u/s 8 and 9 of the Act.

D. **BECAUSE** it is imperative to note that Section 10 of the Act of 2013 provides for limitation of prosecution, wherein no Court shall take cognizance of any complaint made by a person with regard to

any offence under the Act of 2013, beyond a period of 3 months from the commission of the offence. The said provision is illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India. While ignorance of the law is not an excuse, but the persons employed as manual scavengers cannot be deemed to be well-versed with the fine-print of the law and hence the erring local authority, agency, officials or any other person cannot be safeguarded with a clause for limitation of prosecution for performing an act which is prohibited under the law. People working as manual scavengers are already marginalized and belong to the lower strata of the society and it is very difficult for them to raise voice against such inequalities and inhuman behavior. Most people who employ them are powerful it is difficult for them to raise voice against them. The court must take *suomotu* cognizance of the matter and try to remove this practise from the society as soon as possible.

E. **BECAUSE** the Department of Social Justice and Empowerment, Ministry of Social Justice and Empowerment issued a gazetted notification dated 12th December, 2013 titled The Prohibition of Employment as Manual Rehabilitation Rules, 2013. The definition of SafaiKaramchari as under the said Rules has been mentioned above. Furthermore, the Rules provide for protective gear and safety devices made available to any person who is engaged to

clean a sewer or a septic tank. As mentioned above and evidenced through Annexure P/Pg. , the definition of Manual Scavenger (Section 2(j) the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993) and SafaiKaramchari (Section 2(h) National Commission for SafaiKaramchari Act, 1993; Rule 2(h) Prohibition of Employment as Manual Scavengers Rehabilitation Rules,2013) are not synonymous, however dealing with human excreta is common for both. The definition of SafaiKaramchari is wider and includes sanitation work (apart from domestic work). Hence, from a bare perusal of the said provisions, cleaning of drains and sewers is included under the definition of SafaiKaramchari. Hence, the demarcation appears to be more on paper rather than in practice. As noted in the Manual published by the Ministry of Social Justice and Empowerment, Department of Social Justice and Empowerment, February 2013 (ANNEXURE P/ Pg.), the term “SafaiKaramchari” is the genus and the term “Manual Scavengers” is the species.

F. **BECAUSE** the absence of adequate equipment and protective gear provided to the Manual Scavengers pose a de die in diem safety hazard to their health as they are exposed to noxious chemicals, gases, pollutants and are extremely susceptible to infections and suffer from injuries as well.

- G. **BECAUSE** the mandate of the National Commission for SafaiKaramcharis as laid down in the resolution dated 06.03.2013 read with resolution dated 02.03.2009, and inculcated as Section 8 of the National Commission for SafaiKaramcharis Act, 1993 pertaining to the functions of the Commission are produced as follows:
- a. *Recommend to the Central Government specific programmes of action towards elimination of inequalities in status, facilities and opportunities for SafaiKaramcharis.*
 - b. *Study and evaluate the implementation of the programmes and schemes relating to the social and economic rehabilitation of SafaiKaramcharis; and scavengers, in particular.*
 - c. *Investigate specific grievances and take suo-motu notice of matters relating to non-implementation of: -*
 - i. *programmes or schemes in respect of any group of SafaiKaramcharis*
 - ii. *decisions, guidelines or instructions, aimed at mitigating the hardships of SafaiKaramcharis*
 - iii. *measures for the social and economic upliftment of SafaiKaramcharis*

- iv. the provisions of any law in its application to SafaiKaramcharis; and take up such matters with the concerned authorities or with the Central or State Governments*
- d. To study and monitor the working conditions, including those relating to health, safety and wages of SafaiKaramcharis working under various kinds of employers including Government, Municipalities and Panchayats, and to make recommendations in this regard.*
- e. Make reports to the Central or State Governments on any matter concerning SafaiKaramcharis, taking into account any difficulties or disabilities being encountered by SafaiKaramcharis*
- f. Any other matter which may be referred to it by the Central Government.*

H. **BECAUSE** the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 came into effect on 18th September 2013 with the object and purpose that the Right to Live with Dignity is an implicit Fundamental Right under Article 21 (Part III) of the Constitution. Moreover, Article 46 of the Constitution places the duty on the State to protect weaker sections of the society (Schedules Castes and Scheduled Tribes) from social

injustice and all forms of exploitation. The relevant section so the Act are produced hereunder:

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

2(e) insanitary latrine means a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as prescribed;

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

5. Notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, no person, local authority or any agency shall, after the date of commencement of this Act:

(a) construct an insanitary latrine; or

(b)engage or employ either directly or indirectly, a manual scavenger, and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging...

1. No person, local authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of sewer or septic tank.

I. **BECAUSE** the Department of Social Justice and Empowerment (Ministry of Social Justice and Empowerment) vide Gazetted Notification dated 12.12.2013 under Rule 4 of the **Prohibition of Employment as Manual Scavengers Rehabilitation Rules, 2013:**

Any person engaged to clean a sewer or septic tank shall be provided by his employer, protective gear and safety devices including, but not limited to the following:

(i)Air compressor for blower

(ii)Air line breathing apparatus

(iii) Air line respirator with manually operated air blower

(iv) Air Purifier Gas Mask/Chin Cortege

(v) Artificial respiration/Retiuclate

- (vi) Barrier caution tape*
- (vii) Barrier Cream*
- (viii) Barrier Cone*
- (ix) Blower*
- (x) Breath Mask*
- (xi) Breathing Apparatus*
- (xii) Caution Board*
- (xiii) Chlorine Mask*
- (xiv) Emergency Medical Oxygen Resuscitator Kit*
- (xv) First Aid Box*
- (xvi) Face Mask*
- (xvii) Gas Monitor (4 gases)*
- (xviii) Guide Pipe Set*
- (xix) Full body water suit*
- (xx) Fishing water suit attached with boots*
- (xxi) Hand gloves*
- (xxii) Head lamp*
- (xxiii) Helmet*
- (xxiv) Helmet demolishing*
- (xxv) Lead acetate paper*
- (xxvi) Life guard pad*
- (xxvii) Modular airlines supply trolley system*
- (xxviii) Normal face mask*

(xxix) Nylon rope ladder 5 metres

(xxx) Nylon safety belt

(xxxi) Pocket book

(xxxii) Port oxy

(xxxiii) Raincoat

(xxxiv) Reflecting jacket

(xxxv) Safety belt

(xxxvi) Safety belt clothing

(xxxvii) Safety body harness

(xxxviii) Safety goggles

(xxxix) Safety gumboots

(xl) Safety helmet

(xli) Safety showers

(xlii) Safety torch

(xlili) Safety tripod set

(xliv) Search light

Rule 5- The local authority shall ensure that the following cleaning devices are used by persons engaged in cleaning sewer or septic tank including but not limited to the following:

(i) Sewer line cleaning bucketing machine

(ii) Jetting machine

(iii) Suction machine (Gulley Emptier)

- (iv) Combined machine (Jetting cum suction)*
- (v) Deep suction combined machine (Jetting cum suction machine)*
- (vi) Manual hand operated grab bucket*
- (vii) Hydraulic operated trolley mounted grab bucket*
- (viii) Truck mounted motor & winch operated grab bucket machine*
- (ix) Fixed structure mounted motor & winch operated grab bucket machine*
- (x) Rickshaw mounted winch & motor operated desilting machine for wet well*
- (xi) Rickshaw mounted winch & auxiliary engine operated desilting machine for manhole*
- (xii) Escort hydra crane mounted hydraulic winch operated grab bucket desilting machine*
- (xiii) Manual rods, shovels, spades, drainage cleaning machines and steel scrapers with handles*
- (xiv) Hoses and washing instruments*

J. **BECAUSE** as reported in an article published by Scroll.in on 25th June, 2017 despite there being attempts to abolish manual scavenging, the said practice rampantly continues. The reasons for the slow progress of rehabilitation are illiteracy of manual scavengers, their lack of confidence in running self-employment

projects, and the hesitancy of banks in providing them loans due to low recovery. (ANNEXURE P/ Pg.)

K. **BECAUSE** this Hon'ble Court in the case of *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewage & Allied Workers*, (2011) 8 SCC 568, held that for the purposes of ensuring appropriate mechanism for safety and protection of sewage workers, the duty is affixed on the state and its agencies/instrumentalities. Moreover, persons working in the sewers cannot be treated as mechanical robots who can be exposed to poisonous gases in manholes, that it is the Constitutional obligation of the State and its agencies to put in an effective mechanism for ensuring their safety. That direction issued by the High Court in order dated 20.8.2008 must be complied by the States and these directions are complied by contractors who carry out such work relating laying and maintenance of sewer system. The court further directed to ensure compliance of Sections (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) of the 2013 Act to extend to the Contractors that are engaging in such jobs and to further submit a status report in 2 months in regard with this compliance. This extended to NDMC, MCD and Delhi State Industrial Development Corporation.

L. **BECAUSE** the Hon'ble Apex Court, in *Safai Karamchari Andolan & Ors. v. Union of India & Ors.*, (2014) 11 SCC 224 observed that

dry latrines have continued to exist despite a ban and have rather increased in numbers over the years from 72.05 Lakhs (in 1989) to 96 Lakhs and continue to be cleaned manually by scavengers belonging to Scheduled Castes. The manual scavenging to be deep rooted in the concept of caste system and untouchability, wherein 'Untouchability' is forbidden in India by the way of abolition of Untouchability, 1955. That the CAG report in 2003 found that the 2012 scheme had failed to reach its objectives in 10 years. The same is violative of Articles 14, 15, 16, 17, 21 and 47 of the Constitution of India and Section 7A of the Protection of Civil Rights Act, 1955, which protects such people who are forced to work as manual scavengers within such meaning. This Hon'ble Court observed, apart from the provisions of the Constitution of India, Articles 1, 2(1), 23(2) of Universal Declaration of Human Rights, 1948, is in violation of International Covenants and Conventions, which restores to every person human dignity and every person has a right to earn just remuneration for himself and his family. Article 5(a) of the CEDAW that enshrines the duty on state to change law and protect any discrimination on basis of inferiority of superiority practices taking place due to customary and other laws. Also, Article 2(1)(c) of the CERD which also makes it the duty of the state to legislate wherever necessary to remove such racial discrimination without delay to ensure such rights of

every member of the state. India being a part of all such conventions is in violation of such International Covenants. This Hon'ble Court also stated that these International Covenants are in consistence with the domestic law and that under the directions of this Court the States are obligated to collect data and monitor the implementation of the 2013 Act. That the District Magistrate of the said district shall be held liable for rehabilitation of each manual scavenger in accordance with provisions of sub-section (1) of the Act and the State government or DM shall assign responsibilities in his behalf to subordinate officers of the concerned Municipalities. The Apex Court therein directed the State Governments and Union Territories to fully implement the same and appropriate action be taken for non-implementation and violation of the 2013 Act.

M. **BECAUSE** as reported in an article published in News 18 dated 18.09.2018 stated the official numbers collated by the National Commission for Safai Karamcharis (NCSK), the statutory body that was set up by an Act of Parliament for the welfare of sanitation workers, show that 123 people employed as manual scavengers lost their lives. Though the data is mostly based on newspaper reports, it is one of the first such statistics released, tallying up the deaths of sewer and septic tank cleaners. However, the latest data released by the Safai Karamchari Andolan states

that from 2016 to 2018, there were 429 deaths due to manual scavenging, whereas 96 were reported due to sewer cleaning in 2017 and 13 in 2018. But the huge gap in the official and NGO data becomes glaring once the area under consideration is paid attention to. While the 123 deaths stated by the NCSK reveal an all-India figure, the NGO says 429 such deaths occurred in Delhi-NCR alone. So far as the all-India figure is considered, there have been 83 sewer deaths in 2018 and the organisation is still collating the rest of the data. In the past one week itself, Delhi saw six such deaths in the National Capital Region. (ANNEXURE P/ Pg.)

N. **BECAUSE** in the article published in The Centre for Equity Studies dated 15.11.2018 reported that the survey was carried out in 11 states of India, 140 incidents and 302 deaths from 1992 to 2018. Out of 140 incidents a total of 51 incidents were covered by the study in which 97 deaths were reported. According to National Commission for SafaiKaramchari (NCSK) data, Tamilnadu reported highest number of deaths (194) followed by Gujarat (122), Karnataka (68) and Uttar Pradesh (51). In this report, Gujarat reported 62 deaths followed by Maharashtra and Uttar Pradesh reporting 29 deaths each and Madhya Pradesh and Tamil Nadu reporting 24 deaths each. Out of the total case interview, in 35% of the incidents the FIR was filed whereas in 59% of the

incidents FIR were not filed and in 6% of incidents respondents do not know if FIR had been filed. In the total number of cases where the FIR had been filed (18 cases), the research team was able to furnish copies of the FIR for 13 cases during the investigation. The report also highlights that the highest death rate of 37% was recorded in the age group of 15-25 followed by 35% and 23% in the age group of 25-35 and 35-45 respectively. 67% of the total deceased were married. Valmiki, Arunthutiyar, Dom, Mehtar, Rukhi, kumbhar, Matang, Meghwal, Chambhar, Rai Sikh and Hela are the communities engaged in cleaning and sanitation related work in the different states covered by the research. 94% of the families of the deceased belong to the Scheduled Caste category, 4% to the Other Backward Classes and 2% to the Scheduled Tribe. Out of the 94% Scheduled Caste families of the deceased, 65% of the families interviewed belong to the Valmiki caste. 49% of the deceased were found to have studied below the 10th standard whereas another 45% were uneducated. Hence, it is imperative to note that despite the occurrence of death of persons, FIR has not been registered in majority of the known and reported cases.

O. **BECAUSE** as reported by Scroll.in, an article published on 1st September, 2017, in Delhi alone, 10 people died in four separate incidents between July 15 and August 20 after they were sent

without any safety equipment to clean sewers and tanks. Of them, some died when they jumped in to rescue fellow workers who had collapsed inside after inhaling toxic gases. There is still no official national database for such deaths. Data collected by the SafaiKarmachariAndolan revealed that this year alone, across India, at least 90 workers lost their lives – an average of 11 people a month, while cleaning sewers, drains and septic tanks. To clean drains under their jurisdiction, municipal agencies employ both *nalabeldars*(designated drain cleaners on their payrolls) and contract laborers. On paper, the work is fully mechanized. But things differ on the ground. While equipment like jetting and suction machines and safety gear for sanitation workers in case of emergency situations remain there as mandatory on paper, they fail to materialize on the ground.(ANNEXURE P/ Pg.)

P. BECAUSE an Article published in Indian Express on 15.11.2017 reported the estimated deaths of manual scavengers reported by the Safai Karmachari Andolan is 1,560 for the duration of 1993 to 2017. It further reported that less than half of the reported numbers of such incidents are even prosecuted and given compensation as provided by the Central Monitoring Committee Report. (ANNEXURE P/ Pg.)

Q. BECAUSE an Article published in NDTV on 04.09.2017 reported that there have been 39 deaths of manual scavengers in the

period of 100 days . It further reported that the states of Karnataka, West Bengal, Punjab and Andhra Pradesh failed to rehabilitate even the officially identified number of manual scavengers which is violation of numbers precedents of this Hon'ble Apex court and numerous other Hon'ble High courts that obligate the states and union territories to provide rehabilitation and welfare schemes for manual scavengers, thereby violating the provisions as provided under the Act of 2013 . (ANNEXURE P/ Pg.)

R. **BECAUSE** in the case of *Change India v. Government of Tamil Nadu (W.P. No. 25726 of 2017)* it was held that the State is under a bounden duty to prohibit manual scavenging and it cannot avoid its liability to compensate manual scavengers who lose their lives in course of manual scavenging, by reason of the inability of the State to stop manual scavenging.' It further stated that the State shall pay the compensation of Rs. 10 lakhs ordered by this Hon'ble Court to the next of kin of these victims, therefore, this Hon'ble Court further imposed an interest of 8% per annum till the date of payment of compensation of Rs. 10 lakhs.

S. **BECAUSE** in the case of *N. Nagendra Rao & Co. V. State of Andhra Pradesh (C.A. No. 3856 of 1988)* the court held in consonance the doctrines of *laissez faire* and the idea of a Welfare State, the determination of vicarious liability of the State is linked

with negligence of its officers. That in furtherance to this the Hon'ble court held in para 26 that 'Whether the authority to whom this power is delegated is liable for negligence in discharge of duties while performing such functions is a different matter. But when similar powers are conferred under other statute as incidental or ancillary power to carry out the purpose and objective of the Act, then it being an exercise of such State function which is not primary or inalienable, an officer acting negligently is liable personally and the State vicariously.' Furthermore, FIRs against the erring officials and even contractors, as evidenced under ANNEXURES P/ Pg. and P/ Pg., an FIR u/s 304 Indian Penal Code, 1860 affixing vicarious liability upon the negligent and erring officers shall be registered in the present case given the surge in number of manual scavenger deaths.

T. **BECAUSE** National Commission for Safai Karamcharis (Ministry of Social Justice & Empowerment) Government of India submitted an Annual report by **5th** Commission(May-Dec 2009). The committee proposed recommendations for Safai Karamcharis and Manual Scavengers as follows: the complete Abolition of the Contract System, To protect the workers being exploited by such contractors, To improve their living conditions, Providing general facilities and protective equipment, To ensure additional safety measures for sewer cleaning, Advertise Welfare schemes

available to manual scavengers, Education and Health facilities, Provident Fund, Gratuity, Insurance and Payment of wages should be provided to them, Railways should adopt mechanized system, Fresh surveys and provide empowerment for women. These recommendations were made to improve human dignity and provide basic facilities that is the right of every person under the Constitution of India. (ANNEXURE P/ Pg.)

U. **BECAUSE** Bloomberg Quint reported according to NCSK annual reports, the budgetary allocation for rehabilitation of manual scavengers has been 2.2crores for 2010-11, 2.3 crores for 2011-12, 2.9 crores for 2012-13, 3.1 crores for 2013-14, 3.4 crores for 2014-15, 3.8 crores for 2015-16 and 4.1 crores for 2016-17. Further, they stated there's also a provision for rehabilitation of manual scavengers in both the 1993 and 2013 laws. There's also a special employment scheme but over the last four years,budget allocation has gone down from Rs 570 crore to 5 crore. (ANNEXURE P/ Pg.). If the rehabilitation of these workers is not actively done starting from education and vocational training, then thisage-old banished tradition would continue.

V. **BECAUSE** even today, caste remains a major source of occupational and class division. When the world has made significant progress in human development, in India, there exists a community which makes it living by carrying human excreta and

servicing the community sanitation with a baggage of their caste identity. This job, deemed to be polluting and that is filthy, is performed largely by the Scheduled Castes. This inhuman practice of dealing with disposal of human excreta, is not only diabolic, but perhaps is the highest degree of human rights violation.

W. **BECAUSE** the report of the UNDP dated 21.12.2012 stated that Manual Scavengers are treated as untouchables and there is complete social exclusion. Furthermore, it is identified that other Dalit communities are performing better after being allocated with Government sanctioned land and Manual Scavengers are the only community which do not get the land from the Government. However, the report addresses concerns with regard to the lack of societal acceptance extended to persons rehabilitated from the job of manual scavengers to any other job on account of being acquainted with their previous job title.

X. **BECAUSE** the aforementioned article reported in DailyO on 18th September, 2017 brought to light the social discrimination subjected to SafaiKaramcharis employed under Municipal Corporation of Delhi (MCD), as drain cleaners and sweepers, also belong to castes traditionally associated with sanitation work. The sanitation inspector of a Nagar Nigam exposed in an informal conversation that almost all workers presently employed in the corporation are from the Balmiki caste. The Delhi Jal Board, for

instance, currently employs around 60 per cent of its sanitary workers who belong to the Scheduled Castes. A large population of workers employed through private contractors by the board is not even reflected in these figures. Only one percent of our workers belong to the General category, and they are those who suffer from diseases like leprosy.

Y. **BECAUSE** health experts state that the life expectancy of Manual Scavengers is ten years less than the national average. These health hazards include exposure to harmful gases, cardiovascular degeneration, musculoskeletal disorders, infections, skin problems and respiratory system problems. In addition, the workers also face constant verbal abuse from road users and local gentry for obstructing car movement and spreading dirt, working under constant fear from the surrounding traffic, and experiencing social humiliation and discrimination because of their lower caste status.

Z. **BECAUSE** it is not the question here to consider whether the people who are working in such inhuman condition could be due to various constraints, financial constrain being one such owing to which the cleaner/laborer undertake this derogatory and hazardous work to earn their bread and butter. By and large, the Dalit community across the country is subjected to this inhumane and humiliating practice in lieu of meager wages. We live in the era of technology, artificial intelligence and robotic science. We are

tirelessly making efforts to shift human race to different planets around the galaxy. But we are failing miserably in eradicating such inhumane practices which is continuing to claim hundreds of innocent lives every month.

AA.**BECAUSE** despite of so much of time that has gone by, the numbers of deaths of Manual Scavengers have only increased which put an alarming question as to who shall be accountable for the deaths of Manual Scavengers at the workplace. It is a serious question which for which the municipal commissions, private contractors need to reply to and account for so that they cannot easily shrug off the causalities at work place which are continuously on rise. The Respondents failed to take preventive safety measures and to provide equipment/ kits before such hazardous activities being carried out by them through the workers/labourers, as a result some Manual Scavengers meet unfortunate ends and lose their lives. The Respondents should absolutely be made responsible due to their negligence or inaction, the fundamental rights and in particular, the right to life has been infringed due to lack of inaction from the Respondents side.

BB.**BECAUSE** there appears to be a blatant discrepancy with regard to the number of manual scavenger deaths which have actually occurred since its prohibition in 1993 and since the implementation

of the Act of 2013 and the number of deaths which the Respondents reflect across their various reports. It is pertinent to note that the Respondents have intentionally not placed on record the actual number of manual scavengers employed by them either directly or indirectly, as 26 Lakh dry latrines exist as of 2017; to escape the penal liability as imposed under the Act of 2013.

CC.BECAUSE the subsisting infrastructure does not purport towards the safety and security of the Manual Scavengers, resulting in accidents, diseases, injuries and fatalities suffered by them. Hence, inaction on behalf of the Respondents despite knowledge of the abovementioned amounts to willful negligence and disregard to the fundamental rights and needs of certain weaker section of the society in its entirety.

DD.BECAUSE this Hon'ble Court in the case of *Mahadev Prasad Khashik v. State of U.P. & Anr (2009) 2 SCC Cri 834*, with reference to [Section 304](#) IPC, observed that a plain reading of the above section 304 of the Code, makes it clear that it is in two parts. The first part of the section is generally referred to as [Section 304](#), Part I whereas the second part as [Section 304](#), Part II. The first part applies where the accused causes bodily injury to the victim with intention to cause death; or with intention to cause such bodily injury as is likely to cause death. Part II, on the other hand, comes into play when death is caused by doing an

act with knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

EE.BECAUSE this Hon'ble Court in the case of S.J. Vaghela & Anr v State of Gujrat, AIR 2013 SC 571 held that commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. This honorable court in the case of Jagriti Devi v State of Himachal Pradesh, (2009) 14 SCC 771 held that section 304 Part II comes into play when the death is caused by an act with knowledge that it is likely to cause death but there is no intention on the part of the accused whether to cause death or such bodily injury likely to cause death.

FF.BECAUSE this Hon'ble Court in the case of Rampal Singh v State of U.P. (2012) 8 SCC 289 held that the legislature in its wisdom covered the entire gamut of culpable homicide that "amounting to murder" as well as that "not amounting to murder" in a composite manner in section 300 of the code. It is neither advisable nor possible to state any straight jacket formula that would be universally applicable to all cases for such determination. Every case must essentially be decided on its own merit. The court has to perform the very delicate function of applying the provisions of the code to the facts of the case where the clear demarcation as to

what category of cases, the case at hand falls and accordingly punish the accused.

GG.BECAUSE in the present case the contractors, officials, agencies or any other persons involved in engaging or employing the persons as manual scavengers either directly or indirectly shall deemed to have knowledge that the hazardous working conditions that the aforesaid scavengers are subjected to, may likely result in death. In consonance with the above, the Delhi Government in September, 2018 had announced that in light of the increased number of fatalities, the criminal liability u/s 304 of the Indian Penal Code, 1860 in cases of death shall be affixed upon the District Magistrate as well as the person in-charge of the cleaning of septic tanks and sewers. It is the humble submission of the Petitioner that the instance of death of persons under circumstances wherein the number of fatalities are on the rise, they liability affixed cannot be of mere negligence as these contractors, officials, agencies or any other persons are engaging or employing persons either directly or indirectly to carry out acts which are prohibited under the law and are exposing the said persons to deplorable and hazardous conditions which have proved to be fatal in numerous instances. Hence, it is the plea of the Petitioner that the said contractors, officials, agencies or any other persons shall face criminal proceedings u/s 304 of the Penal

Code including the cases of agency wherein vicarious liability applies.

HH.BECAUSE this Hon'ble Court in the case of 13. This Court in [Union of India v. Prabhakaran](#) (2008) (9) SCC 527, extended the principle to cover public utilities like the railways, electricity distribution companies, public corporations and local bodies which may be social utility undertakings not working for private profit. In [Prabhakaran \(supra\)](#) a woman fell on a railway track and was fatally run over and her husband demanded compensation. Railways argued that she was negligent as she tried to board a moving train. Rejecting the plea of the Railways, this Court held that her "contributory negligence" should not be considered in such untoward incidents - the railways has "strict liability". A strict liability in torts, private or constitutional do not call for a finding of intent or negligence. In such a case highest degree of care is expected from private and public bodies especially when the conduct causes physical injury or harm to persons. The question as to whether the law imposes a strict liability on the state and its officials primarily depends upon the purpose and object of the legislation as well. When activities are hazardous and if they are inherently dangerous the statute expects highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no

negligence and that it was not intentional. Public safety legislations generally falls in that category of breach of statutory duty by a public authority. To decide whether the breach is actionable, the Court must generally look at the statute and its provisions and determine whether legislature in its wisdom intended to give rise to a cause of action in damages and whether the claimant is intended to be protected.

II. **BECAUSE** the persons engaged as manual scavengers are discriminated on the basis of caste and therefore tantamount to a clear violation under Article 15 and 16 of the Constitution of India. Manual scavenging is the mirror to see as to how far we have come in abolishing untouchability under article 17. They are forced to do this work because they belong to a particular class and no other option left for them to survive. They denied employment in other fields because of the caste to which they belong.

JJ. **BECAUSE** Article 17 of the Constitution was initially implemented through the enactment of the Protection of Civil Rights Act, 1955 (formerly known as the Untouchability (Offences) Act, 1955). Section 7A of the said 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. While these

constitutional and statutory provisions were path breaking in themselves, they were found to be inadequate in addressing the continuation of the obnoxious practice of manual scavenging across the country, a practice squarely rooted in the concept of the caste-system and untouchability.

Article 17, Abolition of Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

KK.BECAUSE the aforementioned statistics ipso facto are a sufficient cause for demanding remedial and preventive measures to curb such accidents and fatalities in the future on account of primarily lack of facilities and precautionary measures adopted by the State.

LL.BECAUSE the Hon'ble Supreme Court in various cases has held that the 'Right to Life and Liberty' as enshrined in Article 21 of the Constitution of India includes the 'Right to Safety' and 'Right to Live with Dignity'.

MM.BECAUSE the Apex Court in the case of *Khudiram Das v. State of West Bengal* , AIR 1975 SC 550 held that new needs of a person for liberty in the different spheres of life can now be claimed as a part of personal liberty under Article 21 and these personal liberties cannot be restricted either by legislation or by

law except satisfying Articles 14 and 19. Fundamental freedoms can be effectively enjoyed only if a person is to live with dignity, freedom and safety which further ensures a good quality life which, falls within the mandate of Article 21 of the Constitution.

NN.BECAUSE the Hon'ble Supreme Court in *Minu B. Mehta and Another vs Balkrishna Ramchandra Nayan & Anr.* observed that every person has a right to safety and security of his person.

OO.BECAUSE in the Hon'ble Supreme Court in the matter of *Avishek Goenka vs Union Of India & Anr (2012) 5 SCC 321* held that whatever are the rights of an individual, they are regulated and controlled by the statutory provisions of the Act and the Rules framed thereunder. The citizens at large have a right to life i.e. to live with dignity, freedom and safety. This right emerges from Article 21 of the Constitution of India. As opposed to this constitutional mandate, a trivial individual protection or inconvenience, if any, must yield in favour of the larger public interest.

PP.BECAUSE the Apex Court in *Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746* held that right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading and expressing oneself in diverse forms freely moving about and mixing and

commingling with fellow human beings” It means that life of a person is beyond the animal existence. Everyone should be treated with equality and no one should discriminate any human being on the basis of sex, caste, religion, colour or any other reason being human race we should behave and pay dignified respect to others.

QQ.**BECAUSE** the Hon’ble Supreme Court in *ParamandaKatara v. Union of India AIR 1989 SC 2039* held that preservation of life is of utmost importance, because if one’s life is lost, the status quante ante cannot be restored as resurrection is beyond the capacity of man’. Therefore, ‘Right to life’ is a basic and inalienable right of man which shall not be subjected to unwarranted hazards.

RR.**BECAUSE** Argumentum ab auctoritate fortissimum est in lege. Hence, the abovementioned judgments substantiate Article 21 has been infringed as the patients’ ‘Right to Safety’ has been compromised with. The abovementioned judgements places the onus of safety on the State. In light of the above, it is pertinent to note that Article 21 embarks that right to life does not mean mere existence, but life with dignity and on the other hand the Central and State Government; National and State Commissions and Municipal Corporation have drastically failed to even provide safety to human life, let alone life with dignity. The very existence of hazardous, unsafe, unprotected and inhumane working

conditions and works that manual scavengers are subjected to is contrary to the ideals enshrined in our Constitution. The numerous deaths, many of which are not even officially recorded threatens Articles 14, 17, 21 of the Constitution of India and Directive Principles of State Policy. Unless there is an accountability on the municipal commissions and the , private contractors and the owner of the premises is fixed, the unprecedented deaths will continue its course.

SS. **BECAUSE** apart from the provisions of the Constitution, there are various international conventions and covenants to which India is a party, which prescribe the inhuman practice of manual scavenging. These are the Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) and the Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). The relevant provisions of the UDHR, CERD and CEDAW are hereunder.

“Article 1 of Universal Declaration of Human Rights, 1948: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood. Article 2(1) of UDHR Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour,

sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

TT.BECAUSE India is a signatory to and has ratified the International Covenant of Civil and Political Rights (ICCPR), 1996, Article 26 of ICCPR states that, *‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’*

UU.BECAUSE our country has fully embodied the aforementioned provision of Article 26 of International Covenant of Civil and Political Rights, 1966 under the all-encompassing umbrella of the Right to Equality guaranteed under Article 14 of the Constitution of India. Therefore, the State is responsible for ensuring equal treatment and equal protection to all citizens of India, failing which the duty for enforcement of the aforesaid rights is casted upon the Supreme Court and all High Courts under Articles 32 and 226 respectively.

VV.BECAUSE the Hon’ble Supreme Court in *Cooper v. Union of India*, AIR 1970 SC 564, observed that that the right to personal

liberty in Article 21 must be read with Article 19 and Article 14, whenever necessary with a view to strengthen the right to personal liberty. Hence, it follows that Article 14 is attracted in order to embolden the rights as guaranteed under Article 21.

WW.BECAUSE the makers of the Constitution furthermore had embodied under the Directive Principles of State Policy, the State's duty to promote welfare of persons (Article 38), policies towards health of workers (Article 39), provision for just and humane conditions of work (Article 42), provision for a decent standard of living (Article 43), and protection of weaker sections of the Society (Scheduled Castes and Scheduled Tribes from social injustice (Article 46). Even though the Directive Principles of State Policy are non-justiciable, i.e. courts cannot be moved for relief for violation of the same; however, they are enforceable and are required to be inculcated in policies. The relevant aforementioned Articles are hereunder:

Article 38. State to secure a social order for the promotion of welfare of the people: (1) *The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.*

(2) *The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status,*

facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 39. Certain principles of policy to followed by the State: .-The State shall, in particular, direct is policy towards securing-

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 42: Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43: Living wage, etc. for workers - The State shall endeavor to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to promote cottage industries on an individual or cooperative basis in rural areas.

Article 46: *Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.*

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

XX.BECAUSE It is the humble submission of the Petitioners that despite the provisions under Articles 14,17,21,38,39,42,43and 46; neither the cause of deaths of Manual Scavengers has been investigated into nor have adequate precautionary and protective measures been implemented in order to curb the fatalities. Inaction on part of the Respondents tantamount to gross and willful negligence and is contrary to constitutional scheme.

YY.BECAUSE the present Writ Petition is filled against the alleged abuse of the process of law. In this case, it is imperative to consider and take into account the growing level of intolerance in our nation, reaching the dangerous level of fanaticism.

ZZ.BECAUSE it is the humble submission of the Petitioner that the Judges who are bestowed with the duty to protect the Constitution of India and uphold the Majesty of Rule of Law. That the Judiciary,

if not protected may be unable to fulfil its duty casted towards the public at large.

AAA.**BECAUSE** it is humbly submitted that this Hon'ble court may intervene in this present situation and safeguard the rights and interests of the citizens and persons *BoniJudicis Est Judicium sine Dilatione Mandare Executioni*.

PRAYER

In the facts and circumstances of the case, as mentioned above, it is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to:

- a. Issue Writ of Mandamus or any other appropriate writ thereby directing the Chief Secretaries of all States and Union Territories to place on record their respective status reports reflecting the number of manual scavengers engaged or employed either directly or indirectly since 1993;
- b. Issue Writ of Mandamus or any other appropriate writ thereby directing the Chief Divisional Personnel Officer of the Indian Railways to place on record their respective status report reflecting the number of manual scavengers engaged or employed either directly or indirectly since 1993;
- c. Issue Writ of Mandamus or any other appropriate writ thereby directing the Chief Secretaries of all States and

Union Territories to place on record their respective status report reflecting the number of existing and constructed insanitary and dry latrines since 1993;

d. Issue Writ of Mandamus or any other appropriate writ thereby directing the National Human Rights Commission and Chief Secretaries of all States and Union Territories to submit a report reflecting the manual scavenger deaths which have occurred since 1993;

e. Issue Writ of Mandamus or any other appropriate writ thereby directing the Chief Secretaries of all States and Union Territories and appropriate authority of the Indian Railways to investigate into the death of manual scavengers and initiate criminal proceedings u/s 304 r/w 107/119 of the Indian Penal Code, 1860 against the local authorities, agencies, contractors and any other officials/persons pertaining to death of persons either directly or indirectly employed or engaged by them, as manual scavengers.

f. Pass any order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present appeal.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL, AS IN THE DUTY BOUND EVER PRAY.

DRAWN BY:
ASHIMA MANDLA
ADVOCATE

FILED BY:

FUZAIL AHMAD AYUBBI
ADVOCATE FOR PETITIONER

New Delhi

Drawn On: 06.01.2019

Filed on: 09.01.2019

IN THE SUPREME COURT OF INDIA AT NEW DELHI
EXTRAORDINARY WRIT JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2019

(PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

CRIMINAL JUSTICE SOCIETY OF INDIA

...PETITIONER

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

AFFIDAVIT

I, Ahmed Faraz Khan, Son of Mr. L.U. Khan , aged around 31 years, General Secretary of the Petitioner Society having its registered office at 11-B, Mathura Road, Jangpura, New Delhi - 110014, do hereby solemnly affirm and declare as under: -

1. That I am the General Secretary of the Petitioner society in the above captioned matter and being so I am authorized to swear the instant affidavit on its behalf
2. That the present petition is being filed as a Public Interest Litigation.
3. That I have gone through the Supreme Court of India (Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. That I have no personal interest in the litigation and neither myself nor anybody is interested would in any manner benefit

from the relief sought in the present litigation save a member of General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.

5. That I have not moved any other similar petition before this Hon'ble Court or any other High Court.

6. That I have gone through the accompanying Writ Petition containing Pages to , paras to a n d list of dates and synopsis containing pages B to and the accompanying applications. The same have been drafted by my counsel under my instructions and I say that the contents of the same are true and correct to the best of my knowledge and belief as derived from the media reports and news reports and not part of the same is false of concealed therefrom.

7. That the annexures being filed alongwith the present petition are true copies of their respective originals.

8. That I have read the contents of the present petition and accompanying application and the present affidavit and the same is true and correct to the best of my knowledge and belief.

DEPONENT

VERIFICATION

Verified at New Delhi, this the 8th day of January 2019 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT