



Gujarat State Law Commission

JUSTICE M. B. SHAH

Former : Judge, Supreme Court of India,
Chief Justice, High Court of Bombay
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Chairman, Gujarat State Law Commission

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No.GSLC/2021/LPAD_24th REPORT/053 30th June, 2021

Dear Shri Aggarwalji,

Government of Gujarat, Legislative and Parliamentary Affairs Department; vide its Resolution No.LAC / 2006 / 44 / 110 / Law Cell, dated 31st December, 2013; had appointed the undersigned as the Chairman of the State Law Commission.

Till date, the Commission under the chairmanship of the undersigned has submitted in all **twenty-three (23) reports** on various points for consideration and for taking further needful actions.


Today, the Commission submits its **twenty-fourth (24th) report**, namely, "*Need to introduce the mechanized system of cleaning the sewage so as to save the lives of scavengers*".

Two sets of the aforesaid report are sent herewith for consideration and for taking needful actions.

With warm regards,

Yours sincerely,

Encl.: As above


Justice M. B. Shah (Retd.)
Chairman

To,
Shri Manoj Aggarwal (IAS)
Additional Chief Secretary (Addl. Charge)
Legislative and Parliamentary Affairs Department
Block No.4, Fourth Floor, Sardar Bhavan,
Nava Sachivalaya, Gandhinagar.

Need to introduce the mechanized system of cleaning the sewage so as to save the lives of scavengers

1. From the website of the Ahmedabad Municipal Corporation (AMC) [www.ahmedabadcity.gov.in], it is learnt that the AMC operates and maintains 09 (nine) Sewage Treatment Plants, 45 Sewage Pumping Stations and approximately 2,500 kms. long Sewage Network throughout the city area.

It is also learnt that the Drainage Project Department of the AMC is entrusted with various responsibilities, such as,

- (i) Setting up and maintaining new Sewerage Treatment Plants;
- (ii) Sewage Pumping Stations;
- (iii) Storm Water Pumping Stations;
- (iv) Laying the Drainage / Storm Water Drainage Networks in the existing as well as newly merged area;
- (v) Cleaning of the main storm water and drainage trunk lines with the help of advance machineries and the work of old sewage main line rehabilitation (strengthening) is also taken up by the aforesaid Department.

Like the Ahmedabad Municipal Corporation, there are the other Municipal Corporations of the State of Gujarat which must have been entrusted with similar kind of responsibilities.

2. However, many of the times, it is learnt that the municipal sweepers (scavengers – સફાઈ કામદારો) died either by suicide or by other mode/s known to the concerned officials.

These scavengers are, many of the times, forced to clean the manhole with their bare hands and in many cases, the civic officials who forced them to do such kind of works keep themselves away from any kind of responsibilities by pressuring them to say, "*they did such works voluntarily*"; in case they are required to say before the Inquiry Committee.

Such scavengers have to do all the assigned works, such as, to clean the septic tank, to desilt a sewer line or other related works, at the risk of their lives and they do such works manually under the direct pressure of the civic officials who may harass them, can terminate their service or can cut some part of their remuneration. During such works, some scavengers loss their valuable lives.

It appears that the large money is spent only on infrastructure but not on the people who are really involved in the process of cleaning such drainage lines / septic tanks, etc.

Such people's safety is must and for that, they are required to have necessary safety equipments and that of emergency assistance. In case of their death, the real reason should be recorded in the police record, when the case is registered before the police but many of the times, no liability is proved for anyone, except for the workers who died. Hence, there is the need to have the technological advancements.

It appears that lack of political will and corruption in the outsourcing large sanitation contracts act as “hurdle”. **Whatever it may be, but, there is the need to introduce the mechanized system of cleaning the sewage, instead of carrying out such works through manual cleaning. Until this step is taken, people will continue to die.**

3. Question which requires serious consideration is, whether the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 is being properly implemented or otherwise?

The aforesaid Act was enacted by the Central Government to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families and for the matters connected therewith or incidental thereto. Some of its provisions are required to be referred to which are as under:—

- (i) Section 7 deals with “Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks” which specifically provides that, ***“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 date of commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.”***

- (ii) Section 9 deals with the penalty provision in case of contravention of the afore-quoted Section 7 by specifically providing that, "*Whoever contravenes the provisions of Section 7 shall for the first contravention be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and for any subsequent contravention with imprisonment which may extend to five years or with fine which may extend to five lakh rupees or with both.*"
- (iii) Section 11 deals with "Survey of manual scavengers in urban areas by Municipalities" which *inter-alia* provides that, if any Municipality has reason to believe that some persons are engaged or employed in manual scavenging within its jurisdiction, the Chief Executive Officer (CEO) of such Municipality shall cause a survey to be undertaken to identify such persons.

According to the provisions stated in the said Section, such survey shall be completed **within a period of two months** from its commencement in the case of Municipal Corporations and **within a period of one month** in the case of other Municipalities. The CEO of the Municipality, in whose jurisdiction the survey is undertaken, shall be responsible for accurate and timely completion of the survey. After completion of the survey, the CEO shall cause to be drawn up a provisional list of persons found to be working as manual scavengers within the jurisdiction of his

Municipality and fulfilling the eligibility conditions as may be prescribed, shall cause such provisional list to be published for general information in such manner, as may be prescribed and shall invite objections to the list from the general public. Other provisions are also contained in the aforesaid Section 11.

Further, the aforesaid Act deals with various other provisions, in respect of, rehabilitation of persons identified as manual scavengers by a Municipality; survey of manual scavengers in rural areas by Panchayats; rehabilitation of persons identified as manual scavengers by a Panchayat; and such others.

- (iv)** Section 33 deals with “Duty of local authorities and other agencies to use modern technology for cleaning of sewers, etc.”

Sub–Section (1) specifically provides that, *“it shall be the duty of every local authority and other agency to use appropriate technological appliances for cleaning of sewers, septic tanks and other spaces within their control with a view to eliminating the need for the manual handling of excreta in the process of their cleaning.”*

Sub–Section (2) provides that, *“it shall be the duty of the appropriate Government to promote, through financial assistance, incentives and otherwise, the use of modern technology, as mentioned in sub–section (1).”*

4. At this stage, it is required to refer to some of the provisions of the International Covenants / Convention.

(i) According to Article 23(3) of Universal Declaration of Human Rights (UDHR), everyone who works has a right to just and favourable remuneration enduring for himself and his family an existence worthy of human dignity and supplemented, if necessary, **by other means of social protection.**

(ii) Article 2(1) of Convention on Elimination of Racial Discrimination (CERD) *inter-alia* provides that, "*States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:*

(a) *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*

(b) *Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*

(c) Each State Party shall take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;"

(iii) According to Article 5(a) of Convention for Elimination of all Forms of Discrimination Against Women, States Parties shall take all appropriate measures, including to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

5. It would be, now, worthwhile to refer to the Judgment dated 27th March, 2014 rendered by the Honourable Supreme Court of India, in the case of Safai Karamchari Andolan & Ors. vs. Union of India & Ors. [Writ Petition (Civil) No.583 of 2003] whereby the Honourable Court directed to identify the families of all persons who have died in sewerage work (manholes, septic tanks) since the year 1993 and award compensation of Rs.10 lacs for each such death to the family members depending on them.

After referring to various provisions of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and that of Conventions/Covenants; the Honourable Court issued various directions, quoted below:—

- “(i) The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act, in the following manner, namely:—*
- (a) such initial, one time, cash assistance, as may be prescribed;*
 - (b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;*
 - (c) they shall be allotted a residential plot and financial assistance for house construction or a ready-built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme;*
 - (d) at least one member of their family shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period;*
 - (e) at least one adult member of their family shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme;*


- (f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.
- (ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:—
- (a) Sewer deaths entering sewer lines without safety gears should be made a crime even in emergency situations. **For each such death, compensation of Rs.10 lakhs should be given to the family of the deceased.**
- (b) Railways should take time bound strategy to end manual scavenging on the tracks.
- (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.
- (d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.
- (iii) **Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.**
- (iv) **Rehabilitation must be based on the principles of justice and transformation."**

Finally, the Honourable Court directed all State Governments and Union Territories to fully implement various provisions of the aforesaid Act in addition to the afore-quoted directions and to take appropriate action for non-implementation as well as violation of the provisions contained in the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

The Honourable Court made it clear that the duty is cast on all the States and Union Territories to fully implement and to take action against the violators.

Hence, it is the State Government which should comply with all the necessary directions issued by the Honourable Supreme Court of India vide the above-referred judgment.

Date : 30th June, 2021
Place: Ahmedabad



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Former Judge,
Supreme Court of India
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