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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2003
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Safai Karamchari Andolan & Others

Petitioners

Versus

Union of India and Others

Respondents

WITH

I.A.NO. _____ OF 2003: APPLICATION FOR DIRECTIONS

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: S. Muralidhar

(II)

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SYNOPSIS

This Writ Petition under Article 32 of the Constitution of India is being filed by the petitioners who are organisations espousing the cause of manual scavengers as well as individual manual scavengers seeking the strict enforcement and implementation by the Union of India and the States of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act).

The petitioners are constrained to approach this Hon'ble Court for the enforcement of the fundamental right guaranteed under Article 17 of the Constitution read with Articles 14, 19 and 21 thereof in view of the continuing violation of the right against untouchability. Notwithstanding the passage of the above Act more than a decade ago, the practice of manual scavenging exists in many states in the country and is being continued even in public sector undertakings under the control of the Union of India, including the Indian Railways. The official statistics released by the Ministry of Social Justice and Empowerment, Government of India for the year 2002-03 indicates that there are as many as 6.76 lakh manual scavengers in the country. These are spread over 21 States and Union Territories. The Act applied in the first instance to the States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and all Union Territories. It was expected that the remaining States would adopt the Act subsequently by passing an appropriate resolution in the legislature under Article 252 of the Constitution. However, as noted by the National Commission for Safai Karamcharis, many States, including Uttar Pradesh and Rajasthan are yet to adopt the Act and some like Kerala, Nagaland and Pondicherry assert that there is no need to adopt the Act

despite the statistics showing the existence of manual scavenging in these States. The performance in the area of rehabilitation and training of manual scavengers and their dependents has been highly unsatisfactory and indicative of the lack of will on the part of the governments to give any priority to this area.

The Constitution of the National Commission for Safai Karamcharis, under a separate enactment in 1993 and the Constitution of the National Commission for Scheduled Castes and Scheduled Tribes under Article 338 of the Constitution has not helped in the eradication of the pernicious practice of cleaning of dry latrines and collection of night soil and filth by people belonging to the scheduled castes in several States in the country. There is absolutely no justification for this obnoxious practice to be permitted to continue after the Constitution makers consciously framed Article 17 into the Constitution more than 5 decades ago and even after one decade of the passing of the Act. The petitioners have referred to statistics collected by them as regards the practice of manual scavenging in some of the States.

By this petition, the petitioners seek writs of mandamus to the Union of India and the various States to take effective steps for elimination of the practice of manual scavenging simultaneous with formulation and implementation of comprehensive plans for rehabilitation of all persons employed as manual scavengers. The petitioners urge this Hon'ble Court to issue time bound directions to the authorities concerned so that the promise of Article 17 of the Constitution is translated into reality.

Hence this Writ Petition.

LIST OF DATES

- 1989** The Sub Committee of the Task Force constituted by the Planning Commission in 1989 estimated that there were 72.05 lakhs dry latrines in the country. These dry latrines have not only continued to exist till date in several states in the country but have increased to 96 lakhs and are still being cleaned manually by scavengers belonging to the Scheduled Castes.
- February 1989** National Scheduled Caste and Scheduled Tribes Finance and Development Corporation was set up in February, 1989 as a Government company, to provide financial assistance to all scheduled caste and scheduled tribes including Safai Karamcharis for their economic development.
- 1989-90** The Government of India formulated a scheme known as 'Low cost sanitation for liberation of scavengers' which is a centrally sponsored scheme being implemented since 1989-90, for elimination of manual scavenging by converting existing dry latrine into low cost water pour flush latrine and also construction of new sanitary units.
- March 1992** With a view to eliminate manual scavenging, a scheme known as National Scheme of Liberation and

Rehabilitation of Scavengers and their Dependents was launched in March 1992 for identification, liberation and rehabilitation of scavengers and their dependents by providing alternative employment after giving the requisite training.

March 1993

Based on earlier experience and keeping in view the recommendations of the National Seminar on Rural Sanitation held in September 1992, a new strategy was adopted by the Government of India in March 1993. The emphasis was now on providing sanitary latrines including the construction of individual sanitary latrines for selected households below poverty line with subsidy of 80% of the unit cost of Rs.2,500/-.

5.6.1993

The Parliament enacted The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act). The Act received the assent of the President on 5.6.1993. The Act was for “the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water-seal latrines and for matters connected therewith or incidental thereto”.

12.8.1994

The National Commission for Safai Karamcharis was constituted on 12th August 1994 under the provisions

of the National Commission for Safai Karamcharis Act, 1993 (NCSK Act). The Commission was constituted for a period of 3 years i.e. upto 31.3.1997 in the first instance. Later its tenure was extended for 5 years i.e. upto 31.3.2002. [The validity of NCSK Act, 1993 has been further extended upto 29th February 2004 under the National Commission for Safai Karamcharis (Amendment) Act, 2001].

1994-1996

The Commission in its 1st and 2nd report for the year 1994-95 and 1995-96 to the Government had pointed out the serious administrative, financial and operational problems faced by the Commission in the initial years of its constitution. Some of the problems still continue to affect the functioning of Commission.

1.4.1996

The Government of India revised some of the parameters of the rehabilitation scheme which it had commenced in March 1992. The revised scheme was made effective from 1st April 1996.

24.1.1997

The National Safai Karamcharis Finance and Development Corporation (NSKFDC), was incorporated by the Government of India on 24th January 1997 under s.25 of the Companies Act, 1956, to act as an apex institution for all round socio-economic upliftment of the Safai Karamcharis and their dependents and to extend concessions and

financial assistance to the beneficiaries for establishment of income generating and viable projects.

26.1.1997 The Act which was enacted in June 1993 remained inoperative for about 3½ years. It was finally brought into force with effect from 26.1.1997.

6.6.1997 The Ministry of Urban Affairs and Employment, Government of India, in exercise of the powers conferred by Sub section (1) and (2) of s.22 of the Act, made the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) (Central) Rules, 1997 which inter alia gave the composition of the various committees including the Project Committee and Monitoring Committee.

31.1.2000 The National Commission for Safai Karamcharis submitted its 3rd Report for the year 1996-97 and 1997-98 on 31st January 2000. The Report noted that the estimated number of dry latrines in the country is 96 lakhs and that complaints have been received about the perfunctory implementation of the rehabilitation scheme including conversion of dry latrines into water borne flush latrines. The report notice that manual scavengers being employed in the military engineering services and the army, public sector undertakings, and the Indian railways. Quoted

the statistics of the Ministry of Social Justice and Empowerment which indicated that as of 1997-98 there were 5,77,228 scavengers who had been identified.

7.4.2000

The National Commission for Safai Karamcharis submitted its 4th Report for the year 1998-99 and 1999-2000 on 7th April 2000 to the Ministry of Social Justice and Empowerment, Government of India, New Delhi. The Report noted “in almost all the States the implementation of the scheme has been extremely poor and has resulted in wastage of scarce resources without corresponding benefits to the target group, which is growing rather than diminishing”.

___ .11.2003

Writ Petition filed.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO.583 OF 2003
(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

1. Safai Karamchari Andolan
1-4-879/87/1 (942)
Bakaram, Street No.7
Gandhi Nagar
Hyderabad – 500 003
Andhra Pradesh
Through its Convenor
Bejawada Wilson
2. Jan Sahas
14, Mill Road
Post Balgarh
Dewas 455 001
Madhya Pradesh
Through its Secretary
Mr. Asif
3. Adharshila
A-22/780
Indira Nagar
Lucknow – 16
Uttar Pradesh
Through its Secretary
Pushpa Balmiki
4. Young Women's Christian Association
1086, P.H. Road
Chennai – 400 084
Tamil Nadu
Through its General Secretary
Deepthi Sukumar
5. Safai Kamgar Parivartan Sangh
Jagganath Bhatankar Palika Marathi Sakha
27/28, 2nd Floor
Vithal Chavlan Marg
Parel
Mumbai – 400 012
Maharashtra
Through its Secretary
Ramesh Haralkar
6. Dalit Research Institute
Hathi Khana
Behind Sanjay Nagar
Rampur, Uttar Pradesh
Through its Convenor
Dheeraj Kumar Sheel
7. National Campaign on Dalit Human Rights
1-4-879/87/1 (942)

Bakaram, Street No.7,
Gandhi Nagar, Hyderabad 500 080
Through its National Convenor
Namala Paul Divakar

8. D. Khel Singh
H.No.5-4-34/A
Mekal Banda
Mahabubnagar
Andhra Pradesh
9. T. Laxmi Narayana
H.No.5-4-34/D
Mekal Banda
Mahabubnagar
Andhra Pradesh
10. M. Peddakka
Ambaru Veedi
Near Sunkulauma Temple
Ananthapur
Andhra Pradesh
11. M. Nagamma
Ambedkar Nagar
27 Ward
Ananthapur
Andhra Pradesh
12. C. Ganesh
Atubedkar Nagar
Near Tank Bund
Ananthapur
Andhra Pradesh
13. Koduri Bojulaiah
S/o Kondaiah
Patha-Chirala Gate
Hsthinapuram
Jandrapet, Chirala
Prakasam District
Andhra Pradesh
14. Komargiri Venkateswarlu
S/o Subbarao
Rangula Factory
"Yanadi Sangam
Karoonulu Road
Ongole
Prakasam District
Andhra Pradesh

Petitioners

Versus

1. Union of India
through the Secretary
Ministry of Social Justice and Empowerment
Shastri Bhavan
New Delhi
Through its Secretary

2. Union of India
through the Secretary
Ministry of Railways
Baroda House
New Delhi – 110 001
3. Union of India
Through the Secretary
Ministry of Industries
Udyog Bhavan
New Delhi 110 001
4. Union of India
Through the Secretary
Ministry of Defence
Raksha Mantralaya
New Delhi 110 001
5. National Commission for Safai Karamcharis
through its Chairman
B-Wing, 4th Floor
Lok Nayak Bhavan
Khan Market
New Delhi 110 003
6. State of Andhra Pradesh
through its Secretary
Social Welfare Department
Secretariat, Hyderabad
Andhra Pradesh
7. State of Assam
Through its Secretary
Social Welfare Department
Secretariat
Dispur, Assam
8. State of Bihar
Through its Secretary
Social Welfare Department
Secretariat
Patna, Bihar
9. State of West Bengal
Through its Secretary
Social Welfare Department
Secretariat
Kolkatta, West Bengal
10. Jammu and Kashmir
Through its Secretary
Social Welfare Department
Secretariat
Srinagar
Jammu and Kashmir

11. State of Nagaland
Through its Secretary
Social Welfare Department
Secretariat
Kohima
State of Nagaland
12. State of Haryana
Through its Secretary
Social Welfare Department
Secretariat
Chandigarh
Haryana
13. State of Himachal Pradesh
Through its Secretary
Social Welfare Department
Secretariat
Shimla
Himachal Pradesh
14. State of Manipur
Through its Secretary
Social Welfare Department
Secretariat
Imphal, Manipur
15. State of Tripura
Through its Secretary
Social Welfare Department
Secretariat
Agartala
Tripura
16. State of Meghalaya
Through its Secretary
Social Welfare Department
Secretariat
Shillong
Meghalaya
17. State of Sikkim
Through its Secretary
Social Welfare Department
Secretariat
Gangtok
Sikkim
18. State of Mizoram
Through its Secretary
Social Welfare Department
Secretariat
Aizawl
Mizoram

19. State of Arunachal Pradesh
Through its Secretary
Social Welfare Department
Secretariat
Itanagar
Arunachal Pradesh
20. State of Goa
Through its Secretary
Social Welfare Department
Secretariat
Panjim
Goa
21. State of Chattisgarh
Through its Secretary
Social Welfare Department
Secretariat
Raipur
Chattisgarh
22. State of Uttaranchal
Through its Secretary
Social Welfare Department
Secretariat
Dehradun
Uttaranchal
23. State of Jharkhand
Through its Secretary
Social Welfare Department
Secretariat
Ranchi, Jharkhand
24. State of Gujarat
Through its Secretary
Social Welfare Department
Secretariat
Gandhinagar
Gujarat
25. State of Kerala
Through its Secretary
Social Welfare Department
Secretariat
Thiruvananthapuram
Kerala
26. State of Madhya Pradesh
Through its Secretary
Social Welfare Department
Secretariat, Bhopal
Madhya Pradesh
27. State of Tamil Nadu
Through its Secretary

Social Welfare Department
Secretariat
Chennai
Tamil Nadu

28. State of Maharashtra
Through its Secretary
Social Welfare Department
Secretariat
Mumbai
Maharashtra

29. State of Karnataka
Through its Secretary
Social Welfare Department
Secretariat
Bangalore
Karnataka

30. State of Orissa
Through its Secretary
Social Welfare Department
Secretariat
Bhubaneswar
Orissa

31. State of Punjab
Through its Secretary
Social Welfare Department
Secretariat
Chandigarh
Punjab

32. State of Rajasthan
Through its Secretary
Social Welfare Department
Secretariat
Jaipur, Rajasthan

33. State of Uttar Pradesh
Through its Secretary
Social Welfare Department
Secretariat
Lucknow
Uttar Pradesh

34. State of Delhi
Through its Secretary
Social Welfare Department
Secretariat
Delhi

35. Union Territory of
The Andaman and Nicobar Islands
Through its Secretary
Social Welfare Department

Secretariat
Port Blair
Andaman and Nicobar Islands

36. Union Territory of
Lakshadweep
Through its Secretary
Social Welfare Department
Secretariat
Kavaratti
Lakshadweep
37. Union Territory of
Dadra and Nagar Haveli
Through its Secretary
Social Welfare Department
Secretariat
Dadra and Nagar Haveli
38. Union Territory of
Pondicherry
Through its Secretary
Social Welfare Department
Secretariat
Pondicherry
39. Union Territory of Chandigarh
Through its Secretary
Social Welfare Department
Secretariat
Chandigarh
40. Union Territory of
Daman and Diu
Through its Secretary
Social Welfare Department
Secretariat
Diu
Daman and Diu

Contesting Respondents

To

The Hon'ble the Chief Justice of India and His
Companion Justices of the Hon'ble Supreme
Court of India

The humble petition of the above
named petitioners

Most Respectfully Showeth:

1. This Writ Petition is being filed as a Public Interest Litigation under Article 32 of the Constitution of India by the petitioners who comprise Indian citizens seeking the enforcement of the fundamental rights guaranteed under Articles 14, 17, 19, 21 and 47 of the Constitution. In particular, the petition seeks a writ of mandamus to the respondent – Union of India and the different States and Union Territories in the country to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act).

Profile of the Petitioners:

2.1 The petitioner no.1 Safai Karamchari Andolan is a conglomeration of like-minded citizens who have united for achieving the common objective of elimination of the degrading and debasing practice of manual scavenging. Its Chairperson is Sri S.R. Shankaran, IAS (Retd.) and its Convener is Bejawada Wilson, who himself belongs to the Community of scavengers. Petitioner no.1 which is based in Hyderabad in Andhra Pradesh has been working on the issues raised in this petition for about seven years now and has expanded its membership to include Safai Karamcharis and people working for their cause in other States like Karnataka, Maharashtra and Tamil Nadu. It has the support of several other like-minded mass movements and organisations.

- 2.2 The aims and objectives of petitioner no.1 are:
- (a) to liberate and rehabilitate the scavenger from their existing hereditary, obnoxious and inhuman occupation of manually removing night soil and filth and to provide them an alternative and dignified occupation; and
 - (b) to demolish all dry latrines
- 2.3 Petitioner No.2 Jansahas is a registered society based in Dewas, Madhya Pradesh and is engaged in eradication of manual scavenging. It has recently brought out a report on the conditions of those in Madhya Pradesh engaged in manual scavenging.
- 2.4 Petitioner No.3 Adharshila is a registered society, based in Lucknow in U.P., and has been working towards the eradication of practice of manual scavenging in that State.
- 2.5 Petitioner No.4, YWCA, is a reputed organisation, which has branches all over the country working for social causes. Its chapter in Tamil Nadu has been actively evolved in working towards the elimination of the practice of manual scavenging in that State.
- 2.6 Petitioner No.5 Safai Kamgaar Parivartan Sangh is an organisation based in Mumbai in Maharashtra. It was established in 1976 and has since been working for the welfare of the sweepers working in the Brihanmumbai Municipal Corporation.
- 2.7 Petitioner No.6 Dalit Research Institute, is based in Rampur, Uttar Pradesh and has been working amongst those employed as manual scavengers and sweepers.
- 2.8 Petitioner No.7 National Campaign on Dalit Human Rights (NCDHR) is a forum of concerned citizens of various mass organisations, Dalit Organisation and Human Rights Organisation were committed to addressing the issue of caste based

discrimination and is working for the realization of rights of Dalits enshrined in the constitution and enacted in various laws.

- 2.8 Petitioners 8, 9, 10, 11, 12, 13 and 14 are themselves individual manual scavengers who have been compelled, out of poverty and social compulsions, to continue the degrading and inhuman practice of manual scavenging which forms also their source of livelihood.

Profile of the Respondents:

- 3.1 Respondents no.1 to 4 are the Ministries of Social Justice and Empowerment, Railways, Industries and Defence respectively. While the Ministry of Social Justice and Empowerment is directly concerned with the implementation of the Act, the other three Ministries employ manual scavengers in the establishments under their control. Accordingly, these four ministries are necessary and proper parties to this petition.
- 3.2 Respondent No.5 is the National Commission for Safai Karamcharis, which has been entrusted with the responsibility of overseeing the implementation of the Act. It is vitally concerned the issues raised in this petition and can assist in providing information to this Hon'ble Court as well as in the implementation of the directions of this Hon'ble Court may give from time to time. Respondent no.5 is accordingly a necessary and proper party to this petition.
- 3.3 Respondents no.6 to 40 are the various States and Union Territories in the country, each of which is bound to strictly enforce the provisions of the Act. The petitioners submit that there has been a miserable failure on the part of not only the Union of India but also of the States and Union Territories in the country to enforce

the provisions of the Act and corrective measures ought to be taken by each of them. Accordingly, respondent nos.6 to 40 are necessary and proper parties to this petition.

Facts of the case:

4.1 The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrapers; carrying excrements and baskets to dumping sites for disposal is a practice that is still prevalent in many parts of the country today. While the surveys conducted by some of the petitioners organisations estimate that there are over 12 lakh manual scavengers undertaking the degrading human practice in the country today, the official statistics issued by the Ministry of Social Justice and Empowerment for year 2002-03 puts the figure of identified manual scavengers at 6,76,009. Of these over 95% are dalits (persons belonging to the scheduled castes), who are compelled to undertake this denigrating task under the garb of “traditional occupation”. The manual scavengers are considered untouchable by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.

4.2 The above practice which has been prevalent for over decade now, was the cause of great consternation even at the time of making of the Constitution. The following excerpts from the Constituent Assembly Debates (CAD) spell out the anguish and concern of its members expressed during the discussion around the present Articles 17 and 23 of the Constitution.

[Views expressed by Shri V.I. Munniswami Pillai during the discussion on 29.11.1948 on Article 11 (present Article 17)]

“The very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called ‘untouchables’ will find solace when this constitution comes into effect. It is not a certain section of the Indian Community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country”.

“By the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society.

[Views expressed by Smt. Dakshayani Velayudhan during the discussion on 29.11.1948 on Article 11 (present Article 17)]

“The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature”.

[Views expressed by Prof. K.T. Shah during the discussion on 3.12.1948 on Article 17 (present Article 23)]

“Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word “*begar*”, that is to say of compulsory work without payment, and work at command, should also be stopped”.

“*Begar* like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this *begar*, this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States”.

“I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them.”

“This *begar* has been a blot on humanity and has been a humanity of all that has been good and noble in human civilization. Through the centuries this curse has remained as dead weight on the shoulders of the common man like the practice of slavery. The members of the drafting committee and this constituent assembly are entitled to the grateful thanks of the dump down-trodden millions who would be freed by this Article from this curse of *begar*”.

“This forced labour is practice even by the government for instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and to look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place.”

Despite the hope expressed by the framers of the Constitution while drafting Articles 17 and 23 of the Constitution, the abominable practice of manual scavenging exists more than five decades later.

- 4.3 Apart from the above provisions of the Constitution, there are international conventions and covenants to which India is a state party, which prescribe the inhuman practice of manual scavenging. There are the Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) The Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). The relevant provisions of the UDHR, CERD and CEDAW are set out hereunder:

Article 1 of UDHR

“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.”

Article 23(3) of 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.”

Article 5 (a) of CEDAW

States Parties shall take all appropriate measures”

(a) 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.

Article 2 of CERD

Art. 2 (1)(C)

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 his end:

(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 organisation.

It is submitted that the above provisions of International covenants, which have been ratified by India are binding on it to the extent they are not inconsistent with the provisions of the domestic law.

- 4.4 The Sub Committee of the Task Force constituted by the Planning Commission in 1989 estimated that there were 72.05 lakhs dry latrines in the country. These dry latrines have not only continued to exist till date in several states in the country but have increased to 96 lakhs and are still being cleaned manually by scavengers belonging to the Scheduled Castes.
- 4.5 National Scheduled Caste and Scheduled Tribes Finance and Development Corporation was set up in February, 1989 as a Government company, to provide financial assistance to all scheduled caste and scheduled tribes including Safai Karamcharis for their economic development.
- 4.6 The Government of India formulated a scheme known as 'Low cost sanitation for liberation of scavengers' which is a centrally sponsored scheme being implemented since 1989-90, for elimination of manual scavenging by converting existing dry latrine into low cost water pour flush latrine and also construction of new sanitary units.
- 4.7 With a view to eliminating manual scavenging, a scheme known as National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents was launched in March 1992 for identification, liberation and rehabilitation of scavengers and their dependents by providing alternative employment after giving the requisite training.
- 4.8 Based on earlier experience and keeping in view the recommendations of the National Seminar on Rural Sanitation held in September 1992, a new strategy was adopted by the

Government of India in March 1993. The emphasis was now on providing sanitary latrines including the construction of individual sanitary latrines for selected households below poverty line with subsidy of 80% of the unit cost of Rs.2,500/-.

4.9 In the year 1993, the Parliament enacted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act) and it received the assent of the President on 5th June 1993. The long title of the Act describes it is an Act to provide “for prohibition of employment of manual scavenger as well as the construction of dry latrines and for the regulation of construction of water seal latrines and for matters connected with and/ or incidental thereto.” The relevant provisions of the said Act are set out hereunder:

“S.3 (1) Subject to sub-section (2) and the other provisions of this Act, with effect from such date and in such area as the State Government may, by notification, specify in this behalf, no person shall –

- (a) Engage in or employ for or permit to be engaged in or employed for any other person for manually carrying human excreta; or
- (b) construct or maintain a dry latrine.

S.6(2) In particular, and without prejudice to the generality of the foregoing power, such schemes may provide for all or any of the following matters, namely:

- (a) time-bound phased programme for the conversion of dry latrines into water-seal latrines;

- (b) provision of technical or financial assistance for new or alternative low cost sanitation to local bodies or other agencies;
- (c) construction and maintenance of community latrines and regulation of their use on pay and use basis;
- (d) construction and maintenance of shared latrines in slum areas or for the benefit of socially and economically backward classes of citizens;
- (e) registration of manual scavengers and their rehabilitation;
- (f) specification and standards of water-seal latrines;
- (g) procedure for conversion of dry latrines into water-seal latrines;
- (h) licensing for collection of fees in respect of community latrines or shared latrines.”

S.14 Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules or schemes made or orders or directions issued thereunder, shall, in respect of each such failure or contravention be punishable with imprisonment for a term which may extend to one year or with fine, which may extend to two thousand rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to one hundred rupees for every day during which such failure or contravention

continues after the conviction for the first such failure or contravention.

S.16 Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable.”

For ready reference, a copy of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act) dated nil is annexed herewith and marked as **Annexure-P/1.**

4.10 The Act was enacted after the Legislatures of several States in the country had, in pursuance of Article 252 (1) of the Constitution, passed resolutions to the effect that the matters connected with the policy of manual scavenging should be regulated in the States by a Parliamentary enactment. Thus the said law covers the entire field and is binding on the Centre as well as the State Governments and the Union Territories.

4.11 The Act which was enacted in June 1993 remained inoperative for about 3 ½ years. It was finally brought into force with effect from 26.1.197. The Act applied in the first instance to the States of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and all Union Territories. It was expected that the remaining States would adopt the Act subsequently by passing an appropriate resolution in the legislature under Article 252 of the Constitution. However, as noted by the National Commission for Safai Karamcharis, many States, including Uttar Pradesh and Rajasthan are yet to adopt the Act and some like Kerala, Nagaland and

Pondicherry assert that there is no need to adopt the Act despite the statistics showing the existence of manual scavenging in these States.

- 4.12 The nodal ministry entrusted with the enforcement of the Act is the Ministry of Social Justice and Empowerment, respondent no.1. From time to time this Ministry compiles the statistics on the number of scavengers, as well as the allocation and utilization of central grants for the training and rehabilitation of scavengers and their dependents. The figures released by this Ministry for the five years beginning 1992-93 and ending with 1997-98 dated nil is annexed herewith and marked as **Annexure-P/2.** These figures indicate that at the end of year 1997-98 the number of scavengers identified stood at 5,77,228. In its annual report for 2002-03, the Ministry of Social Justice and Empowerment has given the figure of manual scavengers as 6,76,009. Further, Rs.671.19 crores has been released for assisting 1,56,488 scavengers for training and 4,08,644 for rehabilitation upto 2001-02. A true copy of the relevant extract from the Annual Report of the Ministry of Social Justice and Empowerment for the year 2002-03 dated nil is annexed herewith and marked as **Annexure-P/3.**

National Commission for Safai Karamcharis

- 4.13 The National Commission for Safai Karamchari Act, 1993 (Act No.64 of 1993) was enacted and the National Commission for Safai Karamcharis (Commission) (respondent no.5) came to be constituted thereunder on 12.8.1994. The Commission was constituted for a period of 3 years i.e. upto 31.3.1997 in the first instance. Later its tenure was extended for 5 years i.e. upto

31.3.2002. [The validity of NCSK Act, 1993 has been further extended upto 29th February 2004 under the National Commission for Safai Karamcharis (Amendment) Act, 2001]. At present the 3rd National Commission for Safai Karamcharis is in office and its main function is to recommend the Central Government specific programmes for elimination of inequality in status, facilities and opportunities for Safai Karamcharis under a time bound action plan.

4.14 The Commission in its 1st and 2nd report for the year 1994-95 and 1995-96 to the Government had pointed out the serious administrative, financial and operational problems faced by the Commission in the initial years of its constitution. Some of the problems still continue to affect the functioning of Commission.

4.15 The National Safai Karamcharis Finance and Development Corporation, was incorporated by the Government of India on 24th January 1997 under s.25 of the Companies Act, 1956, to act as an apex institution for all round socio-economic upliftment of the Safai Karamcharis and their dependents and to extend concessions and financial assistance to the beneficiaries for establishment of income generating and viable projects.

Practice of Manual Scavenging in Ministries and Establishments of the Union of India

4.16 The Commission submitted its 3rd Report for the year 1996-97 and 1997-98 on 31st January 2000. The Report noted that the estimated number of dry latrines in the country is 96 lakhs and that complaints have been received about the perfunctory implementation of the rehabilitation scheme including conversion of dry latrines into water borne flush latrines. The report noticed that manual scavengers

being employed in the military engineering services and the army, public sector undertakings, and the Indian railways. The report quoted the statistics of the Ministry of Social Justice and Empowerment which indicated that as of 1997-98 there were 5,77,228 scavengers who had been identified. Relevant extracts from the Report of the Commission for the year 1997-98 dated 31.1.2000 is annexed herewith and marked as **Annexure-P/4.**

4.17 The Commission submitted its 4th Report for the year 1998-99 and 1999-2000 on 7th April 2000 to the Ministry of Social Justice and Empowerment, Government of India, New Delhi. The Report noted “in almost all the States the implementation of the scheme has been extremely poor and has resulted in wastage of scarce resources without corresponding benefits to the target group, which is growing rather than diminishing”. Relevant extracts from the Report of the Commission for the years 1998-99 and 1999-2000 dated 7.4.2000 is annexed herewith and marked as **Annexure-P/5.**

4.18 It may be mentioned here that the practice of employing manual scavengers is prevalent even in public sector undertakings. The Bharat Gold Mines Limited which is wholly owned by the Government of India, was itself continuing this obnoxious practice alive till very recently. In defence establishments in the country, in many places manual scavenging is still in practice. Further, the cleaning of toilets in Railway Stations and trains is done by manual scavengers belonging to the Scheduled Castes. These jobs are caste specific and there is extreme degree of exploitation of those engaged in this degrading task.

4.19 There are sizeable number of Safai Karamcharis, who are working on contract basis in many public sector undertakings (PSUs) for sanitation work for the office premises. As per the available information, as on 1.1.1995, there are about 24,623 Safai Karamcharis working in these establishments. As per the analysis of available data from 98 public sector undertakings (out of 237 PSUs) a total of 6,135 Safai Karamcharis are working as contract labour/ daily wage/ part time workers in public sector undertakings. The Safai Karamcharis on contract basis/ daily wage basis are deprived of facilities such as housing loan, compassionate appointment, promotion, retirement benefits, training, government provident fund etc., as compared to that of regular Safai Karamcharis.

4.20 It is wholly inexcusable that these constituents of the Government of India, viz., Ministry of Railways, the Ministry of Defence and the Ministry of Industries are violators of the Act. This violation has gone on unchallenged for several years now. It is submitted that it is imperative for the Union of India to formulate and implement a detailed plan for the complete eradication of manual scavenging in the various Ministries and Departments and ensure the rehabilitation of those employed as manual scavengers.

5. The position in the various States is as follows:

Andhra Pradesh:

5.1 In the State of Andhra Pradesh, the Andhra Pradesh Scheduled Caste Co-operative Finance Corporation, has been implementing the national scheme for liberation of the scavengers. With a view to

eliminating manual scavenging Government of India released a total of 525.17 crores to state governments since March 1991 for implementation of scheme and the sanitary mart scheme formulated by the Government of India in 1999-2000 under which a sanitary mart is formed by a group of ten scavengers and their dependents. They are given financial assistance as a family unit in the range of Rs.50,000/- to Rs.1,00,000/-.

5.2 The Andhra Pradesh Scheduled Caste Co-operative Finance Corporation, Hyderabad conducted a detailed survey conducting the prevalence of manual scavenging in the State of Andhra Pradesh. The petitioner no.1 was associated in the survey. A copy of the letter dated 13.6.2001 to the Executive Directors, District SC Societies, Andhra Pradesh to this effect is annexed herewith and marked as **Annexure-P/6.**

5.3 The survey was conducted in the Municipalities and major Gram Panchayats. According to this survey as on 20.8.2001, 25,762 community dry latrines were identified and similarly two to three lakh of individual or house hold dry latrines were estimated. This survey was conducted in the presence of District Scheduled Caste Society representatives, the representative of the Executive Director of the District Scheduled Caste Services Co-operative Society Ltd., representative of N.G.O. A district-wise abstract of community dry latrine dated nil prepared by A.P. Scheduled Caste Cooperative Finance Corporation is annexed herewith and marked as **Annexure-P/7.** Likewise a survey was conducted in the Municipalities and an abstract of the dry latrines in the Municipalities dated nil is annexed herewith and marked as

Annexure-P/8. Samples of the photographs of the dry latrines in the various districts dated nil are annexed herewith and marked as **Annexure-P/9 Collectively.**

- 5.4 Vide G.O.Ms.No.75 Social Welfare Department dated 28.8.2001, the Government of Andhra Pradesh adopted the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 in all Municipalities, Municipal Corporations and Gram Panchayats incorporating a punishment of one year's imprisonment and/ or penalty of Rs.2,000/- for contravention of the provisions of the Act. A true copy of the G.O.Ms.No.75 dated 28.8.2001 is annexed herewith and marked as **Annexure-P/10.**
- 5.5 By a separate government order vide G.O.Ms.No.75 SWD of the same date, i.e. on 28.8.2001, the District Collectors were declared as executive agencies in G.O.Ms.No.77 SWD dated 28.8.2001 and the Sanitary Inspectors of Municipalities and the Executive Officers of Gram Panchayats were appointed as Inspectors for the purpose of implementing the Act. Similarly, State and District Committees were formed vide G.o.Ms.No.84 SWD dated 4.9.2001 for coordination and monitoring the scheme.
- 5.6 A strategy paper was prepared by A.P. Scheduled Caste Finance Corporation following the declaration of the A.P. Mission mentioned herein above. This strategy paper outlined specific steps towards the achieving the goal of complete eradication and also set out the data of scavengers and community dry latrines. It was disclosed that there were, in the various districts in Andhra Pradesh, 8,366 scavengers and 22,351 if their dependents; further that there were

25,762 community dry latrines still in use in the State of Andhra Pradesh.

5.7 Despite announcement of the above Mission and formulation of strategy for eradication of manual scavenging in the State of Andhra Pradesh, as at present i.e., by the end of 31.3.2003, very little has been done by the Government of Andhra Pradesh in terms of actual implementation of the above scheme. The figures as of 31.3.2003 in the State of Andhra Pradesh are as under:

S.N.	District	Scavengers (Nos.)	Dependents (Nos)	Total (Nos)	*Community dry latrines (Nos)
1.	Srikakulam	179	505	684	1089
2.	Vizianagaram	272	704	976	158
3.	Visakhapatnam	378	1171	1549	2251
4.	East Godavari	910	2143	3053	2248
5.	West Godavari	396	912	1308	3505
6.	Krishna	1246	3167	4413	1167
7.	Guntur	1000	3135	4135	209
8.	Prakasam	655	1867	2522	205
9.	Nellore	246	664	910	64
10.	Kurnool	220	551	771	4782
11.	Cuddapah	112	368	480	2324
12.	Ananthapur	156	449	605	4173
13.	Chittoor	346	1032	1378	56
14.	Warangal	463	571	1034	530
15.	Karimnagar	277	952	1229	248
16.	Adilabad	192	470	662	102
17.	Rangareddy	132	362	494	797
18.	Nalgonda	248	561	809	435
19.	Mahaboobnagar	145	307	452	886
20.	Khammam	382	1202	1584	1
21.	Nizamabad	327	1047	1374	19
22.	Medak	84	211	295	510
23.	Hyderabad	0	0	0	3
Total		8366	22351	30717	25762

* The survey figures of Community dry latrines upto 20.8.2001

5.8 Further, it is clear that whatever money has been allocated for the achievement of the above goals has either been inadequate for the purpose or has been misutilised. The relevant figures from the annual budget for the State of Andhra Pradesh since 1.3.1999 earmarked for eradication of manual scavenging are as under:

Financial Year	Budgetary Estimate	Revised Estimate
1994-95	50.00	50.00
1995-96	55.00	85.40
1996-97	70.00	76.50
1997-98	91.00	96.00
1998-99	119.00	104.00
1999-2000	111.00	117.88
2000-2001	127.50	--

5.9 The petitioner submits that although ambitious plans have been drawn by the State of Andhra Pradesh for eradication of manual scavenging, very little is actually being achieved on the ground. Given the present lack of executive will, it is unlikely that the objectives set out under the Act will actually be accomplished. It is extremely frustrating for the dedicated workers who comprise the petitioner no.1 organisation to keep knocking at the doors of the government hoping that they will keep their word and direct efforts towards eradication of manual scavenging with the seriousness that it deserves.

Madhya Pradesh:

5.10 The research done by petitioner no.2 in 6 districts of M.P. reveals that the practice of manual scavenging still persists in State of Madhya Pradesh. In these six districts, it is estimated that there are

about 531 manual scavengers out of which 506 are women i.e., 97.3% and 25 are men. Further 75.3% among them are illiterate. 97.5% of them carry night soil by hand or on head. According to the report, untouchability is predominant in these areas and rural parts are more affected than the urban. Petitioner no.2 has on 18th August 2003 published a 2nd report which confirms that the practice of manual scavenging is rampant throughout Madhya Pradesh. The report reveals that manual scavengers are considered untouchable by other upper castes and social as well as economic exploitation is predominant. Copies of these reports are available with the petitioners and can be produced if so required.

Tamil Nadu:

5.11 The Directorate of Adidravida Welfare, Government of Tamil Nadu had identified 16,937 scavenger families for rehabilitation in the year 1993. A rapid pilot survey was carried out by petitioner no.1 between August 2001 and March 2002 to confirm the existence of employment of manual scavenging in the State of Tamil Nadu. The survey was carried out in 15 districts. The survey reveals that manual scavenging still exists in 14 of these 15 districts. The report also shows that women are extensively employed in the task of manual scavenging. A list dated nil of the 14 districts and the specific locations where the practice of manual scavenging is carried on in Tamil Nadu is annexed herewith and marked as **Annexure-P/11**. The complete report is available with the petitioner and can be produced if so required.

Uttar Pradesh:

5.12 Petitioner no.3 along with other partner organisations has conducted a survey of 6 locations in Uttar Pradesh including Lucknow to ascertain the problems of the practice of manual scavenging. The report indicates that in Hapur, in Ghaziabad District there were 455 manual scavengers who are leading a miserable life and working in unhygienic work conditions. In Fatehpur town, a total of 282 families with a population of 1485 persons are involved in manual scavenging. In Lakhimpur Kheri there are around 2500 manual scavengers. The practices prevalent in Ghazipur as well as Orai. Women constitute a large percentage of those involved in this degrading and inhuman practice. The report points to the lack of awareness amongst scavengers of the various schemes for rehabilitation and the resultant failure on the part of the State Government to effectively implement the provisions of the Act. The complete report is available with the petitioner and can be produced if so required.

Gujarat

5.13 An independent survey conducted by the NGO Navsarjan Trust, Ahmedabad identified 7,000 manual scavengers working either for municipalities or privately in three districts of Gujarat viz., Surendra Nagar, Ahmedabad and Kheda. Nearly 95% manual scavengers in State of Gujarat belong to SC/ Bhangis and refusal to do the work can result in physical abuse and ostracism from community.

5.14 In the 3rd Report of the National Commission for Safai Karamcharis, refers to an order made by the High Court of Gujarat on 18.9.1997 in a PIL filed by 'Navsarjan Trust' on behalf of 125 Safai Karamcharis in Ranpur town in 1995, for prosecution of

Government officials on the charge of negligence for the continuance of the practice of manual scavenging. In the said PIL, the High Court gave the following directions:

“(a) The State Government is, therefore, directed to see that a time bound schedule is prepared for abolishing this evil practice in Gujarat and to make alternative arrangement for rehabilitating the workers and report the same to this Court. Such report should include a scheme for rehabilitation of the scavenger workers and state that the existence of such practice is illegal.

(b) To work out a time bound programme and appoint a high level Committee to implement for suggestions. It may include NGOs like the petitioner and other suitable sensitive people like the petitioner and other suitable and sensitive people like the Court committee Members and Members of the National Commission for Safai Karamcharis. This shall be done within a period of three months from today and the same shall be produced in this Court by way of affidavit and Misc. Civil Application. The scheme must include not only abolition of this inhuman and undignified practice but also proper rehabilitation and employment elsewhere. Therefore, till the abolition followed by resettlement takes place, the workers will continue to be in the employment of this undignified and inhuman activity and the abolition should not lead to their unemployment and starvation”.

5.15 The petitioner is not aware whether the above directions of the Gujarat High Court have been implemented by the State of Gujarat.

This Hon'ble Court could require the respondent State of Gujarat to indicate the position by way of an affidavit.

5.16 The petitioners state that the details of the practice of manual scavenging in other states are not readily available. However, from the statistics compiled by the Ministry of Social Justice and Empowerment for the year 2002-03, it is clear that there are manual scavengers in at least 21 states and union territories in the country and that their total number is 6,76,009. The highest number is in Uttar Pradesh (1,49,202) followed by Madhya Pradesh (80,072) and Maharashtra (64,785). Delhi has a population of 17,420 manual scavengers. The petitioners are reasonably certain that the actual figures of the number of manual scavengers would be at least 3 to 4 times the official figures. For ready reference a chart dated nil showing the details of the number of manual scavengers in each of the states as of 2002-03 as prepared by the Ministry of Social Justice and Empowerment is annexed herewith and marked as **Annexure-P/12**.

Municipal Corporation/ Municipality/ Nagar Panchayats – Local Bodies

5.17 The situation in local bodies in regard to the employment of manual scavengers is equally alarming. The 4th Report of the National Commission for Safai Karamcharis indicates that as of 1999-2000, dry latrines existed at least 41 Municipal Corporations in 13 States. A list of the 42 Municipal Corporations in 13 States where the practice of manual scavenging still exists is annexed herewith and marked as **Annexure-P/13**. Further, dry latrines are to be found in

at least 246 Municipalities and Nagar Panchayats. The relevant extract from the 4th Report of the National Commission dated nil showing the existence of dry latrines in different municipalities and nagar panchayats in 19 States and Union Territories is annexed and marked as **Annexure-P/14.**

Other Issues:

6.1 As regards the release of grants by the Central Government for the training and rehabilitation of scavengers, the statistics compiled by the Ministry of Social Justice and Empowerment reveals that although Rs.473.80 Crores have been spent between 1992-93 till 1997-98, only 13.29 per cent of the actual number of scavengers identified could be trained and only 25.74 percent could be rehabilitated. This is indicative of the fact that there is a huge wastage and diversion of funds meant for the training and rehabilitation of manual scavengers. A chart dated nil showing the amount of central assistance released between 1992-93 and 1997-98 and the number of scavengers trained and rehabilitated is annexed herewith and marked as **Annexure-P/15.**

6.2 According to a Press Report dated 23.4.2003 under the title “CAG sniffs out scavenger scam”, the recent report of the Comptroller and Auditor General (CAG) shows that the Rs.600 crore central grant has “gone, literally, downly latrine.” It took almost four decades for the Government of India to come up with a central scheme and the current review was conducted 10 years after the government pledged to rehabilitate four lakhs scavengers but ended up doubling the number to 7.87 lakhs. The Press report also states “As in every Government Scheme, misuse of funds and falsification of

targets has been rampant many instances of frauds were detected. For instance, units set up for rehabilitation of scavengers in Andhra Pradesh were found to be non-existent. In Assam, Madhya Pradesh and West Bengal scavengers under the scheme were not listed in records". For ready reference a true copy of the news item "CAG sniffs out scavenger scam" which appeared in the Indian Express, Delhi edition dated 23.4.2003 at page 3 is annexed herewith and marked as **Annexure-P/16**.

- 6.3 The CAG also pointed out that there was a 68% shortfall in the target set by Ministry of Social Justice and Empowerment for training of scavengers. The 9th Plan Budgetary commitment was slashed by Rs.170 crore (a 41% decrease, reflecting on the government's commitment). Further, the explanations for the scheme's failure was awaited for several months but the report was finalized without comments.
- 6.4 The petitioners are moving a separate application along with this petition seeking directions to the Union of India to obtain and produce a copy of the report of the Comptroller and Auditor General of India tabled in Parliament on 22.4.2003.

Health Problems:

- 7.1 The Environmental Sanitation Institute, Gandhi Ashram, Gujarat has found that among the decease that manual scavengers get afflicted by are Anemia (24%), Diarrhoea & vomiting (38%), Respiratory diseases (Asthma, Pneumonia, etc.) (62%), Skin diseases (32%), Jaundice (42%) and Trachoma (23%). Further studies show that in cities like Mumbai, Vadodara and Ahmedabad

scavengers have reportedly died from carbon monoxide poisoning. Most of the manual scavengers suffer from respiratory infections gastro-intestinal disorders and trachoma – a form of contagious bacterial conjunctivitis, which eventually results in blindness. All this apart from regular fever, dizziness and nausea suffered by them other than headaches and the breaking/ spraining of hands, feet and the back and thus results in serious risk to their health. There is absolutely no form of protective gear which the manual scavenger can use to avoid contracting any of the above diseases. They constitute a completely neglected section of the society and any number of schemes by the Central Government does not appear to deal with this serious problem.

Prosecutions:

- 8.1 Under s.14 of the Act the penalty for contravention of any of the provisions therein including s.3 which prohibits the employment of manual scavengers is imprisonment for a term which may extent to 1 year or with fine which may extent Rs.2000/- or with both and in case of failure or continuation of the contravention, an additional fine which may extent to Rs.100/- for every day during which such failure of contravention continues. The offence under the Act is cognizance and no prosecution for any offence can be instituted except with the permission of the Executive Authority which invariably is a District Magistrate or a Sub-Divisional Magistrate.
- 8.2 As to the best of the knowledge of the petitioners there have been very few, if at all, cases instituted by the authorities concerned under s.14 of the Act despite the fact that the violation of s.3 is continuing with impunity in almost every State and Union Territory

in the country. This itself is indicative of the total lack of will on the part of the governments, both at the Centre and the States to strictly enforce the provisions of the Act.

8.3 Apart from the above provisions, under s.3(1)(vi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (POA Act). It is an offence to “compel or entice a member of a Scheduled Caste or a Scheduled Tribe to do ‘*begar*’ or other similar forms of forced or bonded labour and it is punishable with imprisonment for a term it shall not to less than 6 months but which makes 10 to 5 years and with fine”. Further under s.20 it is a duty of the government to ensure effective implementation of the Act. The petitioners submit that to the best of their knowledge, very few prosecutions, if any at all, have been launched against the violators of s.3(1)(vi) of the POA Act.

8.4 Under s.4(iii) of the Protection of Civil Rights Act, 1955 (PCR Act), whoever on the ground of “untouchability” enforces against any person any disability with regard to “the practice of any profession or the carrying on of any occupation, trade or business or employment in any job shall be punishable with imprisonment for a term of not less than 1 month and not more than 6 months and also with fine which shall be not less than 100 rupees and not more than 500 rupees”. Under s.7A of the PCR Act, it is an offence to compel any person “on the ground of untouchability to do any scavenging or sweeping or to remove any carcass.... or to do any other job of a similar nature” and such offence would be punishable with imprisonment for a term which shall not be less than 3 months and not more than 6 months and also with fine which shall not be less

than 100 rupees and not more than 500 rupees. The petitioners submit that to the best of their knowledge, very few prosecutions, if any at all, have been launched against the violators of ss.4(iii) and 7A of the PCR Act.

- 8.5 It is submitted that it would be in the interest of justice if this Hon'ble Court directs the respondent Union of India and State Governments to furnish information on the number of prosecutions launched by them thus far for violations of the provisions of ss.3 read with s.14 of the Act, s.3(1)(vi) of the POA Act and ss.4(iii) and 7A of the PCR Act.
9. The petitioners are approaching this Hon'ble Court directly with a view to spurring the Governments towards achieving the above objectives since they are otherwise not inclined to effectively operationalise the Act despite the lapse of over 10 years since its passage.
10. The petitioners submit that the practice which is complained of in the present petition is an affront to human dignity and is in clear contravention of the fundamental rights enshrined in the Constitution and in particular, Articles 14, 17, 21 and 23 thereof. It is submitted that the issue is of such a grave nature and so widely prevalent all over the country that it would be in the interests of justice for this Hon'ble Court to itself entertain the present Writ Petition under Article 32 of the Constitution and issue directions of the various State Governments to take steps to ensure, in a time bound manner the complete eradication of manual scavenging in the entire country simultaneous with the rehabilitation of the

persons who have been forced into carrying on the degrading practice of manual scavenging.

11. Having no other effective or efficacious, alternative remedy the petitioners are preferring the present Writ Petition for enforcement of the fundamental rights enshrined in the constitution and in particular, Articles 14, 17, 21 and 23. The petitioners have not filed any other Writ Petition before this Hon'ble Court or before any other High Court in India and beg to prefer the present Writ Petition on inter alia the following grounds, which are taken without prejudice to one another:

GROUND

- A. The petitioners submit that the practice of manual scavenging and the continued use of the dry latrines in the various parts of the country is wholly illegal and unconstitutional and an affront to human dignity. It is a practice that violates the fundamental rights guaranteed under Articles 14, 17, 21 and 23 of the Constitution of India. The Ministry of Social Justice and Empowerment has compiled official statistics which reveal that even today there are as many as 6.76 lakh manual scavengers (the actual figure is likely to be 3 to 4 times higher). 95% of these manual scavengers belong to the scheduled castes and nearly 70% are women. Given the abject failure of the state to enforce a fundamental right guaranteed under Articles 21 and 17 of the Constitution even after 55 years after independence, it becomes imperative for this Hon'ble Court to issue writs of mandamus to various State Governments and the Union of India to take effective steps to ensure complete eradication of this

practice and to bind the respondents down by a rigid time schedule in order to achieve the said objective.

B. The petitioners submit that the continuation of the practice of manual scavenging and the working of the dry latrines, in the country also constitutes a gross violation of the international obligations of the Union of India flowing from the following international conventions and covenants which have been ratified by the Government of India:

- (i) Universal Declaration of Human Rights;
- (ii) Convention on the Elimination of Racial Discrimination;
- (iii) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

It is submitted that the provisions of the Act of 1993 are consistent with the above provisions and therefore are directly enforceable as such by the courts in our country. It would be in the interests of justice for this Hon'ble Court to issue writs of mandamus to the respondents to strictly enforce the provisions of the Act consistent with the requirement of the above international law provisions.

C. The petitioners submit that the Act which was to be immediately enforceable in six States and all Union Territories, was expected to be made applicable to other States subsequently by passing an appropriate resolution in the legislature under Article 252 of the Constitution. However, as noted by the National Commission for Safai Karamcharis, many States, including Uttar Pradesh and Rajasthan are yet to adopt the Act and some like Kerala, Nagaland and Pondicherry assert that there is no need to adopt the Act

despite the statistics showing the existence of manual scavenging in these States. It is further noted that certain other States like Himachal Pradesh, Rajasthan and Uttar Pradesh have taken certain steps in this regard. However, it is not clear if they have in fact adopted the Act. It is submitted that there is no justification whatsoever for these States not to adopt the Act particularly where the Ministry of Social Justice and Empowerment has identified the existence of scavengers in each of the States – 1,49,202 in Uttar Pradesh; 57,736 in Rajasthan; 4,757 in Himachal Pradesh; 1,339 in Kerala; 1,800 in Nagaland and 476 in Pondicherry. Information is not available as regards the news States of Uttaranchal, Chattisgarh and Jharkhand. The petitioners submit that these States are liable to explain to this Hon'ble Court why the respective legislatures are not initiative steps to adopt the Act by passing an appropriate resolution under Article 252 of the Constitution.

- D. The petitioners submit that lack of finances can hardly be a ground or justification for the Union of India and the Governments of the States and Union Territories to permit the continuance of the practice of manual scavenging and operation of dry latrines. It is no longer open for the respondents, even 55 years after independence, to justify the existence of this degrading practice which is in violation of all norms of human dignity as well as the fundamental guarantees enshrined in Articles 14, 17, 21 and 23 of the Constitution.
- E. The failure on the part of the State to enforce the provisions of the Act is evidenced by the fact that no cases have been registered against those who operate dry latrines and employ manual

scavengers in violation of s.3 (1) read with s.14 of the Act. Further, despite the practice of manual scavenging constituting an offence under s.3 (1)(vi) POA and ss.4(iii) and 7A of PCR Act, no prosecutions of violators appear to have been initiated under those enactments as well. The petitioner submits that this constitutes a further violation of the fundamental rights of the victims of the pernicious practice of manual scavenging as it denies them justice in accordance with law. The failure to prosecute offenders who have violated the fundamental right guaranteed under Article 17 is itself a further violation of the other fundamental rights enshrined under Articles 14 read with Article 21 of the Constitution.

- F. It is submitted that the Union of India is acting in gross violation of the Constitution in permitting its own departments and ministers, particularly the Ministry of Defence and the Ministry of Railways to employ manual scavengers in the manner detailed in the petition. On the other hand, strict action ought to be taken by them to ensure that all violations of the Act are punished and that the practice of manual scavenging and operation of dry latrines is totally eradicated. In other words the Union of India ought to be able to report to this Hon'ble Court that the entire work of scavenging and clearing of toilets of the various departments and Ministries is not done manually and that there are no dry latrines anywhere in the country. Further, they should be required to initiate appropriate action against those who have been responsible for continued violation of the provisions of the Act.
- G. The petitioners submit that notwithstanding the formulation of rehabilitation schemes by the Central and State Governments, and

the Constitution of the National Commission for Safai Karamcharis, the progress and performance of the task of rehabilitation has been far too inadequate. Where still, the amounts of money spent thus far not only appear to have been misappropriated or diverted for other purposes but as not even been properly accounted for. In the circumstances, it is imperative for the respondent governments to formulate detailed time bound plans for the replacement of all dry latrines with adequate number of usable toilets and to completely eradicate the degrading practice of manual scavenging. This has to be done simultaneously in the rehabilitation of the manual scavengers and their dependents. It is further necessary in the interests of justice for this Hon'ble Court to periodically monitor the implementation of the aforementioned schemes and plans.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ of declaring that the continuance of the practice of manual scavenging and the operation of dry latrines in the country as a whole and in the respondent states and Union of Territories is violative of Articles 14, 17, 21 and 23 of the Constitution and further violative of the mandatory provisions of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and
- (b) Issue a writ of mandamus or any other writ order or direction in the nature of mandamus:

- (i) directing the Union of India, the State Governments and Union Territories and the Ministries, Departments and Undertakings under their control to take immediate time bound and effective steps to ensure strict implementation of Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993;
- (ii) directing the respondents – State Governments, which are yet to adopt the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 to take steps, in a time bound manner, to get their respective legislatures to pass appropriate resolution under Article 252 of the Constitution for adopting the Act;
- (iii) directing the Union of India, the State Governments and Union Territories and the Ministries, Departments and Undertakings under their control to formulate detailed plans on a time bound basis for the complete eradication of the practice of manual scavenging and operation of dry latrines anywhere in the country;
- (iv) directing the Union of India, the State Governments and Union Territories and the Ministries, Departments and Undertakings under their control to formulate and implement detailed plans on time bound basis to ensure the rehabilitation of all persons presently employed as manual scavengers and in the dry latrines in the various parts of the country;

- (c) direct the Union of India and State Governments to issue necessary directives to the various Municipal Corporations, Municipalities and Nagar Panchayats to strictly implement the provisions of the Act and to ensure full implementation of the detailed plans as envisaged in para (b) (ii & iii) above;
- (d) direct the Union of India and State Governments to initiate prosecutions against those found having violated and/ or continuing to violate the provisions of the Act and to report to this Hon'ble Court the details of such prosecutions as well as their result;
- (e) direct the respondents jointly and severally to periodically file reports of compliance with the directions issued by this Hon'ble Court from time to time; and
- (f) pass such other or further orders as may be deemed just and proper by this Hon'ble Court in the facts and circumstances of the case.

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

Drawn and filed by

(S.Muralidhar)
Advocate for the Petitioners

New Delhi
Drawn on:
Filed on: __.11.2003

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NO. _____ OF 2003

IN

WRIT PETITION (CIVIL) NO. _____ OF 2003

IN THE MATTER OF:

Safai Karamchari Andolan & Others

Petitioners/ Applicants

Versus

Union of India and Others

Respondents

AND IN THE MATTER OF:

AN APPLICATION FOR DIRECTIONS

To

The Hon'ble Chief Justices of the Supreme Court of India and His Companion Justices of the Supreme Court of India

The humble application of the applicants above named

Most Respectfully Showeth:

1. By this application the applicants seek directions to the Union of India to obtain and produce a copy of the report of the Comptroller and Auditor General of India on the implementation of the scheme of the Government of India to be liberate and rehabilitate manual scavengers.

2. The applicants have filed the accompanying Writ Petition seeking the strict enforcement of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act). The Writ Petition refers to a press report dated 23.4.2003 which appeared in the Indian Express, New Delhi under the caption "CAG sniffs out scavenger scam". The said press report in turn refers to the report of the Comptroller and Auditor General (CAG), tabled in Parliament on 22.4.2003 which indicates

the misuse of over Rs.600 crores spent by the Central Government towards the National Scheme of Liberation and Rehabilitation of Scavengers which had been initiated in 1992. The petitioners have not been able to obtain a copy of the said report. It is submitted that it would be essential for this Hon'ble Court to examine the said report with a view to ascertain the effectiveness or otherwise of the steps taken so far by the Central Government in fulfilling its constitutional obligation of abolishing the practice of untouchability in general and the implementation of the Act in particular.

3. Further, as pointed out in the accompanying Writ Petition, there are certain which are yet to adopt the Act by getting their respective legislature to pass an appropriate resolution under Article 252 of the Constitution. It is imperative that these States should take the necessary steps for adoption of the Act particularly since more than a decade has gone by since the Act was passed. In the first instance, this Hon'ble Court may require such of those governments who have not yet adopted the Act to give the necessary information to this Hon'ble Court on the steps they have taken in this regard.

4. The applicants submit that it would be in the interests of justice for this Hon'ble Court to grant the relief as prayed for.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

(a) direct the Union of India to obtain and produce a copy of the report of the Comptroller and Auditor General of India National Scheme of

Liberation and Rehabilitation of Scavengers tabled in the Parliament on 22.4.2003;

- (b) direct the respondents – State Governments, which are yet to adopt the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 to explain on affidavit the steps taken by their respective legislatures to pass appropriate resolution under Article 252 of the Constitution for adopting the Act; and
- (b) pass such other or further orders as may be deemed just and proper by this Hon'ble Court in the facts and circumstances of the case.

Drawn and filed by

(S.Muralidhar)
Advocate for the Petitioners

New Delhi
Dated: 3.12.2003

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2003

(Under Article 32 of the Constitution of India)

IN THE MATTER OF:

Safai Karamchari Andolan & Others

Petitioners

Versus

Union of India and Others

Respondents

AFFIDAVIT

I, Bejawada Wilson, 1-4-879/87/1 (942), Bakaram, Street No.7, Gandhi Nagar, Hyderabad – 500 003, Andhra Pradesh, do hereby solemnly affirm and state as follows:

1. I say that I am the Petitioner No.1 (Convenor of Safai Karamchari Andolan) in the above Writ Petition and am well conversant with the facts and circumstances of the case. Therefore, I am competent to swear to this affidavit on behalf of all the petitioners.
2. I say that I have read and understood the contents of synopsis and List of Dates at Pages B to ___ and Writ Petition as contained in paras 1 to ___ at pages ___ to ___ and state that the averments of facts made therein are true to my knowledge and information derived from the record of the case and those of submissions of law made in grounds and prayer are true as per the legal advice received and believed by me.
3. I say that the application for interim directions at pages ___ to ___ are true to my knowledge.

4. That the Annexures-P/1 to P/16 at pages ___ to ___ are annexed to this Writ Petition are true copies of their respective originals.
5. I say that the averments of facts stated herein above are true to my knowledge and no part of it is false and nothing material has been concealed therefrom.

Verified at Hyderabad, on this the day of November 2003.

DEPONENT