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**BENEATH THE CITY'S SHINING FACADE,
DISCRIMINATION AND DEATH IN THE SEWERS**
An analysis of India's right to life obligations to eradicate the caste-based
practice of hazardous manual sewer cleaning

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ABSTRACT

Loss of life resulting from manual sewer cleaning has been a tragic constant in urban India for decades, and its connection with caste and ‘untouchability’ has been an accepted fact, with the victims overwhelmingly belonging to the most oppressed castes. Still, there has been little progress towards addressing this issue, with no reduction in the number of people losing their lives in this way every year. Legislation and schemes aimed at ending the practice of manual sewer cleaning have had little success. This thesis approaches the issue as a violation of the right to life under Article 6(1) of the International Covenant on Civil and Political Rights. Such an analysis would be incomplete without an awareness of the societal role of caste in the perpetuation of the problem. Therefore, this thesis also attempts to address the discriminatory aspect of the issue through an analysis of obligations under Article 2(1) of the Covenant. Through an interdisciplinary approach that draws on historical and legal research methods, it is found that while the State has made several attempts to address the issue of manual sewer cleaning, there is weight to the argument that India is in fact violating Article 6(1), by failing to end the occurrence of death due to manual sewer cleaning, as well as Article 2(1) in conjunction with Article 6(1), due to the caste-based nature of the practice leading to a distinct violation of the right to life.

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ABBREVIATIONS AND ACRONYMS

1993 Act	Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
2013 Act	Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013
CSO	Civil Society Organisation
ERSU	Emergency Response Sanitation Unit
HC	High Court
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
MoHUA	Ministry of Housing and Urban Affairs
MoSJE	Ministry of Social Justice and Empowerment
NAMASTE	National Action for Mechanised Sanitation Ecosystem
NCSK	National Commission for Safai Karamcharis
NSKFDC	National Safai Karamcharis Finance & Development Corporation
OBC	Other Backward Classes
SC	Scheduled Castes
SCI	Supreme Court of India
SKA	Safai Karamchari Andolan
SRMS	Self-Employment Scheme for Rehabilitation of Manual Scavengers
SSC	Safaimitra Suraksha Challenge
ULB	Urban local body
UN	United Nations
UT	Union Territory

1 INTRODUCTION

Every few weeks, Indian newspapers carry an article about an incident where people have lost their lives inside a sewer, having entered it in order to clean it and then asphyxiated because of the toxic gases, or drowned in the noxious liquid inside.¹ Every few weeks, millions of people read such articles, wonder at the brutality of such a death, and then return to their lives, some feeling helpless to change things, some forgetting the incident immediately, and some rationalising it to themselves as collateral damage on the path to progress. Each individual death in a sewer, however – an affront to the idea of human dignity in and of itself – is part of a system of oppression, outlawed in India, much addressed in academia, and very much alive in Indian society – the caste system. Most of the people losing their lives while cleaning sewers belong to the Dalit caste, which is considered the ‘lowest’ in the caste hierarchy.² While much of the urban elite can choose to forget about the existence of caste-based discrimination, or understand it as something that only exists in remote, rural areas, the reality is that in much of urban India, privileged caste households even engage in the dehumanising practice of untouchability, for example, by designating separate utensils for use by domestic workers of a ‘lower’ caste than their own. Within this social landscape, while the elites, far removed from the actual experience of cleaning a sewer, can see each instance as an individual, tragic incident, the fact of the matter is that there is a system in place that pushes members of the most oppressed castes into an occupation as sanitation workers and specifically, sewer cleaners. Such an occupation requires them to work in situations that any human being would be repulsed by, under dangerous conditions, often leading to a brutal and untimely death.

The issue of the manual cleaning of sewers is part of a larger issue of manual scavenging, which has existed in India for hundreds of years. According to the Safai Karamchari Andolan (SKA), an organisation that works to eradicate the practice and liberate those who have been forced to work in such an occupation, manual scavenging is the ‘practice

¹ ‘City Sees More than Half of Manual Scavenging Deaths in Karnataka’ *The Hindu* (27 April 2019) <www.thehindu.com/news/national/karnataka/city-sees-more-than-half-of-manual-scavenging-deaths-in-karnataka/article61557688.ece> accessed 14 June 2023; Jumana Shah, ‘Five Deaths in a Month—How Manual Scavenging Continues to Take Lives in Gujarat’ *India Today* (29 April 2023) <www.indiatoday.in/india-today-insight/story/five-deaths-in-a-month-how-manual-scavenging-continues-to-take-lives-in-gujarat-2366100-2023-04-29> accessed 8 July 2023.

² Rashtriya Garima Abhiyan, ‘Justice Denied: Death of Workers Engaged in Manual Scavenging While Cleaning the Septic Tank or Sewer’ (Jan Sahas 2018) 18–19.

of cleaning, carrying and disposing of human excreta from dry latrines or sewers.’³ The Indian government and regional governments have taken steps to address the issue by introducing legislation against the practice and creating schemes to rehabilitate manual scavengers and support them in finding other professions.⁴ However, the unfortunate fact is that today, seventy-six years after India became an independent country, even after several attempts to abolish it, the practice is still rampant, and is still forced upon those from the most oppressed castes.⁵ It is telling that even though death statistics, which are known to be underestimated in the case of sewer cleaners,⁶ show that in some years, more workers die cleaning sewers across the country than soldiers in conflict-ridden Jammu and Kashmir, where violence frequently breaks out – the latter are treated as heroes and mourned across the country, while the former are ignored, with little progress being made to eradicate the practice that is killing them.⁷

Much research has already addressed this issue as a human rights concern. A number of studies have taken a health-based approach to the problem.⁸ Others have conducted analyses of the domestic law framework, its implementation, and its shortcomings in actually addressing the issue of manual scavenging, while also focusing on resistance by the community.⁹ Some

³ ‘Home: Safai Karmachari Andolan’ (*Safai Karmachari Andolan*) <<https://safaikarmachariandolan.org/>> accessed 14 June 2023.

⁴Subhash Gatade, ‘Silencing Caste, Sanitising Oppression’ (2015) 50 *Economic & Political Weekly* 29, 31–32; Shiv Prakash Katiyar, ‘Manual Scavenging: Retrograding Policy and Sustained Discrimination’ (2014) 8 *Indian Journal of Human Development* 111, 116–127.

⁵ Vignesh Radhakrishnan and Naresh Singaravelu, ‘Data | Uttar Pradesh Records Highest Number of Sewer Cleaning-Related Deaths in Last Five Years’ *The Hindu* (10 February 2021) <www.thehindu.com/data/uttar-pradesh-records-highest-number-of-sewer-cleaning-related-deaths-in-last-five-years/article33801281.ece> accessed 11 June 2023; Tanya Arora, ‘Manual Scavenging Continues Unabated, Indian Govts Turns a Deaf Ear to Acknowledge This Systemic, Extreme Violence’ *SabrangIndia* (14 April 2023) <<https://sabrangindia.in/article/manual-scavenging-continues-unabated-indian-govts-turns-deaf-ear-acknowledge-systemic/>> accessed 14 June 2023; ‘Manual Scavenging Still on: How Swachh Is GOI’s Conscience?’ *SabrangIndia* (2 October 2019) <<https://sabrangindia.in/article/manual-scavenging-still-how-swachh-gois-conscience/>> accessed 14 June 2023.

⁶ Jawed Alam Khan and Tasneem Rahat, ‘15 Years Later, Govt Scheme to Rehabilitate Manual Scavengers Has Made Little Progress’ *The Wire* (7 March 2022) <<https://thewire.in/caste/manual-scavengers-rehabilitation-scheme-progress-report>> accessed 6 June 2023.

⁷ Ajaz Ashraf, ‘It’s Safer Being a Soldier Fighting in Kashmir than a Sewer Worker. What Does That Say about India?’ *Scroll.in* (11 September 2017) <<https://scroll.in/article/849665/its-safer-being-a-soldier-fighting-in-kashmir-than-a-sewer-worker-what-does-that-say-about-india>> accessed 8 July 2023.

⁸ Jai Mala, Roger W Byard and Navpreet Kaur, ‘Manual Scavenging and the Right to Health in India – Social and Medicolegal Perspectives’ [2022] *Medicine, Science and the Law* 2–4; Sakshi Saldanha, ‘Between Paternalism and Illegality: A Longitudinal Analysis of the Role and Condition of Manual Scavengers in India’ (2022) 7 *BMJ global health* e008733, 2–6; Shanal Pradhan and Ashish Mittal, ‘Ethical, Health, and Technical Concerns Surrounding Manual Scavenging in Urban India’ (2020) 28 *Journal of Public Health (Germany)* 271, 273–276.

⁹ Aparajita Baruah, ‘The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013: A Review’ (2014) 1 *Space and Culture, India* 9, 14–16; Sujith Koonan, ‘Manual Scavenging in India: State

researchers have taken an anthropological approach to understanding the violence, oppression and exclusion faced by the Dalit community.¹⁰ One such study also refers to the human rights of the community being violated, making specific reference to the Convention on the Elimination of All Forms of Discrimination Against Women and the International Covenant on Civil and Political Rights (ICCPR).¹¹ A 2018 study comprehensively examined the rights framework around manual scavenging, drawing conclusions about the Indian government's failures and making recommendations as to the ways in which progress towards the eradication of the practice could be made. The international law focus of this study was on conventions and guidelines that referred to discrimination in employment as well as on racial discrimination and discrimination based on descent.¹² In other recent literature, manual scavenging has been addressed as an issue of human dignity and the right to life, with some researchers focusing on how the concept of dignity in international human rights law can help to build a stronger protective framework within India,¹³ and others focusing their analysis on the unconstitutionality of the act of manual scavenging itself as well as the laws that attempt to address the issue.¹⁴

These studies cover a breadth of possible research about the issues that arise from the practice of manual scavenging. While the right to life is addressed in the context of domestic law,¹⁵ there is currently no research that addresses manual scavenging as a violation of the right to life under international human rights law. Gupta does frame their argument in terms of the Human Rights Committee's (HRC) use of the concept of human dignity, but this does not extend to the right to life under the ICCPR.¹⁶ If an analysis of the problem of manual scavenging in terms of the right to life showed that India is in fact in violation of its right to

Apathy, Non-Implementation of Laws and Resistance by the Community' (2021) 5
<https://doi.org/10.1080/24730580.2021.1905340> 149, 158–165.

¹⁰ Sheeva Y Dubey and John W Murphy, 'Manual Scavenging in Mumbai: The Systems of Oppression' (2021) 45 *Humanity & Society* 533, 538–550; KM Ziyauddin, 'Unread History of an Erstwhile Manual Scavenging Community: From Being an Urban to a Marginalized' (2022) 8 *Journal of Social Inclusion Studies* 115, 117–130; Mohd Shahid, 'Manual Scavenging: Issues of Caste, Culture and Violence' (2015) 45 *Social Change* 242, 244–253.

¹¹ Minaketan Bag and Manjulata Jagadala, 'Untouchables amongst Untouchables: An Anthropocentric Study of Ghasi Dalit Women' (2018) 48 *Social Change* 222, 233–234.

¹² Abhishek Gupta, 'Manual Scavenging - A Case of Denied Rights' [2018] *SSRN Electronic Journal* 36, 40–58.

¹³ Aishani Gupta, 'Taking Dignity Seriously to Protect Manual Scavengers in India: Lessons from the UN Human Rights Committee' (2022) 22 *Human Rights Law Review* 13–24 <<https://doi.org/10.1093/hrlr/ngac019>> accessed 7 May 2023.

¹⁴ Asang Wankhede and Alena Kahle, 'The Human Dignity Argument against Manual Scavenging in India' (2023) 4 *CASTE / A Global Journal on Social Exclusion* 109, 116–127.

¹⁵ *ibid.*

¹⁶ Gupta (n 13) 13–24.

life obligations towards communities that are forced to work as manual scavengers, this could add weight to the issue, domestically and internationally. Even though India has not ratified the Optional Protocol to the ICCPR that would allow individual complaints to be brought before the HRC,¹⁷ the framing of a violation of the right to life could bring additional international pressure on India, giving it further incentive to actively work to end the practice of manual sewer cleaning. In this regard, this thesis aims to answer the following research question:

Is India in violation of the right to life under Article 6 (1) of the ICCPR, with regard to the continued occurrence of deaths due to the manual cleaning of sewers, particularly considering the caste-based nature of the occupation?

In order to answer this question, Chapter 2 will first provide the relevant context and background information to the issue at hand. Chapter 3 will explain the theoretical and methodological underpinnings of this research, elaborating on the decision to centre this thesis around the issue of caste-based oppression and the choice to focus on the right to life. It will also address the decisions made regarding the scope of this research, the exclusions, and the possible limitations. Chapter 4 will consider the extent to which caste-based discrimination is responsible for the continued existence of manual sewer cleaning in India. Having established this, Chapter 5 will move on to describing the relevant international human rights law framework, under Articles 6(1) and 2(1), that is applicable to the issue and used in the analysis in this thesis. Chapter 6 will then apply the framework established in Chapter 5 to the issue of manual sewer cleaning, and in particular, deaths due to the hazardous cleaning of sewers. Finally, Chapter 7 will conclude by bringing together the findings of this thesis and suggesting possible avenues of further study.

¹⁷ ‘Status of Treaties, Chapter IV Human Rights: 4. International Covenant on Civil and Political Rights’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en> accessed 13 July 2023; ‘Status of Treaties, Chapter IV Human Rights: 3. International Covenant on Economic, Social and Cultural Rights’ (*United Nations Treaty Collection*) <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en> accessed 13 July 2023.

2 BACKGROUND, CONTEXT AND SIGNIFICANCE

2.1 Political and Legal Context

India became an independent country in 1947 and the republic was formed in 1950, with the completion of the drafting process of the Constitution of India. India's Constitution declares that the country is a 'sovereign, socialist, secular, democratic republic'.¹⁸ In India, the prime minister is the head of government and the president is the head of state.¹⁹ The country has a parliamentary system which consists of the Rajya Sabha (upper house) and Lok Sabha (lower house).²⁰ India is divided into a number of states which, in a federalised system, have significant autonomy and legislative power.²¹ The electorate votes directly for members of the legislative assembly of their own state as well as members of the Lok Sabha. Members of the Rajya Sabha are elected by the legislative assembly of each state, which is why the Rajya Sabha is known as the Council of States, while the Lok Sabha is the House of the People.²² As well as states, India has union territories (UTs), which are regions that are governed directly by the central government.²³ Due to possible confusion between the Indian State and the federal states of India, in this thesis, 'State' will refer to the Indian State, and 'state' will refer to one of the federal states that are part of the Republic of India. When reference is made to a 'state government', this refers to the government of a federal state, and 'central government' refers to the Government of India.

The states and UTs mentioned above are the first level of subdivision of the government. At the local level, rural areas are governed by a 'Panchayat'.²⁴ Depending on the size of an urban area, it is governed by a municipal council or municipal corporation.²⁵ In this thesis, the relevant form of local governance is that which is responsible for an urban area. Such bodies will be referred to as urban local bodies (ULB).

¹⁸ Constitution of India 1950 preamble.

¹⁹ Subrata Mitra, *Politics in India: Structure, Process and Policy* (2nd edn, Routledge 2017) 77.

²⁰ Constitution of India arts 79–81; Mitra (n 19) 77.

²¹ Mitra (n 19) 102–103.

²² Constitution of India arts 79–81.

²³ 'Union Territory: Indian Government' <www.britannica.com/topic/union-territory> accessed 7 July 2023.

²⁴ Constitution of India art 243A–C.

²⁵ *ibid* 243P–R.

The judiciary in India is completely independent of the legislature, a guarantee that is secured in the Constitution.²⁶ The highest court in the country is the Supreme Court of India (SCI), which is a federal court, serves as a constitutional court, and is the highest court of appeal.²⁷ Below the SCI are the state High Courts (HC), which are the highest courts of appeal within a state. All other courts within a state are under the control of the HC. Decisions made by the SC set a binding precedent for all HCs and subordinate courts.²⁸

2.2 The Issue of Manual Sewer Cleaning

2.2.1 Definitions

The manual cleaning of sewers is an occupation that falls under the wider umbrella of sanitation work. Before addressing definitional issues, it is important to understand the range of sanitation work in India that involves a worker coming into contact with human faecal matter. A 2017 report identified nine different categories, which can be seen in table 1. The types of work in the table are numbered according to the level of risk and exposure to faecal matter through the work, with 1 being the highest and 9, the lowest.²⁹ Of these types of work, sewer cleaning is associated with the highest risk in terms of immediate risk while carrying out work and risk of prolonged illness.³⁰

	Type of work	Description	Frequency	Location
1	Sewer cleaning	Cleaning and unblocking of sewers	Complaint-based, more during the rainy season, and occasionally for maintenance	Urban
2	Faecal sludge handling	Cleaning of septic tanks	Demand-based, ranges from every 6 months to 10-15 years	Mainly unplanned, urban areas
3	Railway cleaning	Cleaning faecal matter from railway tracks and platforms, and from train and platform toilets	Several times a day	Railway network and stations

²⁶ *ibid* 50.

²⁷ *ibid* 124–144.

²⁸ *ibid* 141, 214–126.

²⁹ Dalberg Advisors, ‘Sanitation Worker Safety and Livelihoods in India: A Blueprint for Action’ (2017) 12–14.

³⁰ *ibid* 13–14.

4	Latrine cleaning	Emptying and cleaning insanitary latrines	Daily	Primarily rural
5	Treatment Plant work	Maintenance and operation of sewage and faecal sludge treatment plants	Daily	Urban
6	Community/Public Toilet keeping	Maintenance of public and (often insanitary) community toilets	Daily	Rural and urban
7	School toilet cleaning	Operation and maintenance of school toilets	Daily	Rural and urban
8	Sweeping/Drain cleaning	Road sweeping and open drain cleaning	Daily	Urban
9	Domestic Work	Toilet cleaning in institutions and private households	Varies, often daily	Urban

Table 1 Types of sanitation work in India.³¹

Manual scavenging is a term that has been used in India to describe certain occupations within sanitation work, however, the exact definition of the term has been contentious. This definitional issue is important because it affects the level of legal protection available to sanitation workers. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act (1993 Act), defines a manual scavenger as someone who is ‘engaged in or employed for manually carrying human excreta’.³² A later law, which was aimed at strengthening the protection for manual scavengers, defined the term much more narrowly, as ‘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’.³³ Such a definition leaves out a range of occupations that involve contact with human faecal matter, including the subject of this thesis – the manual cleaning of sewers – and applies primarily to sanitation workers who clean insanitary latrines.³⁴ Sewer cleaners are covered under this law through the prohibition

³¹ Adapted from: *ibid*.

³² The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 s 3(1)(a). The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Section??

³³ Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 s 2(1)(g).

³⁴ An insanitary latrine is ‘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’. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 s 2(1)(e).

of ‘hazardous cleaning’, which is defined as the cleaning of a sewer or septic tank without the required safety equipment.³⁵

Researchers and civil society organisations (CSO), have repeatedly called for a more inclusive definition of manual scavenging because of the implications of such a definition for the protection of sanitation workers, which will be addressed further in Chapters 4 and 6.³⁶ According to the SKA, a movement that aims to end the practice of manual scavenging, ‘[m]anual scavenging is the practice of cleaning, carrying and disposing of human excreta from dry latrines or sewers.’³⁷ Such a definition provides a more encompassing view of what manual scavenging is. In this thesis, when reference is made to manual scavenging, unless otherwise stated, it is to be taken in this broader sense. Any reference to a ‘safai karamchari’ is simply using the Hindi word for ‘sanitation worker’. ‘Sewer cleaner’ is used to refer to an individual whose job is to clean sewers, ‘manual sewer cleaning’ refers to the work of a human being who needs to enter a sewer in order to clean it, and ‘hazardous sewer cleaning’ refer to the carrying out of such work without safety equipment and precautions.

2.2.2 *Details of the Work and Magnitude of the Issue*

The work of cleaning a sewer is repugnant and dangerous. It requires an individual who is employed to do the work to lower themselves into the sewer in order to clean or unblock it. The sewer contains human faecal sludge, and other sorts of animal and industrial waste, and a mix of dangerous gases such as hydrogen sulfide, methane and ammonia that are harmful to a human being.³⁸ Workers are required to enter the sewer through a manhole, usually without safety equipment. Once inside, they are submerged in a toxic sludge and face multiple dangers. If the gases inside are above a certain concentration, workers can fall unconscious or immediately become asphyxiated, leading to death. Sometimes they drown in the deep sludge, and when their bodies are recovered, their lungs are filled with faecal sludge and other noxious contents of the sewer.³⁹

³⁵ *ibid* 2(1)(d).

³⁶ Dalberg Advisors (n 29) 22.

³⁷ ‘Home: Safai Karmachari Andolan’ (n 3).

³⁸ National Commission for Safai Karmacharis, ‘Annual Report: 2019-20’ (2020) 48–50.

³⁹ Dalberg Advisors (n 29) 69; ‘Health, Safety and Dignity of Sanitation Workers: An Initial Assessment’ (World Bank, International Labour Organization, WaterAid and World Health Organization 2019) 8–9; ‘What’s Worse than the Job Is the Humiliation We Face’ / *India’s Sewer Cleaners* / *Invisible Asia* (Directed by The

Workers who are made to clean sewers fall into two categories: those contracted to a local government body as sanitation workers, and those employed by private contractors whose role is to source labour to carry out public works for the local government body.⁴⁰ Those in first category have other sanitation work as part of their job and are made to clean sewers when the need arises, while the second category of worker is employed as a daily wage labourer specifically in order to clean sewers.⁴¹ While in other kinds of sanitation work, gender issues are significant, with women facing intersectional issues of caste and gender, with sewer cleaning, gender issues are not relevant because the entire workforce is composed of men.⁴²

Regarding the numbers of active sewer cleaners, government data is hard to come by, and private research organisations have tried to fill this research gap. According to a 2017 report, the estimated number of sewer cleaners stood at 98,000.⁴³ The SKA, on its website, reports 770,000 sewer cleaners in the country.⁴⁴ While there is variation in the estimates, this can be explained by the fact that the former report is an earlier one. In addition, the former report used a model to estimate the number of sewer cleaners based on census data, while the latter data is based on surveys. Even with the lack of clarity as to the exact number of sewer cleaners in the country, the estimates show figures that are undeniably high.

The situation looks grimmer when data about the reported deaths as a result of sewer cleaning are considered. The National Commission for Safai Karamcharis (NCSK), a government body tasked with monitoring the rehabilitation of sanitation workers, estimated that 928 workers have died in sewers between 1993 and 31 March 2020. However, the commission itself recognises that since this data is based on the information that it receives from states and UTs, and media reports, the actual numbers may vary.⁴⁵ CSOs and researchers believe that the numbers are in fact much higher and have made higher estimates, with the SKA suggesting that around 2000 deaths occur due to sewer cleaning every year.⁴⁶ Estimates have even suggested that sewer cleaners die at a rate five times higher than others in urban India

Straits Times, 2021) min 5:58-6:22 <<https://www.youtube.com/watch?v=eXewgDvdqs4>> accessed 10 July 2023.

⁴⁰ Human Rights Watch, *Cleaning Human Waste* (2014) 56–58; ‘Health, Safety and Dignity of Sanitation Workers: An Initial Assessment’ (n 39) 35–36.

⁴¹ Human Rights Watch (n 40) 56–58.

⁴² Dalberg Advisors (n 29) 17, 69.

⁴³ *ibid* 15.

⁴⁴ ‘Crisis: Safai Karmachari Andolan’ (*Safai Karmachari Andolan*) <<https://safaikarmachariandolan.org/crisis>> accessed 13 July 2023.

⁴⁵ National Commission for Safai Karamcharis (n 38) 51.

⁴⁶ ‘Crisis: Safai Karmachari Andolan’ (n 44).

aged between fifteen and fifty-nine.⁴⁷ All this evidence points to the magnitude of this issue and the pressing need for it to be addressed.

This issue of the manual handling of human faecal matter is not unique to India, as other developing countries across Asia and Africa face similar problems. In Tanzania, the growth of informal settlements has led to the existence of many pit latrines that need to be emptied by hand because trucks do not fit on the narrow streets. This work is dangerous, with workers having died when the pits collapse as they are working.⁴⁸ In India's neighbouring countries of Pakistan and Bangladesh, sewer cleaning seems to take the same form as in India, with sewage workers, primarily from the most oppressed castes, being made to enter and clean sewers, often losing their lives in the process.⁴⁹

2.3 The Significance of Caste

2.3.1 *The Caste System*

The caste system has existed as a part of Hinduism since ancient India and elements of it can be traced as far back as 1300 BC. Between around 500 BC and 500 AD, it took on the form that it has today, albeit less complex and less rigid.⁵⁰ The system is based on the belief that different groups of humans were born from various body parts of Brahma, the Creator. According to this system, there are four castes: the Brahmins (born from the head), the Kshatriyas (born from the arms), the Vaishyas (born from the legs), and the Shudras (born from the feet).⁵¹ Each caste group, based on the body part it was believed to have originated from,

⁴⁷ Joel Lee, 'Odor and Order: How Caste Is Inscribed in Space and Sensoria' (2017) 37 *Comparative Studies of South Asia, Africa and the Middle East* 470, 485–486.

⁴⁸ WaterAid, 'The Hidden World of Sanitation Workers: Media Briefing' (2019) 12 <<https://washmatters.wateraid.org/publications/the-hidden-world-of-sanitation-workers>> accessed 10 July 2023.

⁴⁹ Zia ur-Rehman and Maria Abi-Habib, 'Sewer Cleaners Wanted in Pakistan: Only Christians Need Apply.' *The New York Times* (4 May 2020) <www.nytimes.com/2020/05/04/world/asia/pakistan-christians-sweepers.html> accessed 7 July 2023; Saad Zuberi, 'How Death and Despair Haunt Pakistan's Christian Minority' (9 April 2023) <www.aljazeera.com/features/2023/4/9/how-death-and-despair-haunt-pakistans-christian-minority> accessed 7 July 2023; Sadia Rahman, 'A Day in the Lives of Sewer Cleaners' *The Business Standard* (14 September 2019) <www.tbsnews.net/feature/day-lives-sewer-cleaners> accessed 7 July 2023.

⁵⁰ Arthur Anthony Macdonell, 'The Early History of Caste' (1914) 19 *The American Historical Review* 230, 230–231.

⁵¹ Patrick Olivelle and Suman Olivelle, *Manu's Code of Law: A Critical Edition and Translation of the M-Anava-Dharmaś-Astra* (Oxford University Press, Incorporated 2004) para 31 <<http://ebookcentral.proquest.com/lib/abo-ebooks/detail.action?docID=886630>> accessed 15 June 2023.

has supposedly been divinely assigned a particular role in society, and following from this, a profession. Brahmins are supposed to be priests and scholars, Kshatriyas are warriors and rulers, Vaishyas are traders and craftsmen, and Shudras are farmers and labourers.⁵² While these four broad classifications are called castes, sub-groups within them are also referred to as castes or sub-castes. This concerns the translation from the original Sanskrit, the explanation of which would be too much of a digression in this thesis. In this thesis, ‘caste’ will refer to the broader classification and ‘sub-caste’ will refer to a group within a caste.

Apart from the four castes described above, another group, considered lower than the Shudras, were the so-called ‘Untouchables’. The *Manusmriti*, an ancient ‘law book’ said to have been written around 200 AD, gives an indication that society at the time of its writing was organised in a strict caste hierarchy.⁵³ It prescribes ways of living for each of the castes and brutal punishments for infractions, especially for the lower castes. It further states that those who fall outside the caste system:

[m]ust live outside the village...Their property consists of dogs and donkeys, their garments are the clothes of the dead; they eat in broken vessels; their ornaments are of iron; and they constantly roam about. A man who follows the Law should never seek any dealings with them. All their transactions shall be among themselves, and they must marry their own kind.⁵⁴

The *Manusmriti* describes these people as being the children of a Brahmin man and a Shudra woman, however, other scholars have agreed that these communities probably had tribal origins before being inducted into Hinduism.⁵⁵ This group was assigned occupations that were deemed to be ‘unclean’ by those from higher castes. Such occupations were those that involved working with waste, animal carcasses, and sometimes, human remains, and included tanners too.⁵⁶ Being considered an ‘Untouchable’ meant (and still often means) that they were seen as polluted, and were socially ostracised; anyone not from their caste would go to any lengths to avoid associating with them in order to avoid becoming tainted themselves.⁵⁷

⁵² Macdonell (n 50) 240–242.

⁵³ *ibid* 234.

⁵⁴ Olivelle and Olivelle (n 51) paras 52–53.

⁵⁵ Macdonell (n 50) 233–236.

⁵⁶ Mason Olcott, ‘The Caste System of India’ (1944) 9 *American Sociological Review* 648, 649–651.

⁵⁷ *ibid* 651.

A defining characteristic of the caste system is its lack of social mobility, especially for those most oppressed by it; while some members of oppressed caste are able to achieve some level of economic mobility, they cannot change their caste. This issue is especially pronounced for members of ‘Untouchable’ sub-castes.⁵⁸ Since the beginnings of the caste system, those considered as ‘Untouchables’ – 280 distinct groups according to one estimate – were given the worst work and expected to live in servitude of the ‘higher’ castes.⁵⁹ Jyotirao Phule first used the term ‘Dalit’ to refer to these groups in the 19th century. An extremely important figure in the struggle for Dalit liberation, he used the word ‘Dalit’, which means ‘broken’ or ‘crushed’ in his language, Marathi, as an alternative to ‘Untouchable’.⁶⁰ The word ‘Dalit’ basically refers to an aggregation of all the former ‘Untouchable’ castes – diverse peoples who have faced the worst caste-based oppression for centuries.⁶¹ The struggle for Dalit liberation has been a long one, and it continues till date because of the persistence of the caste system, even though untouchability has been made illegal in India.⁶² Every few days, a new incident comes to light in which a member of the dominant castes has abused a Dalit in a horrifying way.⁶³ Recently, a prominent Dalit political leader was shot at and injured in a brazen display of caste-based violence.⁶⁴ All these examples indicate the extent to which caste-based violence and discrimination is embedded and normalised in Indian society.

As well as the term ‘Dalit’, this thesis will use the term, Scheduled Caste (SC), in order to refer to members of the most oppressed caste. This term refers to the constitutional status of these groups, which entitle them to the benefits of affirmative action policies and special

⁵⁸ Mysore Narasimhachar Srinivas, ‘Caste in Modern India’ (1957) 16 *The Journal of Asian Studies* 529, 531–532.

⁵⁹ Olcott (n 56) 649.

⁶⁰ Annapurna Waughray, ‘Caste Discrimination and Minority Rights: The Case of India’s Dalits’ (2010) 17 *International Journal on Minority and Group Rights* 327, 328.

⁶¹ Katiyar (n 4) 113.

⁶² Constitution of India art 17.

⁶³ ‘MP: Six Arrested for Brutally Thrashing Two Dalit Youths, Garlanding Them with Shoes and Parading in Shivpuri District.’ *Dalit Desk* (7 July 2023) <<https://dalitdesk.com/mp-six-arrested-for-brutally-thrashing-two-dalit-youths-garlanding-them-with-shoes-and-parading-in-shivpuri-district>> accessed 7 July 2023; ‘Gujarat: Dalit Man Brutally Assaulted Over Food Order Dies; Two Accused Arrested’ *Dalit Desk* (15 June 2023) <<https://dalitdesk.com/gujarat-dalit-man-brutally-assaulted-over-food-order-dies-two-accused-arrested>> accessed 7 July 2023; ‘Dalit Employee Dies by Suicide after Filing Caste Discrimination Complaint at Bengaluru Firm’ *Dalit Desk* (15 June 2023) <<https://dalitdesk.com/dalit-employee-dies-by-suicide-after-filing-caste-discrimination-complaint-at-bengaluru-firm>> accessed 7 July 2023.

⁶⁴ Rehanmol Raveendran, ‘Firing on Chandrashekhhar Azad: An Attack on Dalit Resistance’ *The Indian Express* (7 July 2023) <<https://indianexpress.com/article/opinion/columns/firing-on-chandrashekhhar-azad-an-attack-on-dalit-resistance-8801331/>> accessed 7 July 2023.

protection.⁶⁵ Importantly, many Dalits attempted to avoid caste-based oppression by converting to Christianity and Islam. While the oppression continues despite the conversion, the legal status of these individuals is different from that of Hindu Dalits. Rather than SC status, Muslim and Christian Dalits are categorised as Other Backward Classes (OBC), and this affects the level of legal protection they enjoy.⁶⁶ This becomes important later, when considering the legal protection against manual sewer cleaning.

2.3.2 *Manual Scavenging and Caste*

The link between manual scavenging and caste is uncontested and has been so since before independence. The first kind of manual scavenging was the cleaning of insanitary latrines, where Dalits were made to manually empty and carry away human faecal matter that accumulated in the pit that was connected to the toilet. This form of work has existed since the ancient times where the group assigned the lowest position in society, then referred to as Chandals, were assigned the work of cleaning and carrying excreta.⁶⁷ Even at the beginning of this millennium, this practice carried on unabated; there were a large number of insanitary latrines that remained, but the practice also began to shift to other kinds of sanitary work that had become necessary with changes to society, such as the cleaning of blocked sewer pipes, and members of the same oppressed castes were hired into these forms of sanitation work.⁶⁸ The sub-castes that are responsible for manual scavenging are looked down upon even by other Dalits, making them ‘Untouchables amongst Untouchables’.⁶⁹ Table 2 provides an overview of the sub-castes that have traditionally been associated with manual scavenging.

State/UT	Name of sub-caste
West Bengal	Hari, Hadi, Basphor, Dome
Uttar Pradesh	Bhangi, Valmiki, Dhanuk, Mehtar, Dome
Madhya Pradesh	Mehtar, Bhangi, Hela, Halalkhor, Valmiki, Dome
Assam	Mehtar, Bhangi, Basphor
Odisha	Mehtar, Bhangi, Valmiki, Hadi

⁶⁵ Waughray (n 60) 329.

⁶⁶ *ibid* 329–331.

⁶⁷ Katiyar SP, ‘Manual Scavenging: Retrograding Policy and Sustained Discrimination’ (2014) 8 *Indian Journal of Human Development* 111. p. 111 (from SP Singh, 2005 – but can’t find this source)

⁶⁸ KM Ziyuddin, ‘Situating Hadis’ Occupation and Caste: Exclusionary Journey from Manual Workers to Sanitation Workers in India’ (2022) 3 *CASTE / A Global Journal on Social Exclusion* 263. 271

⁶⁹ Bag and Jagadala (n 11) 226–228.

Bihar	Mehtar, Halalkhor, Dome, Domar
Tamil Nadu	Totti, Arundhityar, Madiga, Katunayagar (Adivasi), Chekkilyar (Mochi)
Andhra Pradesh	Madiga, Relli, Yanadi (Nomadic Tribe), Halalkhor, Mehtar, Lalbegi
Punjab	Mira, Lalbegi, Chooda, Balshahi, Valmiki
Maharashtra	Ghare, Bhangi
Gujarat	Bhangi, Valmiki, Malkani
Delhi	Bhangi, Valmiki, Chooda
Karnataka	Madiga, Totti, Madigaru, Bhovi
Kerala	Madiga, Arundhityar
Rajasthan	Bhangi, Mehtar, Chooda, Valmiki
Jharkhand	Dome, Hadi, Valmiki
Jammu and Kashmir	Vatal, Mochi, Sheikh, Valmiki
Himachal Pradesh	Valmiki, Chooda

Table 2 Sub-castes associated with manual scavenging.⁷⁰

While the connection between caste (and untouchability specifically) and manual scavenging has never been in contention, views have varied about where the specific issues lay. Mohandas Karamchand Gandhi, a figurehead of the Indian Independence movement, seen by many in India as ‘the father of the nation’, thought untouchability stemmed from the fact that Dalits carried out their manual scavenging work in an unsanitary manner. He thought that if they were simply taught to ensure that they did the work hygienically and cleaned themselves well after the work, privileged-caste members could become amenable to rethink their views of Dalits as ‘unclean’.⁷¹ This view indicates that for Gandhi, the issue was not necessarily that it was only Dalits who were forced to carry out this work, but simply their treatment due to the work they had to do. However, Dr Bhimrao Ambedkar, a freedom fighter, the chair of the drafting committee of the Indian Constitution, and one of the most prominent voices of Dalit resistance, took issue with this view. Firstly, he recognised that the treatment of Dalits as ‘Untouchables’ did not stem entirely from the fact that they engaged in ‘unclean’ work, but also simply from the fact that they were Dalits. He argued that if a non-Dalit were made to engage in the same work as a Dalit, the non-Dalit would not face the same stigmatisation and abuse that a Dalit faces. Similarly, a Dalit who was able to change their profession to one that was not considered ‘unclean’ would face the same discrimination and abuse, indicating that the prejudice ran deeper than a mere aversion to unhygienic practices. The issue, he saw, was the caste system

⁷⁰ Shiv Prakash Katiyar, ‘Manual Scavenging: Retrograding Policy and Sustained Discrimination’ (2014) 8 *Indian Journal of Human Development* 111, 114 from: Singh, Bhasha (2012). *Adrishya Bharat*, New Delhi: Penguin Books, p. 188.

⁷¹ Yui Masuki, ‘Ideas and Practices for Restoring the Humanity of Sanitation Workers in India’, *The Sanitation Triangle: Socio-Culture, Health and Materials* (Springer Nature Singapore) 26–27.

itself and not simply the way in which Dalits were carrying out the work of manual scavenging.⁷²

This is a crucial difference of viewpoints – one sees it as acceptable that Dalits are assigned the sanitation work, but expects it to be such that their dignity is maintained, and the second sees a much deeper-rooted problem, stemming from the association of caste with occupation. Gandhi’s view is illustrative of the views of a large part of Indian society, and is important to understand when examining this research question.

2.4 Attempts to Eradicate Manual Sewer Cleaning

2.4.1 *Protective Legislation and Government Programmes*

The most basic legal protection for sewer cleaners, which is based on their Dalit identity, is that untouchability is outlawed in the Constitution of India.⁷³ In addition to this, the 1993 Act and the 2013 Act specifically address manual scavenging.⁷⁴ There has been talk of an amendment to the 2013 Act – this was supposedly going to be enacted in 2020 – but so far, nothing has come of this.⁷⁵ In the years since these laws have come into force, there has been heated debate about their effectiveness, both in terms of whether the legal wording is sufficient and in terms of implementation. This discussion will be addressed in greater detail in Chapter 6 in terms of its implication for India’s fulfilment of its right to life obligations.

Over the years, the Indian government and state governments have instituted a number of programmes, known as schemes, in order to attempt to address the issue of manual scavenging and sewer cleaning, specifically. Initial efforts were almost entirely focused on eradicating manual scavenging associated with the cleaning of insanitary latrines. For example, the research of the Barve Committee, a government-mandated committee, led to a scheme through which manual scavengers would be supplied wheelbarrows so that they no longer had

⁷² *ibid* 29–30.

⁷³ Constitution of India art 17.

⁷⁴ The 1993 Act; The 2013 Act.

⁷⁵ ‘Govt. to Introduce Bill to Make Law Banning Manual Scavenging More Stringent’ *The Hindu* (12 September 2020) <www.thehindu.com/news/national/govt-to-introduce-bill-to-make-law-banning-manual-scavenging-more-stringent/article32587429.ece> accessed 8 July 2023.

to carry faecal waste on their heads.⁷⁶ In 2007, the central government instituted the Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS), which was aimed at completely eradicating manual scavenging through the rehabilitation of manual scavengers by giving them cash assistance and skills training and support.⁷⁷

2.4.2 Protection through Enforcement Organs

Beginning with the judiciary, the SCI and various HCs have made several statements condemning the perpetuation of manual sewer cleaning. In 2003, the SKA along with six other CSOs and seven members of manual scavenging communities moved the SCI to force the central and state governments to properly implement the 1993 Act in order to eradicate manual scavenging.⁷⁸ The court issued a series of orders over the period between the bringing of the case and the final verdict, in 2014. These orders were such as to gain more information and bring about compliance on the part of the central and state governments with the 1993 Act.⁷⁹ There are also currently cases regarding manual scavenging being heard before the Karnataka, Madras and Odisha HCs.⁸⁰ These cases as well as statements that courts have made regarding manual scavenging, and sewer cleaning specifically, will be examined in greater detail through the analysis in Chapter 6.

Under the Ministry of Social Justice and Empowerment (MoSJE), there are two key bodies which are responsible for the protection of sanitation and the eradication of manual scavenging in India. The first, as already mentioned, is the NCSK, which was created through an act of parliament in 1994.⁸¹ Initially meant to only be in place until 1997, the validity of the Act has been repeatedly extended, and it is currently valid until 31 March 2025.⁸² Another important body, the National Safai Karamcharis Finance & Development Corporation

⁷⁶ Shubhagato Dasgupta and others, *Social Innovations in Urban Sanitation in India: Meeting Unmet Needs* (1st edn, Routledge India 2023) 72 <<https://www.taylorfrancis.com/books/9781003197102>> accessed 30 June 2023.

⁷⁷ *ibid* 73.

⁷⁸ *Safai Karamchari Andolan and Others v Union of India and Others* (SCC).

⁷⁹ *ibid* 8–10.

⁸⁰ ‘Supreme Court Issues Fresh Directions for Implementation of Manual Scavenging Act’ [2023] *India Legal* <<https://www.indialegallive.com/constitutional-law-news/supreme-court-news/supreme-court-directions-manual-scavenging-act/>> accessed 4 July 2023.

⁸¹ ‘National Commission for Safai Karamcharis: Government of India’ (*National Commission for Safai Karamcharis*) <www.ncsk.nic.in/> accessed 13 July 2023.

⁸² ‘About NCSK’ (*National Commission for Safai Karamcharis*) <<https://www.ncsk.nic.in/about-us/about-ncsk>> accessed 13 July 2023.

(NSKFDC), is a company set up in 1997, the function of which, is to bring about the ‘all round socio-economic upliftment of the Safai Karamcharis, Scavengers [*sic*] and their dependants throughout India, through various loan and non-loan based [*sic*] schemes.’⁸³ It is also responsible for the implementation of SRMS.⁸⁴ The work of these bodies will also be further analysed in Chapter 6.

⁸³ ‘Home’ (*National Safai Karamcharis Finance & Development Corporation*) <<https://nskfdc.nic.in/>> accessed 13 July 2023.

⁸⁴ *ibid.*

3 RESEARCH DESIGN

3.1 Theoretical Positioning

This thesis is embedded in critical caste theory. The call for this approach, a sub-field of critical studies, is rooted in the need to address the gaping holes in academic engagement with society that ignores the issue of caste.⁸⁵ Fundamentally, critical caste studies sees caste as something that is embedded in society, underpinning the entirety of the social order. It is a response to an academic discourse that has either ignored the workings of caste or taken a dominant-caste perspective.⁸⁶ Viewed through the lens of critical caste studies, society is rife with exclusion and inequality based in the caste system, and an understanding of society is incomplete without critical engagement with the influence of caste.⁸⁷ As Yengde points out, this need not be limited to caste in the South Asian sense, but has implications for the study of social exclusion that operates with similar mechanisms across the world.⁸⁸ Through the field of critical caste studies, scholars aim to examine the range of mechanisms that allow the caste-system to remain in place, also critically examining the process of normalisation of caste-based dominance. Critical caste studies also aims to prioritise the agency of members of oppressed castes, understanding their demands and resistance against systemic oppression.⁸⁹ While critical caste theory is still a field in its infancy, its assertions find support in decades of anti-caste thinking of bastions of the Dalit liberation movement such as Ambedkar, Phule, Iyothee Thass, and Periyar.⁹⁰

Critical caste studies, given the nature of the analysis required, is also necessarily an interdisciplinary field. This thesis' interdisciplinary approach combines international law and historical concerns in the research question. The choice of methodology and approach to

⁸⁵ Gajendran Ayyathurai, 'It Is Time for a New Subfield: "Critical Caste Studies"' (*South Asia@LSE*, 5 July 2021) <<https://blogs.lse.ac.uk/southasia/2021/07/05/it-is-time-for-a-new-subfield-critical-caste-studies/>> accessed 1 June 2023.

⁸⁶ Consider this similar to the 'male gaze' that has become a popular way of referring to the perspective of a man that has no understanding of the issues faced by other genders. Kelly Oliver, 'The Male Gaze Is More Relevant, and More Dangerous, than Ever' (2017) 15 *New Review of Film and Television Studies* 451, 451–454.

⁸⁷ Ayyathurai (n 85).

⁸⁸ Suraj Yengde, 'Global Castes' (2022) 45 *Ethnic and Racial Studies* 340, 356.

⁸⁹ Ayyathurai (n 85).

⁹⁰ Gajendran Ayyathurai, 'Foundations of Anti-Caste Consciousness: Pandit Iyothee Thass, Tamil Buddhism, and the Marginalized in South India' 62–65, 219–220 <<https://academiccommons.columbia.edu/doi/10.7916/D8MS3SHX>> accessed 20 May 2023; Srinivas (n 58) 533–534.

analysis is also interdisciplinary in the sense that it draws on techniques from both legal and historical disciplines, which will be elaborated on below. Beyond a purely legal perspective, the historical lens adds depth to the understanding of how integral caste is, to understanding the phenomenon being studied, which, in turn, helps to analyse the facts in terms of framing a right to life violation and understanding the extent of the Indian State's obligations and fulfilment of these obligations

With regard to manual scavenging itself, the need for a critical approach like this is clear even from early attempts to address the issue. As described above, Gandhi thought that untouchability could be eradicated by reforming the ways in which Dalits carried out the work of manual scavenging, arguing that if Dalits carried out the work in a hygienic manner and ensured that they cleaned themselves well after the work, it would then merely be a question of working with members of the privileged castes to change their views.⁹¹ Ambedkar's issues with this view illustrate the need for a critical caste theory approach. Firstly, he recognised that the treatment of Dalits as 'Untouchables' did not stem entirely from the fact that they engaged in 'unclean' work, but also simply from the fact that they were Dalits. He argued that if a non-Dalit were made to engage in the same work as a Dalit, the non-Dalit would not face the same stigmatisation and abuse that a Dalit faces. Similarly, a Dalit who was able to change their profession to one that was not considered 'unclean' would face the same discrimination and abuse, indicating that the prejudice ran deeper than a mere aversion to unhygienic practices. The issue, he saw, was the caste system itself and not simply the way in which Dalits were carrying out the work of manual scavenging.⁹² Ambedkar's efforts to eradicate untouchability and manual scavenging focused on the agency of members of the Dalits caste, centring liberation through education, occupational mobility and a protective legal framework. Specifically for manual scavengers, Ambedkar focused his efforts of organising workers to stand against their oppressors and the oppressive practices they were forced to engage in.⁹³ This example indicates that without truthfully reflecting on the casteist assumption that are part of the psyche of an Indian raised within a casteist system, there can be no real liberation of those who face the brunt of the system's oppression.

⁹¹ Masuki (n 71) 23–25.

⁹² *ibid* 29–30.

⁹³ *ibid* 30.

3.2 Scope, Delimitations and Limitations

This thesis only considers cases of manual cleaning of sewers that has led to death while engaged in the act. In actual fact, there are arguments related to the right to life that can be made regarding deaths that result from long-term exposure to hazardous working conditions as well as the lack of a life with dignity when individuals are forced to manually clean sewers. However, cases where deaths result directly from the act, while the victim is engaged in cleaning a sewer, allow the most direct link to the right to life, leaving space for further analysis in this thesis of the State's obligations to respond to incidents and prevent such future violations from occurring. Such articulation could also lay the groundwork for the next step, which could be the framing of less direct right to life violations regarding the manual cleaning of sewers.

This thesis also addresses one specific kind of manual scavenging – the manual cleaning of sewers in urban areas, where the individuals who are made to carry out the cleaning are hired either directly by the ULB or by a private contractor that has been hired by the ULB in order to fulfil its sanitation duties. There are a number of reasons for the choice to narrow the analysis in this manner. Firstly, deaths resulting from manual scavenging primarily occur due to the manual cleaning of sewers and septic tanks, where individuals who are sent into these spaces either die from asphyxiation or drowning.⁹⁴ This makes this form of the act in question the most directly linked to the right to life. Secondly, as outlined in Chapter 2, the organisational structure of local governance differs between urban and rural areas, and it would be impossible to analyse both kinds of areas in a thesis of this length. The cleaning of septic tanks has been excluded from this thesis because the mechanism of the work and organisational aspects of employment are different from that of cleaning a sewer, and it was necessary to choose between the two in order for the analysis in this thesis to do justice to the topic.

Regarding employment type, this thesis focuses on situations in which responsibility can most directly be attributed to the State. This means the focus is on situations where workers are hired directly by the ULB or by contractors who are responsible for sourcing labour for the ULB. The practices of these contractors are assumed in this thesis to be attributable to the State because the practice of contracting out labour-sourcing is not complete privatisation. Here, while part of the operational role is taken over by the private contractor, the State is still

⁹⁴ Dalberg Advisors (n 29) 69.

responsible for the provision of the services, thereby making the State responsible for issues that arise in the carrying out of the work. Given that the HRC has articulated the fact that States have a responsibility even in cases of complete privatisation, this assumption seemed consistent with the committee's approach.⁹⁵ This link becomes less direct for private companies and individuals who hire manual scavengers for private jobs and requires analysis of a slightly different body of law, so it has been excluded in order to streamline the analysis in this thesis.⁹⁶ It is also important to note that ICCPR rights are binding on all branches of a State's governance structure – legislative, executive, and judiciary – as well as any authority, at any level – national, regional and local. As such, all of these bodies take on the responsibility of the state to respect and ensure ICCPR rights and the executive cannot excuse itself of responsibility by claiming that an action that is incompatible with the Covenant was carried out by a body that does not fall under the executive branch or is not the national government.⁹⁷ Also of relevance here is the fact that sanitation, while under the purview of the ULBs, especially in big cities, is often handled by a separate body or corporation that is specifically responsible for water and sanitation services. In this thesis, reference to a ULB also includes such water and sanitation service bodies because they are also government-owned.

These choices have been made in order to allow the simplest articulation of the link between caste and the manual cleaning of sewers, the link between manual cleaning as a caste-based practice and the right to life, and the resulting obligations on the Indian State. Once this base has been created, further analysis can build on it to create links between other aspects and forms of the issue and the right to life along with other human rights.

This thesis addresses the issue of the manual cleaning of sewers as a violation of Article 6 (1) of the ICCPR. The reason to focus on this treaty is that it is the only relevant treaty that confers the obligation to protect and fulfil the right to life that India has ratified. The choice to focus on the right to life over other rights that are also violated by the manual scavenging is based on the fact that the right to life is considered the 'supreme' right in the sense that it is non-derogable and is a precondition to the fulfilment of all other covenant rights.⁹⁸ While there is certainly much to be discussed regarding the interaction between various rights, such as the

⁹⁵ Human Rights Committee, 'General Comment No. 36: The Right to Life' para 21.

⁹⁶ Adam McBeth, 'Privatising Human Rights: What Happens to the State's Human Rights Duties When Services Are Privatised' (2004) 5 *Melbourne Journal of International Law* 133, 142–154.

⁹⁷ Human Rights Committee, 'General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' para 4.

⁹⁸ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 2.

right to health, the right to life, and the prohibition on torture and cruel, inhuman and degrading treatment vis-à-vis the manual cleaning of sewers and drains, the length of this thesis makes it necessary to focus the discussion on one right for a more thorough analysis.

In terms of equality and a prohibition on discrimination, the reason for choosing to analyse this research question through Article 2 rather than Article 26 is due to the accessory nature of Article 2. A clear delineation between the competencies of these two rights can be found in the HRC's General Comment 18, which states that while Article 2 is meant to ensure that all people within territory of and under the jurisdiction of a State have their covenant rights respected without discrimination, Article 26 prohibits discrimination of any kind and applies to issues beyond those covered by the covenant rights.⁹⁹ There was initial contention about whether Article 26 indeed provided a blanket prohibition on discrimination that extended beyond the rights guaranteed by the treaty, with the HRC's initial case law treating it as an accessory provision.¹⁰⁰ However, beginning with the *Broeks* and *Zwaan de Vries* cases, this changed and the committee established that Article 2 was an accessory provision while Article 26 was an overarching right to equality and prohibition on discrimination.¹⁰¹ Even through its decisions on communications, the committee has found on numerous occasions that Article 2 cannot result in standalone violation since it contains general undertakings as to the obligations under the other ICCPR rights.¹⁰² Such a reading is also consistent with the discussions that occurred during the drafting process of the ICCPR.¹⁰³

Considering that Articles 6 and 26 confer different rights on individuals, each has its own depth of jurisprudence. Focusing on both the right to life and the right to equality would require a deep analysis of the bodies of writing associated with each of these rights. Such an analysis would not be adequately covered by a thesis of this length. Therefore, while the right to equality is extremely important in the case of the discriminatory practice of manual scavenging, since this thesis focuses on the right to life, it made more sense to address the issue of discrimination through Article 2(1), because it is an accessory provision rather than a

⁹⁹ Human Rights Committee, 'General Comment No 18: Non-Discrimination' paras 1, 12.

¹⁰⁰ Manfred Nowak, *CCPR Commentary: Commentary on the UN Covenant on Civil and Political Rights* (N P Engel 2005) 604–605.

¹⁰¹ *ibid.*

¹⁰² *MGB and SP v Trinidad and Tobago* [1989] CCPR Communication No 268/1987 [6.2]; *Juan Peirano Basso v Uruguay* [2010] CCPR Communication No 1887/2009 [9.4]; *Mehrez Ben Abde v Canada* [2010] CCPR Communication No Mehrez Ben Abde [7.3].

¹⁰³ Marc J Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights* (Martinus Nijhoff 1987) 488.

substantive right in itself and allows the discussion regarding discrimination to remain entirely situated within the State's obligations under Article 6.

Additionally, as seen earlier, gender is an important point of discrimination when it comes to manual scavenging, with women in the profession facing discrimination and abuse based not only on their caste, but also on their gender.¹⁰⁴ The reason that this is not addressed in this thesis is the choice to focus entirely on urban manual scavenging, specifically, the cleaning of sewers. While the overwhelming majority of those employed in manual scavenging across the country are women, this is different with sewer cleaning, which is only done by men.¹⁰⁵ As explained above, it is the cleaning of sewers and septic tanks that results in the highest number of deaths, thereby providing the most direct link to the right to life. For this reason, while the gender angle is extremely important when studying manual scavenging, in the subject of this specific thesis, it is not relevant.

Once again for ease of analysis, this thesis, in its legal analysis, focuses on the situation as it stands after the year 2013. This year has been chosen because it is the year in which the most recent law against manual scavenging, the 2013 Act, was enacted. This window of time also allows nearly a decade's worth of developments to be taken into account after a major SCI judgement regarding manual scavenging in 2014.¹⁰⁶ This will allow the thesis to draw conclusions regarding the obligations on the Indian State as they stand today, taking into account the most recent actions of the State and its agents and the most recent developments regarding the right to life under international human rights law.

Issues with the accuracy of the data form one limitation of this thesis. While governmental bodies' statistics are a useful record of the situation in the country, government figures for the numbers of people engaged in manually cleaning sewers in the country are widely regarded by civil society and the judiciary to be greatly underestimated.¹⁰⁷ This has led to a discrepancy between numbers reported by CSOs and government bodies. While such discrepancies are of analytical value to a thesis of this nature, it is important to mention possible issues with the data used. Another data-related issue is the fact that government data usually clubs deaths due to sewer cleaning and septic tank cleaning into the same category. However,

¹⁰⁴ Human Rights Watch (n 40) 47–50.

¹⁰⁵ Dalberg Advisors (n 29) 17, 69.

¹⁰⁶ *Safai Karamchhari Andolan and Others v Union of India and Others* (n 78).

¹⁰⁷ *ibid* 9; Alam Khan and Rahat (n 6).

with CSO data addressing sewer-cleaning deaths specifically, this has not been a pronounced problem.

Another limitation regards India's political system. As explained in Chapter 2, due to the level of federalisation, states are given considerable autonomy. Therefore, the situation can differ greatly between one state and another depending on whether the state allows certain laws of the central government to apply, whether it has enacted its own laws and the initiatives it has taken through policies and programmes in order to address the issue of the manual cleaning of sewers. Great cultural difference also exists between and within states, and this too affects the ways in which caste, governance, and civil society involvement play out. While this thesis has not been able to account for detailed differences between states, it draws on examples from individual states to illustrate certain points, taking the position that the Indian State, and the obligation-holder under international human rights law, is responsible for ensuring compliance within every part of its jurisdiction.

Another possible limitation is that most of the sources that have been used are in English. While some videos in Hindi and Kannada have been used for accounts of individuals engaged in the occupation of manually cleaning sewers, much of the material is in English. Regarding court and government documents, this is not an issue because, English being one of India's official languages, all documents accessed have been originals. It is regarding news reports that the language issue could be a limitation because the tone and message conveyed by local news in regional languages could greatly differ from the English-language agencies.

A final limitation lies in the choice to focus the analysis in this thesis only on laws that pertain directly to manual scavenging, particularly the 2013 Act, because it contains provisions against the hazardous cleaning of sewers. Given that this thesis focuses on the international law obligations that India is under, there was no space to enter into a detailed discussion of general SC protection laws that India has, such as the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Therefore, while such domestic legal protection might be mentioned, it does not form a significant part of the analysis.

3.3 Methodology and Historiography

The historical analysis in this thesis draws on a number of primary and secondary sources in order to understand the role of caste in the continued existence of the manual cleaning of

sewers. Based on a critical caste theory approach, the selection and analysis of sources has been carried out with a keen awareness of the existence of caste hierarchy as an organising feature of Indian society as well as the tendency in academia towards the erasure or minimisation of caste identities and the denial of agency of Dalits. Primary sources include first person testimonies of sewer cleaners, contractors and government officials. These statements have been drawn from testimonies in NGO reports, video testimonies recorded by NGOs. The primary sources also include data taken from NGO and government reports, as well as progress reports of government bodies. In addition, newspaper reports have been used to trace developments related to manual sewer cleaning. Given that newspapers and media channels usually have some level of political leaning, the sources used in this thesis have been selected to represent various positions on the political spectrum. For more extensive news reports, the selection has been made based on which agencies have a reputation for thorough research and fact-checking, as well as a grounding in a rights-based approach. When analysing these sources, the aim has been to critically understand the hidden and not-so-hidden workings of caste in the perpetuation of the practice of the manual cleaning of sewers.

The legal methodology used in this thesis is that of a doctrinal analysis. In terms of the hierarchy of the sources used in this analysis, the Statute of the International Court of Justice, as the leading international legal authority, provides an authoritative account of the hierarchy of the various international law sources. According to the ICJ statute, the primary sources of international law are as follows: international conventions, customary international law, and general principles of law.¹⁰⁸ Additionally, judicial decisions and the opinions of the highest experts of international law form a subsidiary means of understanding international law, with the understanding that the outcome of an adjudicated case is legally binding only on the States that were party to the case.¹⁰⁹ For this thesis, the consideration of the right to life rests entirely on the ICCPR, a treaty that India has bound itself to, as a source of law. Largely, the interpretation of the provisions of the ICCPR in this thesis are drawn from the jurisprudence of the HRC, as the body mandated with monitoring the implementation of the treaty.¹¹⁰ The analysis rests primarily on General Comment 36 of the HRC, along with relevant communications dealt with by the committee and the committee's concluding observations.

¹⁰⁸ Statute of the International Court of Justice 1945 art 38(1)(a)-(c).

¹⁰⁹ *ibid* 38(1)(d), 59.

¹¹⁰ International Covenant on Civil and Political Rights 1966 art 28.

Beyond the jurisprudence of the HRC, this thesis draws on additional authoritative sources, in line with Article 38(1)(d),¹¹¹ as subsidiary means of interpreting the treaty and adding contextual insights and nuance. In particular, in order to better understand the legal framework surrounding caste-based discrimination, as well as the role of discrimination in the framing of a violation of the right to life, the jurisprudence of other United Nations (UN) treaty bodies, such as the Committee on the Elimination of Racial Discrimination, Universal Periodic Reviews of India by the Human Rights Council, and relevant reports by UN Special Procedures are analysed. Some attention has also been given to the treatment of the issue of manual sewer cleaning by the case law of the SCI and the Indian Constitution.

The analysis of the specific obligations of the Indian State and how far these are currently being met draws on data from CSOs and government bodies, Indian legislation, schemes of the Indian government that aim to address the issue of manual scavenging, news reports and videos, and first-person testimony drawn from CSO and news agency reports and videos. Once again, effort has been put into ensuring that the news sources represent an array of political leanings.

¹¹¹ Statute of the International Court of Justice art 38(1)(d).

4 THE PERSISTENCE OF MANUAL SEWER CLEANING: A CRITICAL CASTE THEORY APPROACH

4.1 Introduction and Overview

This chapter addresses the question of how far caste-based discrimination is responsible for the continued existence of hazardous sewer cleaning in India after 2013. It approaches this question through the perspective of critical caste theory. As described above, critical caste theory offers an analytical lens that centres the agency of members of oppressed castes and prioritises ensuring that the oft-hidden role of caste is made explicit in any analysis. The contribution of critical caste theory in this regard is that it draws attention to the ways in which caste-based discrimination can explain various shortcomings in efforts to eradicate hazardous sewer cleaning. It also highlights how ignoring or glossing over the role of caste, or conducting research with a ‘dominant-caste gaze’ leads to a skewed understanding of the situation, which in turn means that interventions designed based on this incomplete understanding are less than effective. This chapter attempts to avoid these mistakes through a critical caste theory approach.

The natural starting point to examine the current relationship between caste and manual cleaning of sewers is the composition of the workforce that is made to engage in such manual cleaning. The exact figures vary because, due to definitional reasons and faulty survey methods, government statistics often show lower numbers from those of NGOs, with the government data usually underestimating figures.¹¹² One report found that 96% of the sanitation workers that were interviewed belonged to Dalit sub-castes.¹¹³ Another report found that of the sewer-cleaning deaths that it analysed, 94% of those killed belonged to the SC category and an additional 4% were OBC.¹¹⁴ Considering that the OBC category includes Dalit Muslims and Christians, this indicates a strong correlation between the practice of manually cleaning sewers and an individual’s caste. Important to note as well is that fact that the remaining 2% of deaths were also not of members of dominant castes; these people belonged

¹¹² *Safai Karamchari Andolan and Others v Union of India and Others* (n 78) para 9; Alam Khan and Rahat (n 6).

¹¹³ Dalberg Advisors (n 29) 18.

¹¹⁴ Rashtriya Garima Abhiyan (n 2) 18.

to tribal groups, who are also marginalised by Indian society.¹¹⁵ This indicates a strong correlation between social exclusion and marginalisation, and hazardous sewer cleaning.

Based on this correlation, in order to understand whether caste-based discrimination is primarily responsible for the continued existence of hazardous sewer cleaning in India, this chapter first considers the technological and infrastructure challenges that might be preventing the complete eradication of this practice, as well as advances in this technology. The next section describes efforts that have been made to address the issue of manual sewer cleaning and is followed by an analysis of the factors that allow manual sewer cleaning to continue. The final section ties together the points raised through this chapter, using a critical caste theory lens to analyse the facts that are presented.

4.2 Technology and Infrastructure: Challenges and Advances

The mechanisation of sewer cleaning has been widely supported as a necessary step to end the need for people to enter sewers in order to clean them, and the government has been repeatedly questioned as to why there has not been sufficient progress to this end.¹¹⁶ This section first considers the technological and infrastructure-related challenges that form a barrier to eradicating manual sewer cleaning before describing the solutions that have been developed in the last ten years. The first issue regards infrastructure; servicing sewers with machines is difficult because of the old sanitation infrastructure that is in place in most cities in India. In such situations, using machines to clean sewers is not an option, and when a sewer needs to be serviced or unblocked, it requires manual intervention.¹¹⁷ Another issue concerns safety gear that is supposed to be provided to workers when they are made to enter a sewer. These suits are too bulky and reduce mobility such that they cannot be used in the narrower spaces that sewer cleaners often find themselves in.¹¹⁸ In addition to this, when safety gear is provided at all, workers are not properly trained to use it, meaning that the equipment does not serve its

¹¹⁵ *ibid*; Karuna Chanana, 'Accessing Higher Education: The Dilemma of Schooling Women, Minorities, Scheduled Castes and Scheduled Tribes in Contemporary India' (1993) 26 *Higher Education* 69, 88–91.

¹¹⁶ *NL Interviews: Bezwada Wilson Talks on the Perils of Dealing with 'Shit'* (Directed by NL Team, 2016) min 39:04-39:40 <<https://newslaundry.com/2016/07/30/nl-interviews-bezwada-wilson-talks-on-the-perils-of-dealing-with-shit>> accessed 9 July 2023.

¹¹⁷ Nirat Bhatnagar, Anahitaa Bakshi and Keshav Kanoria, 'Here's What Needs to Change for Sanitation Workers in India' *The Wire* <<https://thewire.in/caste/how-to-improve-conditions-of-sanitation-workers>> accessed 10 July 2023.

¹¹⁸ Dalberg Advisors (n 29) 42.

purpose of making the job safer.¹¹⁹ Another technological issue is that existing machines that are equipped to clean sewers are too large to enter smaller lanes where many manholes are located, or they are too large to enter and work effectively within the sewer.¹²⁰

Some research has focused on addressing issues with safety gear, with Hindustan Aeronautics Limited (HAL), a government-owned aerospace engineering company, working to create a better safety suit that makes it possible to work in narrow spaces without the suit getting in the way.¹²¹ A private company has also designed its own version of a more effective safety suit as well as a device that detects the levels of toxic gases present within the sewer by entering it and testing the conditions inside.¹²² Such a device allows workers to check whether the conditions within the sewer are potentially deadly before entering it.

Other technology aims to address the issue at its root and mechanise the entire process of sewer cleaning. One such development is the Bandicoot, which is a robot that comprises of two units, the stand, which is placed outside the manhole, and the robotic, waterproof camera-fitted drone, which enters the sewer. Once inside, the robot can perform all the actions necessary to unblock the sewer and has a bucket attachment in which waste can be placed and removed from the sewer.¹²³ This robot also solves the issue of machines being mounted on trucks that are too large to enter narrow roads because it is specifically designed to be able to easily manoeuvre all kinds of urban spaces and streets.¹²⁴ Another such robot is the Sewer Croc, which is a standalone unit which is able to enter and travel far within sewers in order to clean them well and leave them in a state where they do not need to be cleaned again for five years.¹²⁵ The device works by using strong water jets to move the robot forward through the sewer while blades attached to the device clear out blockages as it makes its way forward.¹²⁶

¹¹⁹ *ibid* 120.

¹²⁰ *ibid* 39.

¹²¹ *ibid* 42.

¹²² ‘These Are The Samaritans Who Are Developing Sewer Cleaning Technologies to Replace Manual Scavengers’ *News18* (9 October 2018) <<https://www.news18.com/news/buzz/these-are-the-samaritans-who-are-developing-sewer-cleaning-technologies-to-replace-manual-scavengers-1902057.html>> accessed 10 July 2023; Kabir Agarwal, ‘Technological Solutions, Including Robots, Aim to End Manual Scavenging’ *The Wire* (14 October 2018) <<https://thewire.in/labour/technological-solutions-including-robots-aim-to-end-manual-scavenging>> accessed 10 July 2023.

¹²³ ‘Bandicoot2’ (*Genrobotics*) <www.genrobotics.org/bandicoot2> accessed 10 July 2023; Dasgupta and others (n 76) 93.

¹²⁴ ‘Bandicoot2’ (n 123).

¹²⁵ ‘Can Technology, AI, Robots End Manual Scavenging, a Blot for India?’ *Times Of India* (20 September 2022) <<https://epaper.timesgroup.com/timespecial/sci-tech-environment/can-technology-ai-robots-end-manual-scavenging-a-blot-for-india-/1663672735928>> accessed 10 July 2023.

¹²⁶ ‘These Are The Samaritans Who Are Developing Sewer Cleaning Technologies to Replace Manual Scavengers’ (n 122).

While there are certainly a number of technological challenges faced by the government, it is also clear that there are already solutions to some of these challenges. The question now is how much these technological solutions have been picked up on by various ULBs and integrated into other government policy. While considering attempts to address the issue of manual sewer cleaning, the following section addresses this question too.

4.3 Attempts to Address the Issue

4.3.1 Legislation

As touched upon in Chapter 2, the primary law concerning the manual cleaning of sewers is The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. In this act, manual sewer cleaning falls under the category of ‘hazardous cleaning’. According to the act:

‘[H]azardous cleaning’ by an employee, in relation to a 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...¹²⁷

It is important to note that while there is progress in that compared to the 1993 Act, the 2013 Act does provide explicit protection for sewer cleaners,¹²⁸ there are also problems with the 2013 Act. This act does not provide a blanket prohibition on manual sewer cleaning. Rather, it prohibits such work only when it is ‘hazardous’. As Wankhede argues, in a way, this defeats the purpose of the act, which is to eradicate manual scavenging and rehabilitate those who have historically been made to engage in the practice.¹²⁹ In addition, the way in which the 2013 Act has opted to define the various acts that it outlaws, leaves much space for confusion and potentially intentional obfuscation on the part of the government. For example, when asked in the Lok Sabha about the number of deaths that have occurred due to manual scavenging, the

¹²⁷ The 2013 Act s 2(d).

¹²⁸ The 1993 Act s 2(j); Prohibition of Employment as Manual Scavengers and their Rehabilitation Act s 2(d).

¹²⁹ Asang Wankhede, ‘The Legal Defect in the Conditional Prohibition of Manual Scavenging in India’ [2021] Contemporary Voice of Dalit 1, 4–6.

Minister of State for Social Justice and Empowerment, Ramdas Athawale, on separate occasions in 2021 and 2022, stated that there have been no deaths due to manual scavenging. When questioned further, however, he said that there have been deaths due to the hazardous cleaning of sewers and septic tanks, but these do not count as deaths due to manual scavenging.¹³⁰ If such technicalities can be used by the government in order to avoid responsibility, at some level, it indicates the failure of the law to adequately protect those it is supposed to.

In 2020, there was talk of a potential amendment to the 2013 Act. This new law was supposedly going to make the protection offered by the 2013 Act more stringent, as well as completely mechanise the cleaning of sewers.¹³¹ However, in 2021, Athawale stated in the Lok Sabha that there was in fact going to be no amendment to the 2013 Act even though there was a draft law of the same that was waiting to be approved by the cabinet.¹³² Now, three years after the amendment was supposedly going to be discussed in parliament, no such law has been passed.

4.3.2 Government Initiatives

Government initiatives can be broadly separated into two categories, those that aim to remove the need for manual scavenging through addressing how sewer-cleaning is carried out, and those whose purpose is to help rehabilitate manual scavengers by offering economic and other support. This sub-section will first address efforts to remove the need for manual sewer cleaning before discussing rehabilitation initiatives and those that cover both categories.

When the current government came to office in 2014, it began to institute one of its big campaign promises under the Ministry of Housing and Urban Affairs (MoHUA), the Swachh

¹³⁰ Snehashish Roy, 'Centre to Lok Sabha: No Deaths Reported Due to Manual Scavenging' *Hindustan Times* (3 August 2022) <www.hindustantimes.com/india-news/no-deaths-reported-due-to-manual-scavenging-centre-informs-lok-sabha-101659501727068.html> accessed 10 July 2023; Aishwarya Varma, "No Death" Due to Manual Scavenging? A Tragic Truth Buried in "Technicalities" *The Quint* (30 July 2021) <www.thequint.com/news/india/no-deaths-due-to-manual-scavenging-tragic-truth-buried-in-technicalities> accessed 10 July 2023.

¹³¹ Pragya Akhilesh, 'Banning Manual Scavenging in India: A Long, Complex Passage' <www.downtoearth.org.in/blog/rural-water-and-sanitation/banning-manual-scavenging-in-india-a-long-complex-passage-73441> accessed 7 May 2023.

¹³² Sravasti Dasgupta, 'No Plan to Amend Manual Scavenging Law, Govt Says 6 Months after Announcing New Bill' *ThePrint* (23 March 2021) <<https://theprint.in/india/governance/no-plan-to-amend-manual-scavenging-law-govt-says-6-months-after-announcing-new-bill/627186/>> accessed 10 July 2023.

Bharat Mission (SBM).¹³³ The objective of this scheme is to expand and improve India's sanitation network, which also includes waste management, under which sewer cleaning is also addressed.¹³⁴ Sanitation-related schemes that the government has instituted after 2014 have largely been seen as being subsidiary to the overarching goals of the SBM. One such scheme is the Swachhta Udyami Yojana (SUY); initiated on the same day as the SBM, it falls under the MoSJE, is implemented by the NSKFDC, and aims to mechanise sewer cleaning in the country through the provision of financial assistance to sewer cleaner and ULBs.¹³⁵ In 2019, the MoHUA published an advisory on institutionalising the safety of manual sewer cleaners through the setting up of Emergency Response Sanitation Units (ERSUs). These units, the advisory explains, are to be professionally trained in the use of personal protective equipment and safety precautions so that when it is necessary for a person to enter a sewer when the blockage is such that a machine cannot fix it, a lay sewerage worker is not sent into the sewer to die, but rather, trained professionals unblock the sewer with no casualties.¹³⁶ As of March 2023, however, there has been no nationwide initiative to set up ERSUs.¹³⁷

Another innovative initiative under the MoHUA, launched in 2020, is the Safaimitra Suraksha Challenge (SSC). Under this programme, cities compete to improve the mechanisation of their sanitation systems and prevent fatalities due to sewer and septic tank cleaning.¹³⁸ The possibility of winning titles and monetary prizes was the incentive placed before cities to bring sewer related deaths down to zero by 2024.¹³⁹ In August 2022, 500 cities declared that they had completely mechanised their sewer cleaning processes.¹⁴⁰ However, a case study in one of these cities showed this to be far from the truth. Vasai-Virar, in the state

¹³³ 'Swachh Bharat Mission' translates to 'Clean India Mission' in English.

¹³⁴ 'Swachh Bharat Mission' (*Ministry of Housing and Urban Affairs, Government of India*)

<<https://mohua.gov.in/cms/swachh-bharat-mission.php>> accessed 10 July 2023.

¹³⁵ 'Swachhta Udyami Yojana (SUY)' (*National Safai Karamcharis Finance & Development Corporation*)

<<https://nskfcd.nic.in/en/content/home/swachhta-udyami-yojana-suy>> accessed 10 July 2023.

¹³⁶ Technical and managerial Interventions for Ensuring Safety during Sewer and Septic Tank Cleaning

Emergency Response Sanitation Unit (ERSU) An Advisory - chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://scbp.niua.org/sites/default/files/Advisory_on_Emergency_Response_Sanitation_Unit_0.pdf

¹³⁷ Meghna Malhotra, 'Sanitation Workers Deserve an Inclusive Ecosystem — Here Are 5 Best Practices for Their Safety and Dignity' <www.downtoearth.org.in/blog/governance/sanitation-workers-deserve-an-inclusive-ecosystem-here-are-5-best-practices-for-their-safety-and-dignity-88540> accessed 10 July 2023.

¹³⁸ 'Shri Hardeep Singh Puri Launches Safaimitra Suraksha Challenge across 243 Cities' (*Press Information Bureau: Government of India*) <<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1674015>> accessed 10 July 2023.

¹³⁹ *ibid*; '500 Cities Declare Mechanized Sanitation' (*Press Information Bureau: Government of India*)

<<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1852690>> accessed 10 July 2023.

¹⁴⁰ '500 Cities Declare Mechanized Sanitation' (n 139).

of Maharashtra, claimed to have completely eradicated manual sewer cleaning and set up ERSUs, but interviews with sanitation workers showed that in practice, this was in fact untrue and contractors made workers themselves enter sewers to clean them.¹⁴¹ While this is only one example, it casts doubt on the shiny picture that ULB's own presentation of the situation presents.

Motivated by schemes and challenges, as well as of their own accord, ULBs have been attempting to take various initiatives to do away with the need for manual scavenging through technological innovations and strong implementation. For example, Rajkot, a city in the state of Gujarat, has been making an effort to increase its use of machines to clean sewers and has purchased safety equipment, something that it previously lacked. It also issued notices warning citizens against violating the 2013 Act and promising strict legal action if these directions were ignored. Such efforts have been stepped up in response to the SSC.¹⁴² While it is certainly commendable that such efforts are being made, the dark side of this is that although ULB officials claim to have made progress in achieving their ends of providing safety equipment and increasing mechanisation, sewer workers tell a different story. While the ULB claims that it has hired people trained to safely enter sewers for the three to four times a year that someone is actually required to do this work, workers say they have to enter a sewer far more often than this, and they are not provided with safety equipment, nor are separate professionals called in.¹⁴³

Other ULBs, such as in Hyderabad, Chandigarh and Kolkata New Town, have all made progress with mechanising their sewer cleaning. Hyderabad began in 2019 with the purchase of sewer jetting machines, and in 2021, went on to purchase Sewer Croc robots to try to completely mechanise sewer cleaning.¹⁴⁴ In 2022, Chandigarh made plans to buy various machines and equipment in order to address the issue of manual cleaning, and this list includes

¹⁴¹ Aarefa Johari, 'What It Takes for a City to End Manual Scavenging' *Scroll.in* (6 February 2023) <<https://scroll.in/article/1043213/what-it-takes-for-a-city-to-end-manual-scavenging>> accessed 10 July 2023.

¹⁴² Aarefa Johari, 'How Rajkot Made Progress in Ending Manual Scavenging – and Why It Still Has a Long Way to Go' *Scroll.in* (29 January 2023) <<https://scroll.in/article/1042092/how-rajkot-made-progress-in-ending-manual-scavenging-and-why-it-still-has-a-long-way-to-go>> accessed 10 July 2023.

¹⁴³ *ibid.*

¹⁴⁴ Balakrishna Ganeshan, 'How Hyderabad Is Getting Rid of Manual Scavenging with Its Mini Sewer Jetting Machines' *The News Minute* (24 July 2019) <www.thenewsminute.com/article/how-hyderabad-getting-rid-manual-scavenging-its-mini-sewer-jetting-machines-106023> accessed 10 July 2023; Bachan Jeet Singh, 'No More Manual Scavenging: Hyderabad to Get Sewer-Cleaning Robots in 2 Months' *The New Indian Express* (17 August 2021) <www.newindianexpress.com/cities/hyderabad/2021/aug/17/no-more-manual-scavenging-hyderabad-to-get-sewer-cleaning-robots-in-2-months-2345785.html> accessed 10 July 2023.

two sewer-cleaning robots.¹⁴⁵ In 2023, Kolkata's New Town began to use three robots to clean its sewers.¹⁴⁶ This is significant because these are all large cities and state capitals. Setting a good precedent for mechanised cleaning here could mean that other ULBs take note and begin to follow suit. Such robots have also been getting good reviews in places where they have been tried, with the founder of Bandicoot, which is being used in three municipalities in Tamil Nadu, Kerala and Andhra Pradesh, being told that the machines work effectively and fit the sewer-cleaning needs of the ULBs.¹⁴⁷

Regarding rehabilitation, the main scheme available to manual scavengers is SRMS, as described in Chapter 2. While it was instituted in 2007, it was revised in 2021 and is currently still active. It is being implemented by the NSKFD. ¹⁴⁸ The guidelines for this scheme use the terms 'manual scavenger' and 'hazardous cleaning' in the same way as the 2013 Act. ¹⁴⁹ Under this scheme, a number of benefits, such as one-time cash assistance of Rs. 40,000, loans, and skills training, are listed for manual scavengers. ¹⁵⁰ However, with the definition used, many of these benefits do not seem to apply to sewer cleaners. The only benefits they get are those that apply to all sanitation workers, and these include job-related training, and some loans for sanitation-related projects. ¹⁵¹ Essentially, this scheme that is aimed at rehabilitating some of the most oppressed people in society excludes those who face the most hazardous working conditions from availing of many of its benefits. Such a shortcoming is clear in the fact that the MoSJE stated in 2022 that it had identified and provided one-time-cash-assistance to all manual scavengers. ¹⁵² While this is not true even for those covered by the narrow definition of 'manual scavenger' due to the data being an underestimation, ¹⁵³ of relevance to this thesis is the fact that sewer cleaners have clearly been left behind by this scheme.

¹⁴⁵ Sandeep Rana, '2 Sewerage Cleaning Robots on Chandigarh MC Buy List' *Tribuneindia News Service* (27 October 2022) <<https://www.tribuneindia.com/news/chandigarh/2-sewerage-cleaning-robots-on-mc-buy-list-444699>> accessed 10 July 2023.

¹⁴⁶ Anirban Sinha Roy, 'Quick, Efficient Robots to Clean Sewers in Kolkata's New Town' *India Today* (12 June 2023) <www.indiatoday.in/cities/kolkata/story/quick-cost-effective-robots-to-clean-sewer-in-kolkatas-new-town-2391924-2023-06-12> accessed 10 July 2023.

¹⁴⁷ Agarwal (n 122).

¹⁴⁸ 'The Self Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)' (*National Safai Karamcharis Finance & Development Corporation*) <<https://nskfdc.nic.in/en/content/revise-srms/self-employment-scheme-rehabilitation-manual-scavengers-srms>> accessed 11 July 2023.

¹⁴⁹ Ministry of Social Justice and Empowerment, 'Revised Scheme Guidelines: Self Employment Scheme for Rehabilitation of Manual Scavengers' para 2.1-2.2.

¹⁵⁰ *ibid* 3.1-3.13.

¹⁵¹ *ibid* 3.6, 4, 5, 9.3.6, 4, 5, 9

¹⁵² Alam Khan and Rahat (n 6).

¹⁵³ *ibid*.

A prerequisite for any action to help rehabilitate sewer cleaners is an accurate picture of how many people in the country are engaged in the profession. In 2018, the government carried out a survey to identify the number of manual scavengers in the country. The second phase of this survey was supposed to count sewer cleaners, septic tanks cleaners, and those employed by the Indian Railways to clean railway tracks.¹⁵⁴ However, this survey does not appear to have happened as yet. As will be seen later in the section about civil society, governmental inaction has led CSOs to try to step in and conduct this survey themselves.

The most recent attempt by the government to address the issue of manual sewer cleaning is connected to the budget for the year 2023-2024. The budget provides for Rs. 97.41 crores for the newly-instituted National Action for Mechanised Sanitation Ecosystem (NAMASTE), which is a joint project of the MoHUA and MoSJE.¹⁵⁵ While SRMS excludes sewer cleaners from many of its benefits, NAMASTE seems to address this issue by aiming to rehabilitate sewer and septic tank workers, bring fatalities down to zero, and train sanitation workers so that they have the skills to carry out their work safely.¹⁵⁶ With a sizeable budget and a mandate that appears to address the needs of manual sewer cleaners, NAMASTE seems poised to bring about change. During her speech in parliament, the finance minister said that ‘manholes’ would be turned into ‘machine holes’, alluding to the ideal of eradicating the need for a human being to enter a sewer.¹⁵⁷ While this seems promising, activists and researchers alike have been sceptical because they feel frustrated at the number of times the government has said the right words, made the right plans, and then failed in implementing them. Taking issue with the government’s approach, activists have voiced their disappointment that there is no mention of those who have already lost their lives in sewers, and also explain that mechanisation alone is not enough, liberation and rehabilitation need to come first – without these, mechanisation is a hollow promise.¹⁵⁸

¹⁵⁴ Jahnavi Sen, ‘After 25 Years of Broken Promises, India Is Counting Its Manual Scavengers. Again.’ *The Wire* (4 June 2018) <<https://thewire.in/caste/after-25-years-of-broken-promises-india-is-counting-its-manual-scavengers-again>> accessed 9 July 2023.

¹⁵⁵ Ministry of Finance: Budget Division, ‘Expenditure Budget 2023-2024’ 317 <<https://www.india.gov.in/spotlight/union-budget-2023-2024>>; ‘National Action for Mechanised Sanitation Ecosystem (NAMASTE)’ (*Press Information Bureau: Government of India*) <<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1852627>> accessed 11 July 2023.

¹⁵⁶ ‘National Action for Mechanised Sanitation Ecosystem (NAMASTE)’ (n 155).

¹⁵⁷ Tejas Harad, ‘Budget 2023: 100% Mechanisation in Sanitation? Activists Say Human Angle Missing’ *The Quint* (1 February 2023) <<https://www.thequint.com/news/budget-2023-34-announcement-100-percent-mechanisation-sanitation-manual-scavenging-eradication>> accessed 11 July 2023.

¹⁵⁸ *ibid.*

4.3.3 Judiciary and CSOs

The most significant contribution that the SCI has made to the eradication of manual sewer cleaning is its judgement and orders in *Safai Karamchari Andolan and Others v Union of India and Others* (hereafter, *SKA v India*), where it took the issue of manual scavenging, and manual sewer cleaning specifically, seriously, and directed all state and UT governments to properly implement the 2013 Act.¹⁵⁹ There is also currently a case before the SCI, which is once again challenging the government's lack of action regarding the implementation of the 2013 Act, which is allowing manual scavenging to continue unabated.¹⁶⁰ While the case is still being heard, the SCI seems once again to be taking a strong stance against sewer cleaning deaths, asking the government for accounts of progress that it has made since the 2014 judgement and involving additional respondents, such as the MoSJE, in the proceedings.¹⁶¹

Regarding CSO initiatives, this section uses the efforts of the SKA in order to illustrate the approach used by CSOs and the ideology that their activities are based in. While there are numerous CSO initiatives to address manual scavenging, here, two SKA campaigns are considered: the Bhim Yatra and the Stop Killing Us campaign. The SKA has been chosen because it seems to have the widest reach across the country and addresses the issue of deaths due to sewer cleaning specifically within the wider issue of manual scavenging.

Bezwada Wilson, the founder and National Convener of the SKA, explains in an interview that the Bhim Yatra was the result of government inaction after the 2014 SCI judgement in *SKA v. India*. The central and state governments were directed by the SCI to collect data on sewer deaths since 1993 and compensate the families of victims with Rs.10 lakh.¹⁶² However, a year after the judgement, the government had not collected the data, and

¹⁵⁹ *Safai Karamchari Andolan and Others v Union of India and Others* (n 78) para 15.

¹⁶⁰ 'Order of the Supreme Court of India Regarding Implementation of Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013' (*India Environment Portal*, 22 February 2023) <www.indiaenvironmentportal.org.in/content/474576/order-of-the-supreme-court-of-india-regarding-implementation-of-prohibition-of-employment-as-manual-scavengers-and-their-rehabilitation-act-2013-22022023/> accessed 13 July 2023.

¹⁶¹ Rintu Mariam Biju, 'Prohibition Of Manual Scavenging: Supreme Court Asks Centre To Convene Meeting With Secretaries Of All States, Union Territories' (*LiveLaw*, 12 April 2023) <<https://www.livelaw.in/top-stories/supreme-court-employment-of-manual-scavengers-226195>> accessed 13 July 2023; 'SC Asks Govt. What It Has Done to End Manual Scavenging' (*CDJ Law Journal*, 27 February 2023) <[www.cdjlawjournal.com/SC asks govt. what it has done to end manual scavenging](http://www.cdjlawjournal.com/SC%20asks%20govt.%20what%20it%20has%20done%20to%20end%20manual%20scavenging)> accessed 13 July 2023.

¹⁶² *Interviews: Bezwada Wilson Talks on the Perils of Dealing with 'Shit'* (n 115) min 37:22-39:40.

the SKA began collecting the data themselves. Even though they had not finished surveying all the states and UTs, they found that 1370 people had died in sewers between 2011 and 2015. Of these deaths, the government had compensated only 36 by the date of the interview, and not all the families had even received the full 10 lakhs. This led to the decision to start a bus rally across the country to bring awareness to the issue.¹⁶³ From 10 December 2015 to 13 April 2016, the SKA travelled across the country by bus, meeting with people and educating them about the manual cleaning of sewers and the resulting casualties, and meeting with important public figures, including the President of India, and making their demands for the eradication of the practice known.¹⁶⁴ Commencing on International Human Rights Day, the Bhim Yatra ended in India's capital, New Delhi, on the eve of Ambedkar's 125th birthday, the significance of which was to firmly ground the movement in the struggle for the active liberation of Dalits.¹⁶⁵

Following this, in 2018 and in 2022, the SKA organised the 'Stop Killing Us' campaign with the same aim – bringing attention to the horrific situation of sewer cleaners, and demanding the complete mechanisation of sewer cleaning and payment of compensation to the families of victims. Protestors marched in the streets across the country to bring attention to this cause.¹⁶⁶ Even as this thesis is being written, the SKA is in the midst of its 2023 edition of Stop Killing Us, with live updates visible on Wilson's Twitter feed.¹⁶⁷

What is telling about the SKA's approach is that caste and untouchability are treated as central to the problem of manual sewer cleaning; the movement does not ask simply for mechanisation, but mechanisation in the context of liberating the oppressed castes that are forced to do work that no other citizen would possibly do. The ideas of equality and dignity are

¹⁶³ *Interviews: Bezwada Wilson Talks on the Perils of Dealing with 'Shit'* (n 115) min 37:22-39:40.

¹⁶⁴ 'Bhim Yatra Gives Hope to Manual Scavengers - International Dalit Solidarity Network' (12 April 2016) <<https://idsn.org/bhim-yatra-gives-hope-manual-scavengers/>, <https://idsn.org/bhim-yatra-gives-hope-manual-scavengers/>> accessed 11 July 2023; 'Movement | Safai Karmachari Andolan' <<https://safaikarmachariandolan.org/movement>> accessed 11 July 2023.

¹⁶⁵ *Bhim Yatra: A Journey for Protest and Hope* (NewsClick 2016) <www.newsclick.in/bhim-yatra-journey-protest-and-hope> accessed 11 July 2023; 'Movement | Safai Karmachari Andolan' (n 164).

¹⁶⁶ Jahnvi Sen, "'Stop Killing Us": Hundreds Gather in Delhi to Protest Sewer Deaths' *The Wire* (25 September 2018) <<https://thewire.in/rights/stop-killing-us-hundreds-gather-in-delhi-to-protest-sewer-deaths>> accessed 13 July 2023; 'Stop Killing Us: Sanitation Workers' *SabrangIndia* (30 May 2022) <<https://sabrangindia.in/stop-killing-us-sanitation-workers/>> accessed 13 July 2023.

¹⁶⁷ Bezwada Wilson, 'Governments Only React When Situations Reach on Danger Levels, but We Are the Ones Always Diving in the Those Dangers Which No One Wants to Take Care Of' <<https://twitter.com/BezwadaWilson/status/1679199981415321602>> accessed 13 July 2023; Bezwada Wilson, 'Power and Violence Are the Tools of the Elections to Control the Mandate' <<https://twitter.com/BezwadaWilson/status/1678458463083438086>> accessed 13 July 2023.

integral to this approach. This is also indicated by the explicit grounding of the movement in Ambedkar's anti-caste and liberation philosophy.¹⁶⁸

4.4 Reasons for the Continued Existence of Manual Sewer Cleaning

One barrier to the eradication of manual scavenging is that the occupation is necessarily linked to the issue of access to sanitation. In a country that is aiming to improve its sanitation services but also does not have endless economic resources, the natural choice is to provide sanitation in the most economically viable manner. In its pursuit of better sanitation services, the Indian government, like any government that is struggling with funding its development efforts, could use the 'greater good' of providing sanitation services, as justification for not being able to immediately eradicate manual scavenging due to not being able to afford the required technology. Additionally, the lack of availability of the required technology could be used as a reason for failing to eradicate manual sewer cleaning. In the same vein, the government could argue that rehabilitating all sewer cleaners is an expensive undertaking for which funds are not immediately available. However, as was seen in Section 4.2, private individuals and organisations have developed numerous options that the government could use to mechanise its sewer cleaning. Regarding the question of cost, this is also a question of prioritisation. Wilson points out that there is a double standard here because the government invests in initiatives such as space exploration, which come with very high costs.¹⁶⁹ If cost were truly the only limitation, surely the avoidable deaths of citizens should be a priority over sending rockets to Mars. Additionally, the funds that the government does allocate to the solving the issue of manual sewer cleaning are heavily underutilised. Low-target-setting by state governments has led to budgets for relevant schemes being reduced because of funds not being used.¹⁷⁰ This gives the indication that the true issue is one of prioritisation, not an absolute lack of funds.

This prioritisation seems like it has caste-related underpinnings when the opinions of those connected with the profession are taken into account. A contractor who is responsible for hiring workers in order to clean sewers, states that no other caste will do such work even when they are hired as sanitation workers; in such situations, members of other castes make

¹⁶⁸ Dasgupta and others (n 76) 79; Masuki (n 71) 40; Dalberg Advisors (n 29) 18.

¹⁶⁹ *The Big Picture - Stop Manual Scavenging* (Directed by Sansad TV, 2018) 2:51-3:35 <https://www.youtube.com/watch?v=p-Rh4R_COKo> accessed 10 July 2023.

¹⁷⁰ Dalberg Advisors (n 29) 127.

arrangements to get out of working on cleaning sewers.¹⁷¹ Such arrangements are clearly not available to Dalits who are hired for this job. Other accounts depict an even more pronounced societal assumption that Dalits must do the work of sewer cleaning, even if technological changes are suggested and available. For example, a sewer cleaner explained that they are forced to clean without safety gear, even when such gear is readily available. He stated that his employers even told him that they understand that there is now a law banning the hazardous cleaning of sewers, but that the sewer cannot really be clean unless someone enters it to clean it.¹⁷² Such statements paint a bleak picture of the possibility of eradicating manual sewer cleaning because the belief that there is nothing wrong with it if Dalits do it seems deeply entrenched in society.

Jurisprudence and statements of domestic courts within the timeframe of this thesis confirm that this understanding of the centrality of caste-based discrimination is the prevalent one within the legal discourse too. Take for instance the Chief Justice of the Madras High Court's oral statement during a hearing about the eradication of manual scavenging in 2021. The Chief Justice states that the absolute inhumanness of allowing the practice of manual scavenging to continue, is embedded in the caste system and perpetuates the outlawed notion of untouchability:

These are the lowest of the low. A person like you and I wouldn't do this. We take advantage of the innocence of these people and send them down...untouchability, caste system practices – it's the same thing.¹⁷³

The Chief Justice goes on to explain in no uncertain terms that what truly is at stake if manual scavenging is allowed to continue is the dignity of those who are made to engage in the work, and the ideal of equality.¹⁷⁴

The previous paragraphs addressed conditions in society that allow manual sewer cleaning to continue. This one considers why those working as sewer cleaners do not leave this job to

¹⁷¹ Human Rights Watch (n 40) 58.

¹⁷² 'What's Worse than the Job Is the Humiliation We Face' | *India's Sewer Cleaners* / *Invisible Asia* (n 39) min 6:59-7:21.

¹⁷³ Meera Emmanuel, '[Manual Scavenging] We Take Advantage of Their Innocence and Send Them down; It Cannot Go on in Any Civilised Place: Madras High Court' *Bar and Bench* (10 March 2021)

<<https://www.barandbench.com/news/litigation/manual-scavenging-is-inhuman-cannot-go-on-in-any-civilised-place-madras-high-court>> accessed 7 May 2023.

¹⁷⁴ *ibid.*

find a better one. There are various social and economic issues which act as barriers to the complete eradication of the manual cleaning of sewers. One reason for individuals from traditionally scavenging families not to be able to get other jobs and escape having to engage in manual scavenging work, is the fact that education levels amongst members of Dalit sub-castes that are made to engage in scavenging work are low.¹⁷⁵ A report found that 49% of those that lost their lives in sewers had not studied until the 10th grade (age 16), and 45% were illiterate.¹⁷⁶ There is a high drop-out rate amongst people of these sub-castes because discrimination faced at school makes the environment inhospitable for them.¹⁷⁷ The low literacy rate amongst members of these castes makes it difficult for them to find other jobs because they lack the requisite skills. Along with issues of education, members of castes that are traditionally made to engage in manual scavenging are poor, meaning that they often do not have the capital to stop scavenging and search for another job, because they need the income that they get from scavenging and it would be too much of a risk to stop. For example, one sewer cleaner explains that he feels afraid knowing the risks involved every time he enters a sewer, however, he has to go to work because if he does not, he does not receive the money he needs for his family to survive.¹⁷⁸ Over and above this, supposing an individual is able to gather the resources and find an alternative source of income, they often face social and economic boycotts if people find out that they used to be employed in scavenging work.¹⁷⁹

4.5 The Persistence of Manual Sewer Cleaning: Weighing the Factors

The chapter so far has laid out a range of reasons that are contributing to the perpetuation of the practice of hazardous sewer cleaning. As was explained above, the main possible barriers on the government's side, are technological, infrastructure-related, and economic. While technological issues might have been more of an issue a few years ago, now, Section 4.2 has shown that there are multiple technological alternatives to sending a human being into a sewer. The fact that this continues to occur could then be put down to financial constraints on the part of the State. However, Section 4.4 showed that the available funding is not being utilised;

¹⁷⁵ Katiyar (n 4) 128–129.

¹⁷⁶ Rashtriya Garima Abhiyan (n 2) 20.

¹⁷⁷ Katiyar (n 4) 129.

¹⁷⁸ *Manual Scavenging / The Story of a Sewer Cleaner in Delhi / The Quint* (Directed by The Quint, 2022) min 2:58-3:30 <<https://www.youtube.com/watch?v=GuTeivftbJM>> accessed 10 July 2023.

¹⁷⁹ Human Rights Watch (n 40) 69–71.

before the government can make any claim of lacking the funds required to eradicate hazardous sewer cleaning, it would need to be fully using the funding it does have available. Even assuming that funds were fully utilised and the State found that it required greater funding than it had available in order to fully address the issue, this still cannot fully explain one aspect of manual sewer cleaning: the fact that over 90% of those that are engaged in this work belong to Dalit sub-castes. Additionally, if funding were the main issue, in the past, the State has resorted to both international aid and private-public partnerships in order to fund its sanitation projects;¹⁸⁰ why does it not do so in order to tackle this problem?

This begs the question of where the government's decision on the balance between sanitation needs and manual scavenging eradication would lie, if manual scavenging were a profession affecting members of the dominant castes. Conjecture aside, it must be noted that Indian State, over the years, has run various schemes aimed at supporting sanitation workers, and manual scavengers specifically. However, 40 years after the first law banning the practice was enacted, and ten years after the strengthening of this law, it is undeniable that very little progress has been made. It appears from this chapter, that the continued existence of hazardous sewer cleaning is more an issue of implementation and prioritisation, than of means.

There is also the opposing pull of sanitation versus the eradication of manual sewer cleaning to consider. It is not difficult to see the discriminatory discourse of this framing. Instead of seeing the need for sanitation and the need to prevent any more individuals having to suffer manual cleaning as equally important, the need for sanitation seems to be given a place of greater importance, thereby implying that the sanitation needs of those who will be benefitted are somehow more valuable than the lives of those who are made to engage in sanitation work. In a paradigm that did not discriminate and viewed the need for the eradication of manual cleaning, due to its dangers and indignity, as equally important to sanitation needs, the very planning of any sanitation projects would not pit the issues against one another, but simply take into account the objective of eradicating manual cleaning; no project would be sanctioned that did not account for both improved sanitation and ending manual cleaning of sewers.

A vivid example of the level at which this discrimination operates, as described in detail above, is the fact that no one from any other caste wants to do the work of sewer cleaning.

¹⁸⁰ Dasgupta and others (n 76) 1–11.

They are aware, therefore, that it is an onerous job, and yet they believe strongly that for Dalits, this is the only appropriate work.¹⁸¹ This is further corroborated in another example cited above, where a sewer cleaner was told by his employer that even if the law says that technological solutions should be used, a sewer does not actually get cleaned unless a human being enters it to clean it.¹⁸² Caste is further implicated in the issue of manual sewer cleaning failing to be eradicated because of the factors, described in Section 4.4, that prevent sewer cleaners from choosing to do other work. As was established there, these issues of low education and literacy levels, and of poor economic conditions, have their basis in historical and present-day caste-based oppression and discrimination.

Further justifying this point is the fact that when rehabilitation of former sewer cleaners is successful, as it has been for SKA, the approach taken centres caste and its effects on the life of the individual.¹⁸³ Additionally, both CSOs and the judiciary in India appear to share this understanding of the casteism underlying the continued existence of hazardous sewer cleaning. To once again quote the Chief Justice of the Madras HC, ‘[a] person like you and I wouldn’t do this...untouchability, caste system practices – it’s the same thing’.¹⁸⁴ While the government institutes schemes and announces budgetary and nomenclature changes to try to address the issue of manual sewer cleaning, ministers try and hide behind technicalities in order to minimise the issue of deaths that occur in the process of sewer cleaning.¹⁸⁵ The government schemes, as described above, remain valid, but gradually, the budgets are cut due to underutilisation. It is often only through being told about a scheme by a CSO, that a sewer worker knows that such assistance is available to them.¹⁸⁶

Governmental apathy and societal tolerance for these horrific deaths – these are byproducts of the caste system that has shaped the Indian social conscience. It can be ignored through a surface-level reading of a situation, which could focus on economic and technological issues instead, but ignoring the underlying influence of caste renders any understanding of this phenomenon incomplete. There is a general opinion that those made to clean sewers are ‘meant’ for this work, or at least, that if this work needs to be done, it cannot

¹⁸¹ Human Rights Watch (n 40) 58.

¹⁸² ‘What’s Worse than the Job Is the Humiliation We Face’ | *India’s Sewer Cleaners* / *Invisible Asia* (n 39) min 6:59-7:21.

¹⁸³ ‘Grocery Shop’ (*Safai Karmachari Andolan*) <<https://safaikarmachariandolan.org/node/126>> accessed 14 July 2023.

¹⁸⁴ Emmanuel (n 173).

¹⁸⁵ Roy (n 130); Varma (n 130).

¹⁸⁶ Dalberg Advisors (n 29) 85; ‘Grocery Shop’ (n 183).

be done by anyone other than those from these castes – without this prejudice being tackled, there will be no impetus to overcome any of the other issues, so no progress towards the eradication of manual scavenging will be made until caste-based discrimination is also made an essential part of the discourse. Considering the fact that India is a developing country that will necessarily need to expand its sanitation system in the coming years, it is also important to consider how decisions about sanitation infrastructure can be made in a way that is most conducive to the eradication of manual scavenging. Such decisions should be based not on balancing the need for sanitation with the dignity of sanitation workers, but rather, by planning any sanitation projects keeping in mind both the need for sanitation and the need to eradicate manual scavenging.

5 LEGAL FRAMEWORK: ARTICLES 6 (1) AND 2 (1)

5.1 Introduction and Overview

India's rate of ratification of international human rights treaties is low. While India has ratified major human rights treaties like the ICCPR and the International Covenant on Economic, Social and Cultural Rights, it has not ratified the optional protocols to either of these treaties, meaning that there is no individual communications mechanism available to citizens of India. In addition to this, although India has ratified important treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, there is a gaping hole where India has failed to ratify the Convention Against Torture. Apart from India's apparent reluctance to embrace aspects of the international human rights framework, the State has also decried statements made by UN treaty bodies, organs and Special Procedures about its human rights record.¹⁸⁷ On the other hand, India has submitted fairly thorough periodic reports to the HRC, even if it has done so significantly late.¹⁸⁸

Regarding India's ratification status of the ICCPR, it is important to note that the HRC finds that any reservations as to the non-derogable obligations of Article 6 are incompatible with the objects and purposes of the covenant.¹⁸⁹ Consequently, India has no reservations regarding Article 6.¹⁹⁰ This means that Article 6 applies to India exactly as it is laid out in the ICCPR, and all commentary by the HRC applies. The HRC has also noted that reservations with regard to Article 2 cannot be accepted, as any such reservations would not be compatible

¹⁸⁷ Devirupa Mitra, 'Stung by UN Report on Caste Discrimination, India Cries Foul' *The Wire* (20 March 2016) <<https://thewire.in/diplomacy/stung-by-un-report-on-caste-discrimination-india-hits-back>> accessed 14 July 2023; Kallol Bhattacharjee, 'Teesta Setalvad Arrest | UN Human Rights Chief's Comment Unwarranted, Says India' *The Hindu* (29 June 2022) <www.thehindu.com/news/national/india-slams-un-human-rights-for-comments-on-action-against-teesta-setalvad-calls-it-completely-unwarranted/article65579646.ece> accessed 14 July 2023.

¹⁸⁸ Human Rights Committee, 'Concluding Observations of the Human Rights Committee: India' para 2.

¹⁸⁹ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 68.

¹⁹⁰ 'Status of Treaties, Chapter IV Human Rights: 4. International Covenant on Civil and Political Rights' (n 17); 'Status of Treaties, Chapter IV Human Rights: 3. International Covenant on Economic, Social and Cultural Rights' (n 17).

with the object and purposes of the Covenant.¹⁹¹ As such, India has not entered any reservations regarding Article 2, so the provision applies to the State in its entirety.¹⁹²

In this chapter, the legal framework necessary for the analysis in this thesis is laid out. The section following this one addresses the right to life under Article 6(1). It first examines the elements of a violation of the right to life, then describes the obligations that States are under regarding this right, and ends with a consideration of how the HRC addresses the balancing of positive obligations and financial capacity. The following section discusses discrimination and special protection under the right to life, beginning with an examination of the protection offered by Article 2(1), before articulating the way in which caste is treated as grounds for discrimination under the right to life.

5.2 The Right to Life

5.2.1 *Elements of a Violation of the Right to life*

The right to life is accepted to be the ‘supreme’ right, from which no derogation is permitted.¹⁹³ It is important to clarify, however, that this does not mean that it is absolute; there are circumstances under which the deprivation of life is permissible, such as the death penalty for States that have not ratified the Second Optional Protocol to the ICCPR. However, the conditions that make the deprivation of life permissible, are extremely strict.¹⁹⁴ The Universal Declaration of Human Rights terms the right to life, a fundamental right, one whose protection is a prerequisite for the fulfilment of every other right.¹⁹⁵ Codified in Article 6 of the ICCPR, the wording of Article 6 itself lends credence to the importance of the right to life. Article 6(1) states that ‘[e]very human being has the inherent right to life.’¹⁹⁶ The first aspect to note is the use of ‘inherent’. The drafting history of the Covenant supports this idea of the right to life

¹⁹¹ Human Rights Committee, ‘General Comment No. 31’ (n 97) para 5.

¹⁹² ‘Status of Treaties, Chapter IV Human Rights: 4. International Covenant on Civil and Political Rights’ (n 17); ‘Status of Treaties, Chapter IV Human Rights: 3. International Covenant on Economic, Social and Cultural Rights’ (n 17).

¹⁹³ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) paras 2, 67; *Pestaño and Pestaño v Philippines* [2010] CCPR Communication No 1619/2007 [7.2]; *Amirov v Russian Federation* [2009] CCPR Communication No 1447/2006 [11.2].

¹⁹⁴ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 10.

¹⁹⁵ Universal Declaration of Human Rights 1948 art 3; Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 2.

¹⁹⁶ International Covenant on Civil and Political Rights art 6(1).

being the preeminent right because of the addition of ‘inherent’ to the article, when draft versions of the covenant did not contain this wording.¹⁹⁷ The right to life is the only Covenant right that is given the status of being ‘inherent’. It is also noteworthy that Article 6 uses the present tense, ‘has’, while most other rights are conferred on the individual with the use of the future tense, ‘shall have’. In fact, only two other articles are worded in the present tense, and these are Articles 1 (self-determination) and 9 (personal liberty and security).¹⁹⁸ There have also been arguments made that human rights law is not restricted by general principles of international law, but in fact has a natural law basis. With regard to the right to life, its present-tense formulation and the assertion that it is an ‘inherent’ right give an indication that its existence predates positive law.¹⁹⁹ In a similar vein, the right to life has also been argued to be a *jus cogens* norm.²⁰⁰

Beginning once again with the wording of Article 6 itself sheds some light on the nature of the right to life. The second sentence of Article 6(1) says that the right to life is to be protected by law, and the third sentence says that there can be no arbitrary deprivation of the right to life.²⁰¹ In order to understand the right to life, it is necessary to understand what constitutes sufficient legal protection and what constitutes arbitrary deprivation of life. The HRC, in its general comment, states that the protection of the right to life by law requires that States put in place a legal framework that sufficiently protects the right to life and criminalises arbitrary deprivation of life.²⁰² It also defines arbitrary deprivation as any deprivation of life that is inconsistent with domestic or international law. However, the committee adds that arbitrariness is also a concept to be interpreted more broadly than purely being inconsistent with law; a determination of arbitrariness must take into account inappropriateness, injustice, reasonableness, necessity, proportionality, and the lack of predictability and due process.²⁰³

In its most recent general comment on Article 6, the HRC has reiterated that the right to life is not to be interpreted narrowly, having noted in an earlier general comment that the

¹⁹⁷ Nowak (n 100) 122.

¹⁹⁸ International Covenant on Civil and Political Rights arts 1, 6, 9; Nowak (n 100) 122.

¹⁹⁹ Nowak (n 100) 3–4.

²⁰⁰ *ibid* 122.

²⁰¹ International Covenant on Civil and Political Rights art 6(1); Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 11.

²⁰² Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) paras 18, 20. General Comment 36, paras 18, 20

²⁰³ *ibid* 12.

right to life has been interpreted narrowly too often.²⁰⁴ The Committee goes on the state that the right to life entails the right of an individual to be free from acts and omissions that are either intended or expected to cause an unnatural or premature death.²⁰⁵ The Committee explicitly articulates the fact that ‘reasonably foreseeable threats and life-threatening situations that can result in loss of life’ also fall within the scope of the right to life.²⁰⁶ An act that amounts to a violation of Article 6 must lead to intentional or ‘otherwise foreseeable and preventable life-terminating harm or injury’.²⁰⁷ It is only by interpreting it sufficiently broadly and taking into account every aspect of the right that the ‘inherent’ nature of the right to life can be properly understood and fulfilled.²⁰⁸ This non-restrictive interpretation of the right to life means that if States merely do not engage in conduct that results in the arbitrary deprivation of life, by that act alone, they have not taken sufficient action to protect the right to life; they are also bound to fulfil positive obligations, which are derived by taking Article 6 in conjunction with Article 2(1), which outlines the general duty to ensure the rights enshrined in the ICCPR.²⁰⁹ The following section describes the specific obligations on States under the right to life.

5.2.2 *Obligations on States Under the Right to Life*

According to the HRC, States have the obligation to respect, protect and ensure the right to life.²¹⁰ They must protect it by ensuring that they have a legal framework that criminalises the deprivation of life.²¹¹ This protection is also required to extend to deprivation caused by private actors, where States have an obligation to carry out due-diligence to ensure that the right to life is protected against deprivation by these non-State actors.²¹² The obligation to protect also includes protection through the organisation of State institutions and bodies that have public authority in such a way that that they respect the right to life in the carrying out of their work.²¹³

²⁰⁴ Human Rights Committee, ‘General Comment No 6: Article 6 (Right to Life)’ paras 1, 5; Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 3.

²⁰⁵ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 3.

²⁰⁶ *ibid* 7; *Toussaint v Canada* [2018] CCPR Communication No. 2348/2014 [11.3].

²⁰⁷ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 6.

²⁰⁸ Human Rights Committee, ‘General Comment No 6: Article 6 (Right to Life)’ (n 204) para 1.5.

²⁰⁹ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) paras 7, 21.

²¹⁰ *ibid* 27, 62.

²¹¹ *ibid* 18.

²¹² *ibid* 7, 18; Human Rights Committee, ‘General Comment No. 31’ (n 97) para 8; *Pestaño and Pestaño v Philippines* (n 193) para 7.2.

²¹³ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 19.

Within this obligation also lies the requirement that States ensure the existence of institutions and procedures that are equipped to prevent the deprivation of the right to life, as well as to prosecute, punish, and provide full reparations in case of a violation of the right to life.²¹⁴

Following from this, States have the procedural obligation to investigate, prosecute and punish alleged violations of the right to life, and to provide effective remedy to victims and relatives of victims of a violation of the right to life.²¹⁵ The procedural obligation to investigate and prosecute can be derived from a joint reading of the general obligations on States under Article 2(1) and the right to life obligations under Article 6(1).²¹⁶ The obligation to provide an effective remedy to victims and relatives of victims derives from Article 2(3) taken in conjunction with Article 6.²¹⁷ Importantly, the HRC states that in the case of a violation of the right to life, administrative or disciplinary measures are insufficient for States to fully perform their duty; it is necessary that an alleged violation of the right to life leads to a criminal investigation, which, if the investigation finds sufficient evidence to make the case, should lead to criminal prosecution and the bringing of perpetrators to justice.²¹⁸ Deriving from Article 2(3), such reparations necessarily include appropriate compensation, and can also include restitution, rehabilitation, and measures of satisfaction.²¹⁹ The committee's view is that this is always the case with regard to a serious violation of human rights, such as a violation of the right to life.²²⁰ Any investigation of an alleged violation of the right to life must be independent, transparent and thorough, and if a violation is found, full reparations must be awarded.²²¹ If a State does not take the appropriate procedural measures, this can, in and of itself, constitute a violation of the right to life.²²²

Along with obligations to prevent and address violations that have occurred, the HRC also categorically states that there is an obligation on States to prevent violations similar to

²¹⁴ *ibid.*

²¹⁵ *ibid.* 27.

²¹⁶ *ibid.*

²¹⁷ *ibid.*; Human Rights Committee, 'General Comment No. 31' (n 97) para 15.

²¹⁸ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 27; Human Rights Committee, 'General Comment No. 31' (n 97) para 18; *Marcellana and Gumanjoy v Philippines* [2008] CCPR Communication No 1560/2007 [7.2, 7.4]; *Vincente et al v Colombia*, [1997] CCPR Communication No. 612/1995, 18042 [8.8].

²¹⁹ Human Rights Committee, 'General Comment No. 31' (n 97) para 16.

²²⁰ *Andreu v Colombia* [1995] CCPR Communication No 563/1993 [8.2]; *Marcellana and Gumanjoy v Philippines* (n 218) para 7.2, 7.4.

²²¹ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 28; Human Rights Committee, 'General Comment No. 31' (n 97) para 16; *Amirov v Russian Federation* (n 193) para 11.2.

²²² *Pestaño and Pestaño v Philippines* (n 193) para 7.2.

those that have already occurred from occurring in the future.²²³ Such an obligation is partially met through fulfilling the procedural obligations to investigate, prosecute and punish violations of the right to life, and the requirement of the provision of an effective remedy cannot be met if a right to life violation is followed simply by administrative or disciplinary measures rather than a criminal procedure.²²⁴ While procedural measures can fulfil a State's obligations in terms to taking action to prevent another similar case of a violation of the right to life, the obligation to prevent similar occurrences in the future is not limited to these procedural obligations, but also includes other measures that are relevant to each specific situation; In *Chongwe v. Zambia*, the remedies included the expedition of criminal proceedings against the perpetrator and the requirement that the State pay damages to the author if the perpetrator was found to have been acting in official capacity when shooting at the author.²²⁵

Additionally, the HRC has demonstrated through past action that it does not shy away from extending the right to life to issues that States deem be outside of its competence. In General Comment 14, the committee boldly declared that nuclear weapons were one of the greatest threats to humanity at the time, and said that their production, testing, possession, and use should be banned and categorised as crimes against humanity.²²⁶ States, especially western States, were unhappy with this general comment, and took issue with what they saw as the HRC's overreaching. The committee, however, stood its ground, arguing that its competence to make such statements was derived from the connection of the issue of nuclear weapons to Articles 2(2), 6(1) and 40(4) of the ICCPR.²²⁷ While there are certainly arguments to be made regarding the committee's need to be wary of undermining itself in the view of States, the example above indicates that it takes the broad interpretation of Article 6 seriously.²²⁸ Even in the face of potential displeasure by States, the HRC stands by its interpretation of the ICCPR and its commitment to interpreting Article 6 in a non-restrictive manner. It is also important to note that according to the HRC, there is an obligation on States to give effect to covenant rights

²²³ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) paras 27, 28; Human Rights Committee, 'General Comment No. 31' (n 97) para 17; *Herrera Rubio v Colombia*, [1987] CCPR Communication No 161/1983, 3 [12].

²²⁴ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) paras 27, 28; *Andreu v Colombia* (n 220) para 10.

²²⁵ *Chongwe v Zambia* [2007] CCPR Communication No 821/1998 [7]; Special Rapporteur on Extrajudicial, summary or arbitrary executions, 'Civil and Political Rights, Including the Question of Disappearances and Summary Executions' (2006) E/CN.4/2006/53 para 41.

²²⁶ Human Rights Committee, 'General Comment No 14: Article 6 (Right to Life)' paras 4–6.

²²⁷ Nowak (n 100) 126–127.

²²⁸ *ibid.*

immediately; this is derived from Article 2(2). The Committee further states that citing political, social, cultural or economic issues of the State does not constitute a justification for not having given effect to rights in the ICCPR.²²⁹ This applies to all rights in the covenant, and therefore, also applies to the right to life under Article 6(1).

5.2.3 *Positive Obligations and a Disproportionate Burden*

As was established above, according to the HRC, States have positive obligations under the right to life. This duty to take positive measures can be derived from Article 2(1), which addresses general obligations on States to ensure covenant rights, when read in conjunction with Article 6(1).²³⁰ As mentioned above, these positive obligations extend to protection from the actions and omissions of State agents as well as those of private entities.²³¹ The HRC is careful to also mention, however, that although States have a due diligence obligation to take reasonably protective measures as regards the deprivation of life by private entities, these measures cannot impose a disproportionate burden on States.²³² However, the HRC also finds that States are obligated to take appropriate measures of protection against the deprivation of life by private entities, for example, transportation companies and private hospitals.²³³ From this, it is clear that the HRC's understanding is that States have far-reaching obligations to take positive measures to protect the right to life. The question is then, where this balance between State obligation and disproportionate burden lies.

The HRC itself sheds some light on this issue when it says that States' duty to protect life also includes taking measures to address 'general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity'.²³⁴ As examples of general conditions that bring such an obligation upon States, the HRC lists the following: the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria, extensive substance abuse, widespread hunger and malnutrition, and extreme poverty and

²²⁹ Human Rights Committee, 'General Comment No. 31' (n 97) para 14.

²³⁰ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 21.

²³¹ *ibid* 7, 18; Human Rights Committee, 'General Comment No. 31' (n 97) para 8; *Pestaño and Pestaño v Philippines* (n 193) para 7.2.

²³² Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 21.

²³³ *ibid*.

²³⁴ *ibid* 26.

homelessness.²³⁵ While much of the HRC's jurisprudence regarding the right to life deals with intentional deprivation of life, these examples show that the committee sees the right to life obligations on States as extending into the realm of socio-economic issues that can lead to the loss of life. This is supported by the HRC's assertion that in order for States to fulfil their obligation to address general conditions in society that can lead to the deprivation of life, the measures that they are required to take can include, where such measures are necessary, 'essential goods and services such as food, water, shelter, health care, electricity and sanitation, and other measures designed to promote and facilitate adequate general conditions, such as the bolstering of effective emergency health services, emergency response operations (including firefighters, ambulance services and police forces) and social housing programmes'.²³⁶

This view is supported in the committee's examination of State reports. For example, in its concluding observations on Canada's report, the HRC found that homelessness was a serious issue that was leading to health problems and death, and that Canada was required to 'take positive measures required by article 6', to address the issue.²³⁷ Here, the committee clearly situates the State's obligation to take measures that would require the spending of economic resources, in the State's right to life obligations. Of course, the specific balance between positive obligations on a State, and the requirement that no undue burden is placed upon the State, depends on the specific facts of each situation. Wherever the balance lies in each instance of a potential violation of the right to life, however, it is clear that the HRC finds that the mere fact that measures would require States to spend economic resources on meeting their obligations to protect life, does not give the States a justification not to spend these resources. In other words, it seems that in the committee's view, a State cannot claim financial difficulty as a justification for failing to protect the right to life through positive measures.

Additional justification for this view comes from the drafting history of the ICCPR. The second sentence of Article 6(1) requires that States protect the right to life by law.²³⁸ During the drafting process, however, a few States, such as the USA, argued for the right to life to entail only negative obligations.²³⁹ However, in a demonstration of States' willingness to bind themselves to positive obligations under the right to life, a majority of the delegates

²³⁵ *ibid.*

²³⁶ *ibid.*

²³⁷ Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Canada' para 5.

²³⁸ International Covenant on Civil and Political Rights art 6(1).

²³⁹ Nowak (n 100) 122.

present, pushed for horizontal protection of the right to life.²⁴⁰ Horizontal effects refer to the relationship between individuals and between an individual and private entities under international human right law. This is as opposed to vertical effects, which refer to the protection of an individual from the actions of a State.²⁴¹ Therefore, a right with horizontal effects requires a State not only to refrain from violating the right itself, but to also take measures to protect individuals from the violation of this right by any other parties. By showing that they wanted to be bound by positive obligations, the States provide legitimacy to the HRC's reading of the right to life in a non-restrictive way, and its continued assertion that States have positive obligations and that failing to fulfil these obligations is not justified by the lack of economic means.

5.3 Special Protection and Discrimination

5.3.1 *Article 2(1): Protection Against Discrimination*

Article 2(1) of the ICCPR provides protection against discrimination in the realisation of rights enshrined in the covenant. The HRC sees discrimination as meaning any 'distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.'²⁴² This article, which follows wording of the comparable article in the Universal Declaration of Human Rights, was much discussed during the drafting of the ICCPR, with States agreeing that it was important to ensure that all covenant rights would be protected and ensured without discrimination.²⁴³ This emphasises the importance that States gave to the idea of non-discrimination when they agreed to bind themselves to the covenant.

Regarding the actual obligations that this article entails, the HRC specifically highlights the need for States, in their periodic reports to the committee, to provide information about discrimination-related issues that exist in terms of the actions of public authorities, the

²⁴⁰ *ibid.*

²⁴¹ *ibid* 39–40.

²⁴² Human Rights Committee, 'General Comment No 18: Non-Discrimination' (n 99) para 7.

²⁴³ Bossuyt (n 103) 52.

community, or private individuals or bodies, as well as measures taken to address these issues.²⁴⁴ The HRC also says that States are under both negative and positive obligations regarding Article 2(1).²⁴⁵ Further, the committee finds that States are under a legal obligation to take all necessary steps to ensure the enjoyment of covenant rights by all individuals within their territory and subject to their jurisdiction, including ‘the removal of obstacles to the equal enjoyment of such rights, the education of the population and of State officials in human rights, and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant.’²⁴⁶

While the HRC holds non-discrimination to be a foundational principle of human rights, it also recognises that the principle of equality can require States to take affirmative action and provide preferential treatment to address the issue of certain groups not being able to enjoy their ICCPR rights. Such a measure would constitute legitimate differential treatment.²⁴⁷ Furthermore, there is no blanket prohibition on discrimination; if a State can show that it has a reasonable and objective rationale for discriminatory treatment, and that the aim of such an action is to achieve a legitimate purpose under the covenant, such discrimination would also be legitimate.²⁴⁸ From this, it appears that finding a certain kind of treatment to be discriminatory, depends on the specific facts of a scenario, and on the intention behind the treatment, as well as the possible harm such treatment could do, especially in terms of violating ICCPR rights.

As regards the manner in which article 2(1) can be applied, firstly, as described in Chapter 3, it is an accessory provision that can only be violated in conjunction with another right enshrined in the ICCPR.²⁴⁹ In *Andreas Dafnis v. Greece*, the HRC further stated that there can be a violation of article 2(1), only ‘[w]hen the failure by the State party to observe its obligations under Article 2 is the proximate cause of a distinct violation of the covenant, directly affecting the individual claiming to be a victim.’²⁵⁰ From this, Article 2(1) may only

²⁴⁴ Human Rights Committee, ‘General Comment No 18: Non-Discrimination’ (n 99) para 9.

²⁴⁵ Human Rights Committee, ‘General Comment No. 31’ (n 97) para 6.

²⁴⁶ Human Rights Committee, ‘General Comment No 28: Article 3 (The Equality of Rights Between Men and Women)’ para 3.

²⁴⁷ Human Rights Committee, ‘General Comment No 18: Non-Discrimination’ (n 99) para 10.

²⁴⁸ *ibid* 13.

²⁴⁹ *MGB and SP v Trinidad and Tobago* (n 102) para 6.2; *LMR v Argentina* (CCPR) [8.4]; *Hamida v Canada* [2010] CCPR Communication No 1544/2007 [7.3].

²⁵⁰ *Andreas Dafnis v Greece* [2022] CCPR Communication No 3740/2020 [7.13]; *Poliakov v Belarus* [2017] CCPR Communication No 2030/2011 [7.4].

be violated in conjunction with another covenant right, and the alleged discrimination must be sufficiently responsible for causing a distinct violation of that right.

5.3.2 *The Legal Status of Caste-based Discrimination*

The duty to protect, respect and ensure the right to life also requires that States offer special protection to vulnerable groups. In its general comment, the HRC says that States are required to take special protective measures for individuals who are in vulnerable situations, or for people whose lives can be put at risk due to a specific threat.²⁵¹ Regarding discrimination and the right to life, the HRC states that the obligation to respect and ensure the right life must be exercised without discrimination, and that legal protection of the right to life must provide all individuals with ‘effective guarantees against all forms of discrimination’.²⁵² The HRC categorically finds that if a deprivation of the right to life is discriminatory in nature – in law, or in fact – it is *ipso facto* an arbitrary deprivation of life, which is in violation of the guarantees offered by the ICCPR.²⁵³ As examples of grounds of discrimination, the HRC lists, ‘race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or any other status, including caste’.²⁵⁴

In its examination of country reports, the HRC has repeatedly commented on the way in which discrimination can impair the ability of States to properly realise the covenant rights of their citizens. For example, the HRC found that anti-Semitic violence that was observed in France, put the State’s compliance with a number of covenant rights at risk, and one of these was the right to life. The HRC then called on France to increase its efforts to protect citizens from ‘racist and anti-Semitic violence’, also through education aimed at ensuring mutual respect between citizen.²⁵⁵ About India specifically, the committee found that the continued discrimination against members of oppressed castes was a clear obstacle to the realisation of covenant rights.²⁵⁶ While commending India for its efforts to address the issue of caste-based discrimination and oppression through the establishment of the National Commission for Schedules Castes and Scheduled Tribes, which, through its programmes, had brought some

²⁵¹ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 23.

²⁵² *ibid* 61.

²⁵³ *ibid*.

²⁵⁴ *ibid*.

²⁵⁵ Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: France’ para 24.

²⁵⁶ Human Rights Committee, ‘Concluding Observations of the Human Rights Committee: India’ (n 188) para 5.

improvement in education and representation in elected bodies and public authorities,²⁵⁷ the HRC expressed serious concern regarding the level of discrimination and violence experienced by members of Scheduled Castes and Scheduled Tribes.²⁵⁸ This discrimination, the committee found, leads to these groups facing disproportionate violations of the rights that are supposed to be protected through the ICCPR. Crucially, the HRC stated that the ‘de facto perpetuation of the caste system entrenches social differences and contributes to these violations’.²⁵⁹ In light of this, the committee recommended that India take further action to address the issue of discrimination, requiring the State to take measures, including educational programmes aimed at fighting discrimination.²⁶⁰

The formulation of caste as grounds for discrimination under human rights law gets support from the Committee on the Elimination of Racial Discrimination, which is the treaty body responsible for the monitoring of the International Convention on the Eradication of All Forms of Racial Discrimination. The committee had previously already asserted that caste-based discrimination is a form of racial discrimination, based on the fact that caste is a descent-based categorisation. India contested this, but in its 2007 concluding observations, the committee reiterated the fact that caste-based discrimination is a form of racial discrimination.²⁶¹ In this regard, according to this committee and the HRC, members of oppressed caste groups are subject to special protection under international human rights law. This also concerns special protection under the right to life, considering the HRC’s inclusion of caste as grounds for discrimination in its general comment.²⁶²

²⁵⁷ *ibid* 8, 10.

²⁵⁸ *ibid* 15.

²⁵⁹ *ibid*.

²⁶⁰ *ibid*.

²⁶¹ Committee on the Elimination of Racial Discrimination, ‘Concluding Observations of the Committee on the Elimination of Racial Discrimination: India’ para 8.

²⁶² Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 61.

6 MANUAL SEWER CLEANING DEATHS AND THE RIGHT TO LIFE

6.1 Overview

It was established in Chapter 5 that the HRC sees the right to life as one that can only be fulfilled if it is interpreted broadly.²⁶³ It was also established that the elements of a violation of the right to life are arbitrariness and the fact that an act or omission is intended, expected or can be reasonably foreseen to result in the loss of life.²⁶⁴ As well as negative obligations, States have positive obligations to fulfil the right to life. They are required to protect the right to life through legislation and the setting up of institutions equipped to act in cases where a violation occurs. States also have procedural obligations to investigate, prosecute and punish violations of the right to life, as well as to provide full reparations to the victim and their family.²⁶⁵ In addition to these obligations, which are a direct response to a violation, it was also shown that States are obligated to prevent future occurrences of a similar violation; this is partly fulfilled by procedural obligation, but can also require other measures as a necessary in a particular situation.²⁶⁶ In situations where a State's financial capacity makes it difficult for it to take required measures, the HRC's reasoning is that although there should be no disproportionate burden placed on States, the lack of financial capacity does not constitute a justification when a State does not take positive measures to ensure the right to life.²⁶⁷ The precise balance depends on the specific facts of each case.

Chapter 5 also established that under Article 2(1), a violation can only occur in conjunction with another Covenant right, and that such a violation must be proximately caused by discrimination, resulting in a distinct violation of the right in question.²⁶⁸ It was also found that caste is increasingly being recognised as grounds for discrimination under international law, both through the jurisprudence of the Committee on the Elimination of Racial

²⁶³ *ibid* 3.

²⁶⁴ *ibid* 18.

²⁶⁵ *ibid* 19, 28.

²⁶⁶ *ibid* 28.

²⁶⁷ *ibid* 21, 26.

²⁶⁸ *Andreas Dafnis v Greece* (n 250) para 7.13; *Poliakov v. Belarus* (n 250) para 7.4.

Discrimination, and its own category, through the HRC's jurisprudence.²⁶⁹ This chapter is going to analyse the issue of deaths due to manual sewer cleaning through the legal framework established above. Section 6.2 begins by examining whether a death that occurs in this way has the elements required to constitute a violation of the right to life. Then, the discussion turns to what obligations the State is under regarding its response to such a death, before considering the State's obligations to prevent the recurrence of similar violations. Section 6.5 then deliberates on the role of caste-based discrimination in a sewer-cleaning death, and considers whether the facts constitute a violation of Article 2(1) in conjunction with Article 6(1).

6.2 Elements of a Violation of Article 6(1)

In order for an act or omission of the State to constitute a violation of the right to life, as outlined above, such an act or omission must be such that it is intended or expected to cause an unnatural or premature death. This protection also extends to a reasonably foreseeable threat or life-threatening situation that can cause death.²⁷⁰ In order for a loss of life to constitute a violation of the right to life, it is also required to be arbitrary in nature, as described above.²⁷¹ It would be unfair to say that there is any intention on the part of the Indian State to cause the loss of life that results from the manual cleaning of sewers and septic tanks. Therefore, deaths resulting from manual sewer cleaning are more apt to be considered under the expectation that they will cause an unnatural or premature death or that there is a reasonably foreseeable risk of loss of life. The requirement of arbitrariness will be examined once it has been established that deaths due to manual sewer cleaning meet the former requirements.

While in General Comment 36, it appears that the expectation that an act or omission can lead to loss of life, and the reasonably foreseeable risk of loss of life, are two separate standards for establishing a violation of the right to life, the HRC's reasoning in its findings on communications, treats them in a more connected way. It treats reasonable foreseeability of risk as a standard for establishing that an act or omission could be expected to cause the

²⁶⁹ Committee on the Elimination of Racial Discrimination (n 261) para 8; Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 61.

²⁷⁰ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 3.

²⁷¹ International Covenant on Civil and Political Rights art 6(1); Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 11.

unnatural and premature death of an individual.²⁷² In the context of this thesis, therefore, in order to establish whether there is an act or omission that can be expected to result in an unnatural or premature loss of life, it is necessary to understand whether there is a reasonably foreseeable risk of death when an individual is engaged to manually clean a sewer.

The data regarding the number of deaths that have occurred is a good indication of this risk. The NCSK estimate of 928 deaths between 1993 and 2020 is already high, but the commission itself recognised that the true number is far higher.²⁷³ The SKA, estimates that around 2000 people die cleaning sewers every year.²⁷⁴ In addition, the mortality rate for sewer cleaners is five times higher than for any other urban profession,²⁷⁵ and in some years, more workers die cleaning sewers than do soldiers in conflict-ridden Kashmir.²⁷⁶ Further evidence of the risk associated with the job of manual sewer cleaning comes from an account by a sewer cleaner. He says he feels afraid because when sewer cleaners leave home in order to carry out their work, anything could happen; he has been in situations where co-workers have entered sewers and lost their lives. Sometimes the fear makes him avoid work for days at a stretch, but eventually, he has to go back and face the risk because he needs to earn money for his family.²⁷⁷ In another articulation of the risk involved in sewer cleaning, in a 2020 judgement, the SCI said:

We see sewer workers dying in due to poisonous gases in chambers. They are like death traps. We have not been able to provide the masks and oxygen cylinders for entering in sewer chambers, we cannot leave them to die like this and avoid tortious liability concerned with officials/machinery, and they are still discriminated within the society in the matter of enjoying their civil rights and cannot live with human dignity.²⁷⁸

²⁷² *Toussant v. Canada*, para 11.3; *Portillo Cáceres et al. v. Paraguay*, para. 7.5; *Toussaint v. Canada* (n 206) para 11.3; *Portillo Cáceres et al v Paraguay* [2019] CCPR Communication No 2751/2016 [7.5]; Ginevra Le Moli, ‘The Human Rights Committee, Environmental Protection and the Right to Life’ (2020) 69 *International & Comparative Law Quarterly* 735, 747–748.

²⁷³ National Commission for Safai Karmacharis (n 38) 51.

²⁷⁴ ‘Crisis: Safai Karmachari Andolan’ (n 44).

²⁷⁵ Lee (n 47) 485–486.

²⁷⁶ Ashraf (n 7).

²⁷⁷ *Manual Scavenging / The Story of a Sewer Cleaner in Delhi / The Quint* (n 178) min 2:58-3:30.

²⁷⁸ *Prathvi Raj Chauhan v Union of India and others* (SCI) [46].

This evidence points unequivocally to the fact that when an individual loses their life while cleaning a sewer, at the point that they were engaged to enter the sewer, there is enough information to know that there was a reasonably foreseeable risk of loss of life.

The next step is to establish that this loss of life is arbitrary. As already explained, arbitrariness, according to the HRC, is to be interpreted broadly, drawing on elements of inappropriateness, injustice, lack of predictability and due process of law, reasonableness, necessity, and proportionality.²⁷⁹ In addition, ‘[a]ny deprivation of life based on discrimination in law or in fact is *ipso facto* arbitrary in nature’²⁸⁰ As was established in Chapter 4, the continued existence of the practice of manual sewer cleaning, which leads to the deaths of sewer cleaners, is deeply embedded in caste-based discrimination. The fact that anywhere between 94% and 98% of those employed to clean sewers are from specific Dalit sub-castes is an indication of caste-based discrimination.²⁸¹ It would be a stretch to argue this, but supposing it were argued that this connection with caste is simply a coincidental correlation, there is evidence of people being assigned sanitation work simply because of their caste.²⁸² This caste bias is confirmed by a contractor responsible for hiring subcontracted sanitation workers in Bharatpur, a city in Rajasthan. He says that among those hired directly by the municipality, sanitation work is left to the lowest sub-caste and even when other castes are hired as sanitation workers, after promising to do sanitation work, they make arrangements through the system so that the actual work they are made to do is not connected to sanitation.²⁸³ Regarding subcontracted workers he explains, ‘all of our subcontracted workers are from the Valmiki community—no other community would do this work. It is just not possible. If there is excrement to pick up, they [Valmikis] have to pick it up.’²⁸⁴ All this evidence points strongly to the discriminatory nature of the work of manual sewer cleaning, which then results in death. This would mean that the deaths result from discrimination in fact, which classifies the deaths as arbitrary in the meaning of Article 6(1).

Supposing, however, that it is not accepted that the link to caste-based discrimination is sufficient to be considered *ipso facto* as an arbitrary deprivation of life, there is an argument

²⁷⁹ Human Rights Committee, ‘General Comment No. 36: The Right to Life’ (n 95) para 12.

²⁸⁰ *ibid* 61.

²⁸¹ Dalberg Advisors (n 29) 18; Rashtriya Garima Abhiyan (n 2) 18–20.

²⁸² *NL Interviews: Bezwada Wilson Talks on the Perils of Dealing with ‘Shit’* (n 116) min 8:37-11:00.

²⁸³ Human Rights Watch (n 40) 58.

²⁸⁴ The Valmiki community is one of the sub-castes that has historically been associated with manual scavenging. *ibid*.

to be made under the other conditions for arbitrariness, specifically, the concepts of unlawfulness and injustice. The HRC finds that a deprivation of life is arbitrary if it is inconsistent with domestic law.²⁸⁵ Under the 2013 Act, employing an individual for the hazardous cleaning of sewers is illegal,²⁸⁶ and as such, any instance where safety equipment is not provided to an individual who enters a sewer is inconsistent with this act. This means that by being inconsistent with domestic law, deaths due to manual sewer cleaning are arbitrary in nature. They can also be established as being arbitrary using the notion of injustice, because, considering that there are technological alternatives to sending an individual into a sewer, and considering that safety equipment is available that would make the work less hazardous, the fact that people are still being sent into sewers in a manner that threatens their life is unjust. Considering also the fact that a vast majority of deaths are of individuals of particular Dalit sub-castes,²⁸⁷ in the absence of a justifiable reason why members of this particular sub-caste should be sent into these hazardous situations to die, their deaths are necessarily arbitrary.

6.3 Balancing: Positive Obligations and a Disproportionate Burden

The first step in understanding whether the continued occurrence of deaths due to the hazardous cleaning of sewers constitutes a violation of the right to life, is to establish that such deaths have the required elements of such a violation. This has been established in the previous section. It now remains to be considered whether the Indian State has taken sufficient measures to address this issue, in order to decide whether a violation of the right to life is indeed occurring. To reiterate from Chapter 5, this requires the balancing of the State's obligation to take measures, and the necessity not to place a disproportionate burden on the State.

The first issue to address here, is what measures the State has taken in order to address the problem of deaths due to hazardous sewer cleaning. The State has banned the practice of hazardous cleaning of sewers, and has been considering an amendment to the relevant law, which would strengthen its protection.²⁸⁸ The State has been running a number of schemes

²⁸⁵ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 12.

²⁸⁶ The 2013 Act s 7.

²⁸⁷ Dalberg Advisors (n 29) 18, 69; Rashtriya Garima Abhiyan (n 2) 18.

²⁸⁸ The 2013 Act s 7; Department of Social Justice and Empowerment, 'Annual Report: 2020-21' (Ministry of Social Justice and Empowerment 2021) 14–15.

aimed at mechanising sewer cleaning and rehabilitating manual scavengers.²⁸⁹ There are institutions within the State, such as the NCSK and NSKFDC, that have been set up specifically to implement schemes related to the empowerment of manual scavengers and to monitor the status of progress towards their rehabilitation.²⁹⁰ The budget for the year 2023-2024 allocates a significant sum to issues related to manual sewer cleaning, and the finance minister has said that the goal of the government is to completely mechanise sewer cleaning in the country.²⁹¹ It appears from this information, that the State is taking the issue seriously and taking significant measures to realise the goal of the eradication of manual sewer cleaning.

The issue, however, is that successive governments have made such promises, but there has been no effect on the number of deaths occurring due to manual sewer cleaning, and every five days, another sanitation worker loses their life, cleaning a sewer.²⁹² In *Daniel Billy v Australia*, the HRC reiterated that States have an obligation to take all appropriate measures to address general conditions in society that could directly threaten the right to life.²⁹³ In India, there is a general condition in society – the continued employment of people to hazardously clean sewers – which is directly responsible for thousands of deaths. The Indian State is under an obligation to take all appropriate measures to prevent the loss of life resulting from this threat. In the *Daniel Billy* case, the HRC did not find a violation, because it believed that the Australian government had been taking measures to ensure the protection of the right to life.²⁹⁴

The *Daniel Billy* case, however, concerned the effects of climate change. The authors had asserted that their right to life was being threatened due to insufficient climate adaptation measures on the part of Australia. They said that within the next 10-15 years, the island that they lived on would become uninhabitable, thereby threatening their right to life.²⁹⁵ The HRC found that 10-15 years gave the Australian government time to take adaptive measures, which it had already begun to do.²⁹⁶ In the case of manual sewer cleaning, however, it is not a question of taking measures in order to prevent a likely violation of the right to life, it is a question of

²⁸⁹ ‘The Self Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)’ (n 148); Ministry of Social Justice and Empowerment (n 149) para 3.1-18; ‘National Action for Mechanised Sanitation Ecosystem (NAMASTE)’ (n 155).

²⁹⁰ ‘About NCSK’ (n 82); ‘Home’ (n 83).

²⁹¹ Ministry of Finance: Budget Division (n 155) 317; Harad (n 157).

²⁹² ‘Health, Safety and Dignity of Sanitation Workers: An Initial Assessment’ (n 39) 35.

²⁹³ *Daniel Billy et al v Australia* [2022] CCPR Communication No 3624/2019 [8.3].

²⁹⁴ *ibid* 8.7-8.8.

²⁹⁵ *ibid* 2.2-3.7.

²⁹⁶ *ibid* 8.7-8.8.

taking measures to prevent an ongoing loss of life. The State cannot claim ignorance as to the issue either, because it has clearly recognised the problem enough to make efforts to address it.

The reasoning in *Daniel Billy*, was that there was insufficient evidence to show that the authors faced a direct threat to their right to life with dignity.²⁹⁷ As regards manual sewer cleaning, however, not only does the act of entering a sewer without the requisite safety equipment directly threaten the life of an individual, it also actually results in loss of life, as evidenced by the number of deaths that have occurred, and continue to occur, in the country; low estimates find that 928 workers have died in sewers since 1993, and higher estimates suggest the occurrence of 2000 deaths every year.²⁹⁸ It seems from this information that the situation of manual sewer cleaners in India does meet the HRC's requirement of a direct threat to the right to life, which would give the State an obligation to take all possible measures in order to address the problem.

Considering, however, that the HRC is clear that any such obligations should not place a disproportionate burden on the State, it is important to consider this aspect of the issue. This is a matter of balancing the proportionality of the harm to the victims, and the burden on the State. When discussing the general conditions that could require a State to take positive measures, the HRC uses examples such as, high levels of criminality, environmental degradation, life-threatening diseases, substance abuse, and extreme poverty.²⁹⁹ These are all conditions over which the State does not have control; it plays the role of a mitigator of adverse effects of external conditions on its citizens. The situation regarding death due to manual sewer cleaning, however, is one over which the state has near complete control. Granted, technological lags could have been a factor outside of the State's control, but now there are various technological solutions to choose from, be it better-designed safety suits, or robots that can enter and clean sewers, cutting out the need for a human being to endanger themselves.³⁰⁰ Also, the State has never used economic constraints as a reason for having failed to eradicate hazardous sewer cleaning, but for the sake of argument, say that this was forwarded as a justification. It does not hold water because of the heavy underutilisation of existing funding,

²⁹⁷ *ibid* 8.7.

²⁹⁸ National Commission for Safai Karamcharis (n 38) 51; 'Crisis: Safai Karmachari Andolan' (n 44).

²⁹⁹ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 26.

³⁰⁰ Dalberg Advisors (n 29) 42; 'These Are The Samaritans Who Are Developing Sewer Cleaning Technologies to Replace Manual Scavengers' (n 122); Agarwal (n 122); 'Bandicoot2' (n 123).

which has led to the reduction of funding in consecutive years of schemes, for example as occurred with SRMS.³⁰¹ For a State to credibly claim that certain measures would place a disproportionate financial burden on it, it cannot have funds allocated for solving that very issue going unused.

It appears from this, that taking positive measures that would help to eradicate the hazardous cleaning of sewers, and save the lives of the workers who are made to do this job, does not place a disproportionate burden on the State. In justification of this view is the HRC's finding in *Toussaint v. Canada*:

[A]s a minimum States parties have the obligation to provide access to existing health care services that are reasonably available and accessible, when lack of access to the health care would expose a person to a reasonably foreseeable risk that can result in loss of life.³⁰²

The key point here is the committee's articulation of a minimum requirement to provide access to healthcare. This already broad interpretation also implies that States can in fact be expected to take greater measures, beyond the minimum requirement. In the context of manual sewer cleaning, while it is not a question of provision of healthcare, it is a question of the provision of equipment and machinery that would not only protect the worker's right to life with dignity, it would prevent them from losing their life entirely. In such a case, there seems to be no disproportionate burden on the State, rather, if the situation continues in the present way, the workers are bearing the disproportionate burden of the State's failure to protect them.

If it is accepted that deaths due to manual sewer cleaning do constitute a violation of Article 6(1), the State is also under an obligation to prevent the recurrence of such a violation.³⁰³ The numbers of deaths that continue to occur – one life lost every five days – is a clear indication that the State is failing in its obligation to prevent future violations. One part of this obligation also includes a procedural obligation to investigate and prosecute.³⁰⁴ In this regard too, the State seems to be failing to fulfil its obligations. Although there is a law that prohibits the hazardous cleaning of sewers, one study found that out of 51 incidents where people had

³⁰¹ Dalberg Advisors (n 29) 127.

³⁰² *Toussaint v. Canada* (n 206) para 11.3.

³⁰³ Human Rights Committee, 'General Comment No. 36: The Right to Life' (n 95) para 28.

³⁰⁴ *ibid* 27–28.

died while cleaning sewers, a case was only registered with the police in 18 of the incidents.³⁰⁵ Having understood this issue to be pressing, the NCSK has begun to monitor how cases of sewer deaths are handled and what action is taken.³⁰⁶ Therefore, while the State currently seems to be failing to fulfil its procedural obligations, it does seem to be attempting to address this problem.

6.4 The Discriminatory Nature of the Violation

The deep influence of the caste system on the existence of manual sewer cleaning was articulated in Chapter 4. Here, it remains to be seen whether this caste-based discrimination is sufficient to meet the requirement to be a proximate cause of death, and whether this constitutes a distinct violation of the right to life. This is the requirement that is outlined in several cases, for example, *Tharu and Tharuni v Nepal* and *Dafnis v Greece*.³⁰⁷

To first address the issue of a proximate cause of death, it is necessary to show that caste-based discrimination is sufficiently implicated in the deaths of the workers. The HRC so far, does not seem to have adopted any views regarding the finding of a proximate cause under Article 2(1), apart from inadmissibility decisions. In the cases mentioned above, the HRC notes the requirement that the failure of the State party to respect Article 2(1) needs to be the proximate cause of the violation.³⁰⁸ Based on this, the relevant evidence for finding a proximate cause is that most of the deaths that occur due to hazardous sewer cleaning are of members of Dalit sub-castes.³⁰⁹ The reason these people are made to do this work is that much of society believes that they are ‘supposed’ to do it. Contractors have admitted to hiring people based on their caste, also explaining that people of other castes would refuse to do such work.³¹⁰ This indicates that someone who is born in one of the Dalit sub-castes that is associated with sanitation work is at a very high risk of being made to engage in sewer cleaning, while someone

³⁰⁵ Rashtriya Garima Abhiyan (n 2) 34.

³⁰⁶ Department of Social Justice and Empowerment, ‘Annual Report 2021-22’ (Ministry of Social Justice and Empowerment 2022) 22.

³⁰⁷ *Puniram Tharu and Nira Kumari Tharuni v Nepal* [2022] CCPR Communication No 3199/2018 [6.3]; *Andreas Dafnis v Greece* (n 250) para 7.13.

³⁰⁸ *Puniram Tharu and Nira Kumari Tharuni v Nepal* (n 307) para 6.3; *Andreas Dafnis v Greece* (n 250) para 7.13.

³⁰⁹ Dalberg Advisors (n 29) 18, 69; Rashtriya Garima Abhiyan (n 2) 18.

³¹⁰ Human Rights Watch (n 40) 58; ‘What’s Worse than the Job Is the Humiliation We Face’ / *India’s Sewer Cleaners / Invisible Asia* (n 39) min 6:59-7:21; min *NL Interviews: Bezwada Wilson Talks on the Perils of Dealing with ‘Shit’* (n 116) 8:37-11:00.

born in a dominant caste faces a negligible risk of this. In other words, the State's failure to address the issue of caste-based discrimination, especially in the hiring practices of those who employ people on behalf of the state, leaves those from the most oppressed castes at risk. The proximate cause of the death due to hazardous cleaning is simply the fact of being born in a certain caste, in a State where such discrimination operates unhindered. In the words of the supreme court:

One thing is sure that we have not been able to eradicate untouchability in a real sense as envisaged and we have not been able to provide down-trodden class the fundamental civil rights and amenities, frugal comforts of life which make life worth living...³¹¹

The court goes on to say, '[t]he plight of untouchables is that they are still denied various civil rights'.³¹² This failure on the part of the Indian State, to address the deep issue of caste-based discrimination, putting the life of those born in scavenging-associated sub-castes at risk.

The distinctness of this violation – under Article 2(1) in conjunction with Article 6(1) – as compared to Article 6(1) alone, is the following. The violation of Article 6(1) is a terrible thing, but in theory, it could happen to anyone. Such a framing does not take into account the insidious role of the practice of untouchability and caste-based discrimination in bringing about the deaths of those that are made to clean sewers. In reality, it is almost entirely those belonging to a few Dalit sub-castes that continue to lose their lives while cleaning sewers. Only a recognition of the discrimination that is inherent to the way in which their right to life is being violated, can begin to do justice to their situation.

³¹¹ *Prathvi Raj Chauhan v Union of India and others* (n 278) para 42.

³¹² *ibid.*

7 CONCLUSION

The magnitude of the tragic problem of loss of life caused by hazardous sewer cleaning is explicit in the chapter above. Although protective legislation does exist, it falls short in terms of its scope, and importantly, its implementation. Various government schemes have also attempted to rectify this deep societal problem, but their lack of effectiveness is easily discerned through the ever-rising death toll that results from sewer cleaning. To make matters worse, it seems that much of Indian society does not appreciate the gravity of the problem, seeing it as something that is simply a part of the way life has always been and should be; this is tied to the pervasive casteism that has been a facet of Indian society for thousands of years. While the State has faced barriers of a technological and economic nature, the fact is, the underlying influence of caste plays a major role in slowing progress towards the complete eradication of manual sewer cleaning. It shows itself in the prioritisation of sanitation for parts of the population over the fatalities of the most oppressed castes. It is also obvious in the fact that over 90% of those that are made to clean sewers, and lose their lives doing so, belong to Dalit sub-castes that have traditionally been associated with manual scavenging and sanitation work. Its role is also apparent in the difficulties faced by sewer cleaners in escaping this deadly and discriminatory profession.

Given that there have been clear attempts over the years, on the part of the Indian State, to take measures to eradicate the practice of manual sewer cleaning, it is not an obvious assumption that the State is failing to fulfil its obligations to protect the right to life of sewer cleaners by ensuring the eradication of the practice. The question is whether the measures that the State has taken are sufficient considering that the practice continues to exist and lives continue to be lost. In this thesis, this was analysed both in terms of whether there is a violation of the right to life under Article 6(1) of the ICCPR, and a violation of Article 2(1) in conjunction with Article 6(1), due to the discriminatory nature of hazardous sewer cleaning, and the resulting deaths. In order to answer the first part of the question, it was necessary to show that a death that occurs due to hazardous sewer cleaning is both arbitrary and reasonably foreseeable. The answer to the second part of the question lay in a consideration of whether the discrimination related to the hazardous cleaning of sewers was a proximate cause of death, leading to a distinct violation of the right to life.

This thesis found that there is an argument to be made that the Indian State is in fact failing to fulfil its obligation to protect the right to life of those engaged in manual sewer cleaning. Although the State has made attempts to address the issue in such a way that no more citizens lose their lives while cleaning sewers, it has been clear that there has been no real progress to the end. The State has continued to make promises regarding the eradication of sewer cleaning, however, on the ground, there is little implementation, and the deaths continue. The issue of implementation of government schemes is not new, and in this regard, efforts to rectify the issue have been lacking. This is true for schemes that focus on mechanisation of sewer cleaning, as well as those that aim to rehabilitate sewer cleaners. The State is also failing in its procedural obligations to properly investigate incidents where deaths occur and to hold the perpetrators accountable. This also creates a space of impunity for those that hire individuals to engage in hazardous cleaning, in contravention of the 2013 Act.

As well as this, on the one hand, the government makes promises of bringing the death toll of sewer cleaning down to zero, but on the other, ministers use technicalities to avoid answering questions about the true number of people that lose their lives cleaning sewers in the country, bringing into question whether the government is acting in good faith in its attempts to eradicate manual sewer cleaning. Also, a starting point for any effort to eradicate hazardous sewer cleaning, is an accurate estimate of the number of people engaged in the profession. While the government has publicised schemes and challenges for ULBs to mechanise their systems, it is yet to conduct a thorough survey of sewer cleaners in the country. Budgetary issues do not seem to be a constraint because existing funding is already underutilised. This evidence pointed overwhelmingly towards concluding that the measures taken by the State are insufficient, and therefore, it is in violation of the right to life under Article 6(1).

Regarding the question of a violation of Article 2(1) in conjunction with Article 6(1), this thesis has shown that caste-based discrimination is an overarching aspect of the life of an individual who is engaged to manually clean sewers. The finding of a proximate cause of death in this case, lies in the fact that if they were born in a different caste, there would be a nearly non-existent risk that the individual would be made to clean a sewer, and consequently, a non-existent risk that they would lose their life in this way. For this reason, this thesis concluded that caste is in fact a proximate cause of death, leading to a distinct violation of the right to life that has its basis in the social origin of the individual.

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