



International Environmental  
Law Research Centre

# **SWACHCHH BHARAT**

## **BEYOND CHARITY AND SYMBOLISM TO LEGAL RIGHTS AND DUTIES**

Sujith Koonan

Published in: *KAFILA*, 12 January 2015.

*This paper can be downloaded in PDF format from IELRC's website at  
<http://www.ielrc.org/content/n1501.pdf>*

# Swachchh Bharat – Beyond Charity and Symbolism to Legal Rights and Duties

KAFILA

12 January 2015

Guest post by SUJITH KOONAN

Sanitation and cleanliness seems to have become buzzwords. Celebrities and political leaders have started talking about sanitation. The call for *Swachchh Bharat* by the Prime Minister of India was welcomed by many taking brooms in their hands. Several institutions have uploaded prestigiously the photographs of its employees carrying brooms. All of a sudden, the sanitation consciousness seems to have increased in the country. Indeed, it is a good sign that we have started thinking and talking about the ‘unmentionables’ – shit and dirt.

Many of these actions and responses are symbolic and rhetoric in nature. While it may be acceptable to begin with symbolism, the seriousness needs to be demonstrated through concrete long term plans and actions. One can hope that the government will take such steps. One way to show that the ongoing sanitation talk is serious, and the state is sincere about it, is to recognise the legal aspects of sanitation. There are mainly three issues where the government has been a failure in fulfilling its constitutional and legal duties and these are supposed to be at the forefront of the *Swachchh Bharat Mission* (SBM).

Firstly, as rightly pointed out by Anand Teltumbde in an essay published recently in the *Economic and Political Weekly* (8 November 2014), any talk on sanitation in India has to start by recognising its caste dimension. Most importantly, this includes elimination of the practice of manual scavenging because this centuries old practice violates all basic human rights and dignity. Therefore, implementation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 should be the first priority of any scheme or programme on sanitation. This requires a huge effort to move beyond the symbolism reflected in the step of a few people taking brooms in their hands most probably for a day for the purpose of photographs.

The government should start this job by admitting its failure in this regard. Manual scavenging has continued in India despite the constitutional provision abolishing untouchability and its manifestation in any form of job (Article 17). Needless to say that manual scavenging is a practice rooted in untouchability and it continues to be a caste oriented practice with huge gender bias (as majority of manual scavengers being women). Even though a law was passed in 1993 (Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993), both the central government and the state governments have focused more on denying the existence of this practice than on fulfilling their duty to implement the law. The Indian state has chosen to be blind towards the issue of manual scavenging and its caste dimensions and pushed the manual scavengers further away to the margins. There were occasions when the denial of the state went to the extent of openly claiming in the court that manual scavenging does not exist which the movement of *safai karmacharis* (*Safai Karmachari Andolan*) had to disprove with photographs. This approach needs to be changed if at all the ongoing sanitation talk meant to achieve the goal of *Swachchh Bharat*.

The central and the state governments should show utmost commitment to ensure complete elimination of this practice because caste and caste based oppression still continue in India. A 2014 **report** by the Human Rights Watch (HRW) on manual scavengers in India highlights that despite the presence of a law, manual scavenging continues in different parts of the country. In many cases manual scavengers are appointed by none other than local bodies. The

HRW report also highlights that when they try to leave this ‘dirty job’, they face pressure and threat from the higher caste ruling class at the local level. There is no reason to assume that the implementation of the 2013 Act would be free from the influence of caste factors at the local level. The central government and state government have to demonstrate what they got to overcome the caste influences on implementation of the 2013 Act. Otherwise, we will probably have another law after a decade or two and this exercise will go on as a mockery to the institution of law and state. What is required at this time is not mere acknowledgement of historical injustices to a group of citizens of this country in the name of caste, but demonstration of a concrete plan to stop it immediately; a concrete plan to ensure that there is no situation that force them to go back to manual scavenging.

Secondly, safety of sanitation workers continues to be a key legal issue. The death or illness of sanitation workers because of the unsafe working conditions is not an uncommon news in India. Nobody seems to be taking responsibility of violating their life, body and dignity. Despite several reports highlighting the health risks faced by sanitation workers and despite orders from the Supreme Court of India (*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others*) and different high courts (e.g. *A. Narayanan v. Chief Secretary*) directing the government to take adequate measures for safety of sanitation workers, the issue remains. For example, it was reported in newspapers in March 2014 that, a 28 year old sanitation worker died while cleaning a manhole in Noida after inhaling toxic fumes. Another person who tried to save the sanitation worker was also died in the same manhole. A major reason for the continued neglect from the part of the State is probably due to the fact that sanitation workers predominantly belong to the historically marginalised caste. A recent study on sewerage workers in Delhi by the Praxis Institute for Participatory Practices highlights that majority of the sanitation workers are Dalits belonging to the *Balmiki* caste. The report also highlights an irony that sanitation workers do not have essential facilities including drinking water and sanitation facilities.

Safety and dignity of sanitation workers have now been explicitly promised under the new law prohibiting manual scavenging. Therefore, they require to be at the forefront of priorities of any talk on *Swachhh Bharat*. The idea of *Swachhh Bharat* cannot be achieved when sanitation workers die while they are at work or when they suffer from a lot of dangerous health related problems. It would be a contradiction if the central government go on with the SBM and tolerate the death or ill health of sanitation workers. The ongoing sanitation talk cannot be progressive unless it hear the voices of sanitation workers and addresses their concerns on safety, dignity and wages.

Thirdly, *Swachhh Bharat* cannot be reduced to a campaign. It is also a right. It is a part of the fundamental right to life guaranteed under the Constitution of India. The Supreme Court of India has interpreted fundamental right to life under Article 21 of the Constitution to include all essential attributes of a life with dignity which includes the right to sanitation (*Virender Gaur v. State of Haryana*). High Courts in various states have also followed the same line in interpreting the right to life to include the right to sanitation (*LK Koolwal v. State of Haryana*). Sanitation, being a constitutional right, demand both positive and negative actions from the State. Therefore, sanitation programmes and policies including the SBM need to be viewed as initiatives to fullfil the state’s constitutional obligation emanating from the right to sanitation. So far, the sanitation programmes and policies have refused to approach sanitation from a rights perspective. None of the existing sanitation related programmes and policies seem to acknowledge sanitation as a constitutional and legal obligation. It is yet to be seen if the SBM is going to be different from its predecessors in this regard. It would be a progressive step if SBM explicitly acknowledge the fact that sanitation

is a constitutional and legal duty and not a charity and convey the same message strongly to the implementation agencies at the local level.

One can only hope that the ongoing sanitation talk will move away from being a rhetoric to concrete actions based on legal and constitutional duties and rights. It would be appropriate for the government and its implementing agencies to recognise explicitly sanitation as a right of the people and a duty of the State. While implementing sanitation policies and programmes, the state should fulfill its constitutional and legal duties and promises on a priority basis which inevitably should include taking all measures including budget allocations necessary to eliminate the practice of manual scavenging and for providing adequate safety to sanitation workers.

*Sujith Koonan is pursuing his Ph D from SOAS, University of London, and is with Environmental Law Research Society (ELRS), New Delhi. He can be contacted at: [sujithkoonan@gmail.com](mailto:sujithkoonan@gmail.com)*