

# OCCUPATIONAL HEALTH AND SAFETY

(Based on the judgment in Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others)

(2011) 8 Supreme Court Cases 568

## RAJAN'S STORY - ONE OF MANY

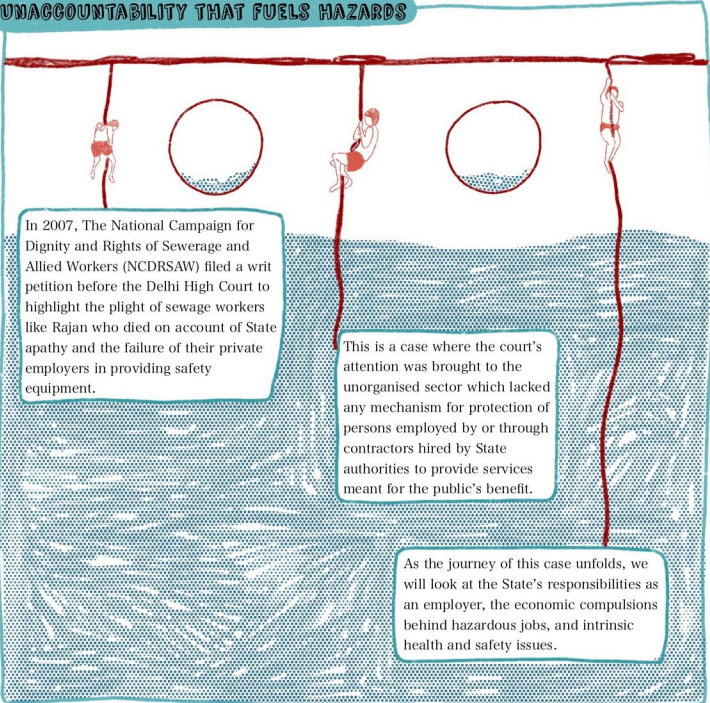
March 2009: As reported in a leading national daily

A city zoo hired sewage workers to rehabilitate their sewers, Rajan being one of them. For a week, he carried out the work of painting a sewer. Required to descend into the sewer daily with the help of a ladder, he requested his contractor to provide safety equipment and oxygen masks. But his requests were denied. One day at work, due to the presence of toxic gasses and lack of oxygen, Rajan became unconscious. After being taken to the hospital, he was declared dead on arrival.

Rajan's story was highlighted as one of many in ongoing proceedings before the Delhi High Court.



## UNACCOUNTABILITY THAT FUELS HAZARDS



In 2007, The National Campaign for Dignity and Rights of Sewerage and Allied Workers (NCDRSAW) filed a writ petition before the Delhi High Court to highlight the plight of sewage workers like Rajan who died on account of State apathy and the failure of their private employers in providing safety equipment.

This is a case where the court's attention was brought to the unorganised sector which lacked any mechanism for protection of persons employed by or through contractors hired by State authorities to provide services meant for the public's benefit.

As the journey of this case unfolds, we will look at the State's responsibilities as an employer, the economic compulsions behind hazardous jobs, and intrinsic health and safety issues.

## AN ATTEMPT TO WRONG A RIGHT

The Delhi Jal Board (“DJB”) filed an appeal before the Supreme Court seeking to set aside directions passed by the Delhi High Court in the case by NCDRSAW.

DJB appeared before the Supreme Court under fear of contempt proceedings by the Delhi High Court for non-compliance with its orders.

What had the NCDRSAW argued? What were the directions that the Delhi High Court passed? Before we look at how the Supreme Court dealt with this, we need to go back to the proceedings before the Delhi High Court...



## THE GROUND SITUATION

The petition filed before the Delhi High Court presented certain ground realities as they stood in the year of its filing:

The DJB was responsible for the treatment and disposal of waste water through a network of about 5600 km sewers for which approximately 5500 sewage workers were employed.

These workers were made to work without basic safety equipment such as helmets or gas masks, artificial respirators or portable ladders, contrary to the guidelines by the National Human Rights Commission.

A study reported that sewage workers suffer high mortality and morbidity due to the inherently hazardous work. A majority of workers suffer from issues like cuts and injuries in underground pipelines, irritation of eyes, skin rashes, only one-third are immunized against tetanus, and none are vaccinated for Hepatitis B. About 46% of workers are underweight as per Body Mass Index (BMI) parameters across all age groups, 37% have haemoglobin deficiencies and more than 50% workers' pulmonary function reports were abnormal.

Additionally, during the course of court proceedings, news came in of the death of six sewage workers across different areas of Delhi. What did the Delhi High Court do?



## THE DELHI HIGH COURT INTERVENES

After a long hearing, the Delhi High Court passed orders to holistically address the plight of sewage workers. It directed the authorities to take action on the following fronts:

### MEDICAL

All workers found to be suffering from occupational diseases, ailments or accidents to be given free medical treatment and examinations; services of the workers during this period not be terminated.

### COMPENSATION

The relevant authorities (DJB, Delhi Development Authority – DDA etc.) to pay compensation to those who suffer occupational ailments in accordance with the provisions of the Workmen's Compensation Act, 1923. Immediate compensation of INR 1 lakh to be given in case of death of workers, including contract workers. Amounts to be recoverable from the contractors.

### STATUTORY DUES AND BENEFITS

All benefits of provident fund, gratuity and bonus be extended to sewage workers, including contract workers, as applicable in law.

### PROTECTIVE GEAR

Modern protective equipment in consultation with NCDRSAW to be provided.

### HYGIENE

Soap and oil to be provided to all workers every month. Restrooms and canteens to have first aid, safe drinking water and creches.

### CENTRAL PUBLIC WORKS DEPARTMENT/PUBLIC WORKS DEPARTMENT (DELHI) / DJB CONTRACTORS' LABOUR REGULATIONS:

All concerned authorities to comply with relevant provisions of labour regulations.

### PHASING OUT CURRENT MECHANISM

A plan to phase out manual work and replace it with mechanised sewer cleaning to be prepared within three months.

A committee comprising an IAS officer, and officials from the New Delhi Municipal Corporation, DDA, DJB and the Social Welfare Department of the Delhi Government was constituted to oversee the implementation of these directions.

## VALUING THE LOSS OF LIFE

Additionally, the Delhi High Court took up the case of the six deaths across the capital and directed that compensation amounts be deposited by the relevant authorities.

The court asked the CEOs of the authorities – the DDA, the DJB and the Delhi State Industrial and Infrastructure Development Corporation to file affidavits that all muster roll workers are:

Provided with protective gear

Provided with provident fund

Given employment cards

Put through medical examinations



## SETTING THE RECORD STRAIGHT

In the appeal filed before it the Supreme Court reminded the DJB of the State's constitutional commitments ...

Article 38 requires the State to secure a social order for the promotion of welfare of the people, including specifically to minimise inequalities in income, status, facilities and opportunities.

Article 39(e) mandates that the State develop policies to secure the health and strength of workers, and ensure that citizens are not forced by economic necessity to undertake work unsuited to their age or strength.

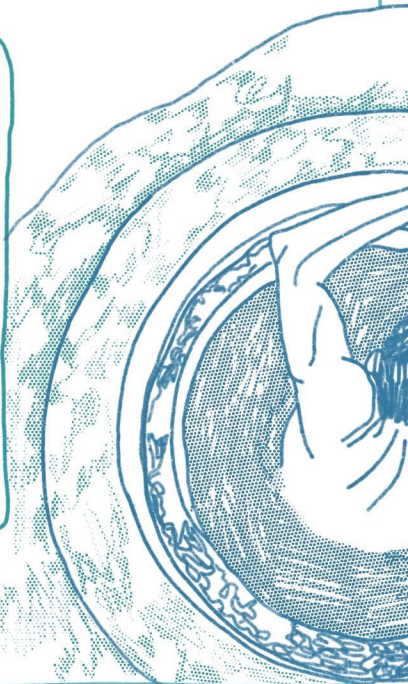
Article 42 expects the State to provide for securing just and humane work conditions and for maternity relief.

It held that the directions of the Delhi High Court were in conformity with the court's writ jurisdiction to do justice to the disadvantaged and poor sections of the society.




## A TIME FOR INTROSPECTION: THE COURTS' ROLE AND OURS

*“Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for the last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter a manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.”*





## DOING COMPLETE JUSTICE



The Supreme Court did not end with these words. It went ahead and noted that the compensation awarded by the High Court was inadequate. Invoking Article 142 of the Constitution of India - which empowers the Supreme Court to pass any order to do complete justice - the court directed the DJB to pay an enhanced compensation to the families of the deceased workers. It also gave the DJB two months to comply with the High Court directions.

After this ruling the Parliament passed the Prohibition of Employment As Manual Scavengers And Their Rehabilitation Act, 2013 to respect, protect and fulfill the right to live with dignity as per Article 21 (right to life) and protection of social and economic interests of Scheduled Castes and Scheduled Tribes as per Article 46 of the Constitution of India.

(Based on the judgment in *Punjab Board v. National Campaign for Equality and Rights of Sewerage and Allied Workers and Others*)  
(2011) 8 Supreme Court Cases 345

**RAJAN'S STORY - ONE OF MANY**

March 2009: An encounter by a leading national daily

A city too hired sewage workers to rehabilitate their sewers, Rajan being being one of them. For a week, he carried out the work of painting a sewer. Unpleasant incidents and the several deaths with the help of a ladder, he requested a container to provide safety equipment and oxygen masks. But his requests were denied. One day at work, due to the protrusion of two gears and lack of oxygen, Rajan became unconscious. After being taken to the hospital he was declared dead on arrival.



Rajan's story was highlighted as one of many in ongoing proceedings before the Delhi High Court.

In 2007, The National Campaign for Equality and Rights of Sewerage and Allied Workers (NCEAW) filed a writ petition before the Delhi High Court to highlight the plight of sewage workers the Rajan who died on account of State negligence and the failure of those private employers in providing safety equipment.

This is a case where the court's attention was brought to the unorganised sector which lacked any mechanism for protection of persons employed by or through contractors hired by State authorities to provide services meant for the public's benefit.

As the journey of this case unfolds, we will look at the State's responsibilities as an employer, the economic compulsions behind hazardous jobs, and worker's health and safety issues.

**AN ATTEMPT TO IGNORE A RIGHT**

The Delhi Industrial Workers' Union applied before the Supreme Court seeking to set aside directions issued by the Delhi High Court in the case by NCDISAW

DIB applied before the Supreme Court seeking for a writ of mandamus by the Delhi High Court for enforcement with the codes.

What did the NCDISAW argue? What were the directions of the Delhi High Court? How did the Supreme Court deal with this, we look at it back to the proceedings before the Delhi High Court ...



The petition filed before the Delhi High Court presented certain ground realities as they stood in the year of its filing:

The DIB was responsible for the treatment and disposal of waste water through a network of about 5600 km sewers for which approximately 6000 sewage workers were employed.

These workers were made to work without basic safety equipment such as helmets or gas masks, artificial respirators or portable ladders, contrary to the guidelines by the National Human Rights Commission.

A study revealed that sewage workers suffer high mortality and morbidity due to the inherently hazardous work. A majority of workers suffer from issues like cuts and lacerations to underground pipelines, irritation of eyes, skin rashes, and nose that are hampered against ventilation, and nose are accustomed for sulphur H<sub>2</sub>. About 80% of workers are underground as the Delhi Metro has 1000 parameters across all age groups. 75% have haemoglobin deficiencies and more than 50% workers' pulmonary function remains very abnormal.

Additionally, about the cause of Covid-19, some deaths of six sewage workers are no different cases in this. What did the Delhi High Court do?

**THE DELHI HIGH COURT INTERVENES**

After a long hearing, the Delhi High Court passed orders to holistically address the plight of sewage workers. It directed the authorities to take action on the following fronts:

- MEDICAL:** All workers found to be suffering from occupational diseases, ailments or accidents to be given free medical treatment and examinations; services of the workers during this period not to be terminated.
  - COMPENSATION:** The relevant authorities (DIB, Delhi Development Authority - DDA etc) to pay compensation to those who suffer occupational ailments in accordance with the provisions of the Workmen's Compensation Act, 1923. Immediate compensation of INR 1 lakh to be given in case of death of workers, including contract workers. Amounts to be recoverable from the contractors.
  - STATUTORY DUES AND BENEFITS:** All benefits of provident fund, gratuity and bonus be extended to sewage workers, including contract workers, as applicable in law.
  - PROTECTIVE GEAR:** Modern protective equipment in consultation with NCDISAW to be provided.
  - HYGIENE:** Soap and oil to be provided to all workers every month. Restrooms and canteens to have first aid, safe drinking water and creches.
  - CENTRAL PUBLIC WORKS DEPARTMENT/PUBLIC WORKS DEPARTMENT (DELHI) / DIB CONTRACTORS' LABOUR REGULATIONS:** All concerned authorities to comply with relevant provisions of labour regulations.
  - PHASING OUT CURRENT MECHANISMS:** A plan to phase out manual work and replace it with mechanised sewer cleaning to be prepared within three months.
- A committee comprising an IAS officer, and officials from the New Delhi Municipal Corporation, DDA, DIB and the Social Welfare Department of the Delhi Government was constituted to oversee the implementation of these directions.

**VALUING THE LOSS OF LIFE**

The court asked the CEOs of the authorities - the DDA, the DIB and the Delhi State Industrial and Infrastructure Development Corporation to file affidavits that all number of workers are:

- Provided with protective gear
- Provided with protective fund
- Given employment cards
- Put through medical examination

compensation for their deaths was made up to the same as for six deaths across the capital and directed that compensation amounts be deposited by the relevant authorities.

**SETTING THE RECORD STRAIGHT**

In the appeal filed before the Supreme Court reminded the DIB of the State's constitutional responsibilities:

- Article 36 requires the State to secure a social order for the promotion of welfare of its people, including specially vulnerable sections, and to minimize inequalities in income, status, facilities and opportunities.
- Article 320A reads that the State shall develop policies to secure the health of citizens as far as practicable, and to ensure that citizens are not forced by work unrelated to their age or strength.
- Article 42 expects the State to provide for securing just and humane work conditions and for maternity relief.
- It held that the directions of the Delhi High Court were in conformity with the court's well-justified to do justice to the (disadvantaged and poor sections of the society).

**A TIME FOR REFLECTION: THE COURT'S ROLE AND OURS**

"Given the options, we are not likely to enter the mundanity of a safety system for long time periods, but there are people in the world who are not so lucky. They are not so lucky as to be able to make a new sewer and find their family. They are not so lucky as to be the recipient of others' (dis)regard for the last few decades - a substantial amount of the state's wealth has been necessary in the light of the past and the mistakes including those who, on account of their own negligence and/or indifference, were not able to understand why a person is made to work in a manner without safety gear and proper equipment. They had the safety gear in the hands of a worker who died as the machine is taken out with the help of ropes and ropes. In this scenario, the courts are not only provided that one needs a constitutional obligation to take the responsibility of the same relating to the lives of the people who are made to undertake jobs which are hazardous and dangerous to life."

**THE SUPREME COURT**

The Supreme Court did not end with these words. It went ahead and noted that the circumstances supplied by the High Court was inadequate. Invoking Article 142 of the Constitution of India - which empowers the Supreme Court to pass any order to do complete justice - the court directed the DIB to pay an enhanced compensation to the families of the deceased workers. It also gave the DIB two months to comply with the High Court directions.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 to regulate, protect and fulfill the right to their rights, dignity as per Article 21 (Right to Life) and provisions of social and economic interests of Scheduled Castes and Scheduled Tribes as per Article 30 of the Constitution of India.