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Of Legal Mobilisation and Active Citizenship: Examining NGO Litigation in India to Eradicate Manual Scavenging

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Abstract

For decades, manual scavengers – people cleaning and engaging with human faeces as part of the sanitation chain, most of whom are Dalits – in India have been protesting against the severe health risks and exploitation associated with their work. Despite the enactment of stricter laws and high-profile court cases and wins, manual scavenging persists rampantly. Yet, non-governmental organisations (NGOs) continue to seek the involvement of courts in order to eradicate manual scavenging, and some scholars claim Dalit NGOs over-rely on litigation. In this thesis, I ask: First, what factors do NGOs in India mention as important in their considerations of when to involve courts in their efforts to eradicate manual scavenging? Second, what purpose do these NGOs explicitly ascribe to litigation in these efforts? I answer these questions through software-assisted qualitative analysis of data from interviews with and documents of a total of 23 NGOs. I draw on the lenses of legal mobilisation and active citizenship to construct a comprehensive grounded theory. Overall, I find that NGOs aim to shift responsibility towards the government, remind it of its duty to serve its citizens, and renegotiate government strategy especially in the context of neoliberal governance, which is marked by state absence and neglect towards manual scavengers. Given the difficulties especially Dalit-led NGOs face in influencing the policy process, I contend litigation emerges as the main venue through which they believe they can make any advances. As existing literature suggests, legal mobilisation occurs when it is considered the most promising venue, and NGOs for instance mention their own caste status and budget, the risk of litigation causing further harms for manual scavengers, the likelihood of a *mandamus* remedy, and other factors as relevant when choosing litigation. My research also provides the first dataset on manual scavenging-related litigation in India, and goes beyond existing literature in focusing not only on public interest litigation. My thesis contributes to a detailed understanding of the importance of access to courts for marginalised groups, and paves the way for future research on whether litigation on manual scavenging ‘works’.

Keywords: active citizenship, Dalit rights, legal mobilisation, litigation, manual scavenging, neoliberal governance, public interest litigation, sanitation

Dedication

I dedicate this thesis to the non-governmental organisations and civil society actors working tirelessly to eradicate manual scavenging and fight caste discrimination in the face of extreme backlash, and to those judges who are still committed to judicial independence and justice.

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I express my deepest gratitude to Kaninik Baradi for first making me aware of manual scavenging, putting aside hours to explain local governance to me, and allowing me to attend all of UMC's webinars on sanitation governance. I thank Asang Wankhede for his mentorship, extensive and encouraging feedback on my thoughts and for bouncing ideas, and Hemal Thakker for pointing me to helpful sources and listening to endless voice notes, and Sagar S.K. for helping me explore new angles and access information. I thank several anonymous members of the Ghadar network of Indian diaspora and of the Sanitation Workers Forum for making introductions with partners in India working on manual scavenging, without whom I would have never entered into conversation with people on the ground, and the NGO representatives, both those explicitly named and those who preferred to remain anonymous. I thank my parents: My father for his academic and analytical thinking, and my mother for her dedicated and eager support. I thank Dr Ritumbra Manuvie for her honest feedback, and finally I extend my deepest gratitude to my supervisor Dr Ole Hammerslev and faculty in the Sociology of Law Department of Lund University for their clear and concise words of feedback, and their support in making this thesis matter for the wider discipline, rather than just the case at hand.

Epigraph

Here Is My Offer

Asang Wankhede, 2017

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Here is my offer
Manu made me unclean.
Your prejudiced mind makes me
reek of caste names and exclusion
I glow with the fragrance of sores,
I stink of oppression and not your shit.

To please your lord, you offered me
soap and shampoo today.
Have you ever used them to clean
those foul smelling tongues,
which talk of raping minorities and
violence?
Or used them to clean those brains,
that preach *Manuvād* and
varnashramadharmā?

With your offer,
you have abused my dignity.
With my offer,
I am abusing your conceit.

Appropriators of my Babasaheb
act as my ephemeral cleansers.
Soap exacerbates my wounds
of caste oppression and exclusion,
I don't want your sympathy,
I want your detestation.
I play the song of assertion
in the cries of protests;
It gives me dignity and freedom,
a freedom to fight for.

For two meals
I carry your faeces!
If I don't, I will sleep
hungry in this Republic.
Soap and shampoo only feed your
ignorance,
not my stomach.

Your lord is here to capture the nation's
spotlight
We are bleached, to look presentable;
We are told to cheer like minions,
What will tremble when my insides break
their silence?

Oh Lord, come see my home!
It is cleaner than your *bhagwa* drape.
But talk only when your consciousness is
clean;
Smile only when you burn the Manu
dancing in your heart.
For my silence is about to break,
It is dawn already.

Before you turn your back
here is my offer.
I offer you my soaps, Ambedkar and
Buddha.
Go clean your mental slavery,
Go annihilate caste and the Manu infused
in your reason,
bleach your *bhagwa* to white.
There cannot be two Suns on this side, and
We have our own, to incinerate yours.

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List of Definitions

Casteism	The practice of discriminating against people based on their caste based on an ideology that empowers one group to dominate another
Contracting/Out-sourcing/ Subcontracting	As interviewees did not distinguish between the terms, I interchangeably use these to refer to a government body hiring a private actor to handle the jurisdiction's sanitation.
Dalit	A self-ascribed, emancipatory name to refer to those designated 'untouchable' by the caste system.
Litigation	The act or process of addressing a civil dispute, disagreement, or issue in an official state court.
Mandamus	The practice of a Court issuing interim orders to oversee the fulfilment of a right.
Manual scavenger	A sanitation worker responsible for engaging directly with faecal matter without adequate protective equipment at any step of the sanitation chain, including daily labourers without a contract or fixed remuneration. A contested definition, the term is also used to refer to all sanitation workers who engage with faecal matter, regardless of protective equipment, in order to highlight that the work is inherently dangerous and exploitative. The Manual Scavenging Act 2013 considers a manual scavenger only someone who can provide evidence of work as such. I predominantly use the formulation "person doing manual scavenging tasks" for clarity in this thesis.
Non-governmental organisation	An entity not formed by the government that pursues a goal in an organised way, including community organizations, civil society organizations, trade unions, non-profits, etc.
Public Interest Litigation	A litigation filed by a third party not directly aggrieved, seeking the enforcement of a right and the protection of the public interest.

Right to Information A right for Indian citizens to file requests with public authorities for non-national-security-sensitive information they otherwise cannot access.

Sanitation worker A worker responsible for cleaning, maintaining, operating, or emptying technology at any step of the sanitation chain, such as sewers, septic tanks, dry latrines, and faecal sludge treatment plants.

Format Disclaimer

I use single quotation marks when I use a term that is colloquial, that I invoke cautiously, or to introduce a concept, while double quotation marks introduce an actual quote.

Chapter 1

Introduction

Depending on the state of development of a locality, human faecal waste may need to be handled in different forms: While some rural households may require someone to continuously collect fresh faeces from an open defecation spot or insanitary latrine, others may have pit latrines that need emptying every few months, urban households may have a septic tank that requires cleaning only every few years, and community toilets might need additional cleaning after a particularly dirty and carefree user (Urban Management Consulting Pvt. Ltd., 2015). In any case, people are engaged all along the sanitation chain, to perform tasks that, if not done, could bring about a public health crisis. As such an essential task, it may come as surprising that workers have historically – in India, as well as other countries – received little to no training, equipment, or respect. In fact, to date, workers in India are exposed to severe health risks as they manually and without the necessary gear perform tasks along the sanitation chain. Over the decades, this has led to the development of the term “manual scavenging”, and a wider campaign around sanitation workers’ rights, led by several non-governmental organisations (NGOs), that uses diverse tactics, ranging from civil disobedience, to education, to litigation, to liberate themselves from the hazardous and exploitative labour (Singh, 2020).

Despite apparent successes – such as manual scavenging being repeatedly outlawed, most recently with the *Prohibition of Employment of Manual Scavengers and their Rehabilitation Act 2013*, and several high-profile cases at High Courts and Supreme Courts ordering local governments to take very explicit steps to eradicate manual scavenging – it persists rampantly. Yet, a puzzle arises in that NGOs continue to seek the involvement of courts in order to eradicate manual scavenging. While this has led to several authors criticising that the movement against manual scavenging is hindered by over-reliance on litigation (Mandal, 2008; Narula, 2008), literature from other contexts suggests that the choice to litigate is practically and pragmatically motivated (Gloppen, 2018; Brierley, 2019).

Given a lack of knowledge as to the exact purpose of litigation and the reasons actors choose courts as venues, this thesis examines the considerations by NGOs leading up to the decision to litigate to counter manual scavenging.

Research Questions

In this thesis, I approach an answer to two interwoven research questions:

1. First, what factors do NGOs in India mention as important in their considerations of when to involve courts in their efforts to eradicate manual scavenging?
2. Second, what purpose do these NGOs explicitly ascribe to litigation in these efforts?

I do so through a multi-method, software-assisted qualitative research drawing on documents and interview data.

Structure of Thesis

In Chapter 2, I first define manual scavenging in relation to caste, and discuss existing legislation to eradicate manual scavenging. In Chapter 3, I give a brief overview of NGO leadership in litigation on manual scavenging, and review literature that has been critical of this NGO leadership. I then review literature that examines why groups have approached courts in other contexts, and ultimately pinpoint the gap in literature I intend to fill in the rest of the thesis. In Chapter 4, I introduce legal mobilisation and active citizenship, the theoretical lenses through which I approach the research problem, and in Chapter 5 operationalise the theory by constructing my research questions and justifying the methodological and ethical choices made in this exploratory, qualitative research project. In Chapter 6, I explore what factors NGOs in India mention as important in their considerations of when to involve courts in their efforts to eradicate manual scavenging, and thereby answer my first research question. In Chapter 7, I construct a grounded theory on the purpose NGOs ascribe to litigation in their efforts to eradicate manual scavenging, and answer my second research question. Finally, in Chapter 8, I discuss and consolidate the insights from above chapters through the lenses of legal

mobilisation and active citizenship, and conclude and give recommendations for further research in Chapter 9.

Thesis Statement

I conclude NGOs seek to shift responsibility to the government, remind the state of its duty to serve its citizens, and overall participate politically and influence the government's actions through their involvement. Given the difficulties especially Dalit-led NGOs face in influencing the policy process, I contend litigation emerges as the main venue through which they believe they can make any advances. I argue that NGOs do not blindly involve courts to eradicate manual scavenging, but make considerations regarding, for instance, budget, time, anticipated barriers to achieving results in the light of caste, and balance risks of harms to manual scavengers through litigation. Specific features of courts, such as mandamus and a mediation-oriented approach, were mentioned as uniquely enabling petitioners to exercise active citizenship and force government officials to at least consider manual scavengers' interests.

Chapter 2

Setting the Scene – Manual Scavenging in Contemporary India

Introduction

Before delving deeper into literature and presenting my own research on how NGOs have sought to eradicate manual scavenging and what role courts play in this, I use this chapter to set the foundational building blocks to understand manual scavenging itself. I first discuss key terms and define manual scavenging in relation to caste, then lay out the unique form manual scavenging has taken in contemporary neoliberal India, and finally discuss existing legislation that is meant to bring about dedicated action to help manual scavengers.

Manual Scavenging Defined

Within the larger debate about manual scavenging, the distinction between “sanitation work” and “manual scavenging” has emerged as a contentious point. In general, sanitation work as per the WHO, ILO and other international actors refers broadly to cleaning, maintaining, operating, or emptying technology at any step of the sanitation chain, such as sewers, septic tanks, dry latrines, and faecal sludge treatment plants (World Bank *et al.*, 2019). It is sometimes used to include sweepers, dry waste and garbage workers as well. By contrast, as per official governmental discourse, as reflected in India’s 2013 *Prohibition of Employment of Manual Scavengers and their Rehabilitation Act*, “manual scavenging” refers to the more narrower tasks of “cleaning, carrying, disposing of, or otherwise handling” of “human excreta in an insanitary latrine or in an open drain or pit ... before the excreta fully decomposes”, without proper devices and safety gear (Ministry of Law and Justice, 2013, para. 2(1)(g)). The government also recognises the cleaning of

sewers and septic tanks without safety equipment as hazardous (Ministry of Law and Justice, 2013, para. 2(1)(d)), and includes it in the prohibition under the Act, although it being mentioned separately reflects the historical understanding of manual scavenging as simply being related to removing faeces from dry latrines. In fact, empirical research in fact-finding reports shows that government officials still consider manual scavenging to only refer to dry latrines (People’s Union for Civil Liberties - Karnataka, 2019). In practice, manual scavenging of course does not neatly fit the rigid, legal definition presented above, as sweepers as well as waste pickers regularly come in contact with faeces (Dubey, 2018; Walters, 2019). As such, manual scavenging is, *de facto*, any engagement with human faeces, in whatever state, at any stage along the sanitation chain, and I therefore use the formulation of “people doing manual scavenging tasks” throughout this thesis.

Human engagement with faeces is highly adverse to health, especially if a manual scavenger enters a sewer with partially decomposed faeces and accompanying gases. Since the AMRUT scheme of the Indian government has led to the connection of more households to sewer lines, manual scavenging has witnessed a shift away from dry latrines and towards such more hazardous tasks, and has brought with it a stark increase in mortality. *BusinessToday* (2020) reported that 110 manual scavengers had died while doing their work in 2019 – an increase of 61% compared to 2018.

Manual Scavenging and Caste

Manual scavenging is not accurately understood as simply an issue of unprofessionalism or failure to invest in proper equipment. Rather, it has been convincingly conceptualised as deeply grounded in the caste system (Mandal, 2008; Human Rights Watch, 2014; Yengde, 2019; Dubey and Murphy, 2021; Wankhede, 2021). Caste is at its core a division of all Hindus into a hierarchy, allocating to people based on their position at birth a task to perform within society (Yengde, 2019). While it is true that ancestors’ professions can be approximated in almost all cultures based on last name, social origin through caste is “all-pervasive in that it governs all aspects of life, classifying people according to a hierarchy and

prescribing how they should interact” (Shah *et al.*, 2006, p. 14). “Untouchables” are those individuals who are born into a caste that performs “polluting” work, ranging from working with leather and thus dead animals to manual scavenging. Since caste prescribes how individuals should interact, “untouchability is not a trait defining particular people, but a relationship between people” (Shah *et al.*, 2006, p. 81), and untouchables are expected to “perform their subjugated social status for the benefit of upper castes” (Shah *et al.*, 2006, p. 137). As part of the movement against caste discrimination, untouchables have adopted the name “Dalit” to refer to their identity – Dalit meaning ‘oppressed’ or ‘broken’ – in order to challenge social relations permeated by casteism (Shah *et al.*, 2006; Rao, 2009). Given how rooted Indian society is in caste, it has for long now not just stratified Hindus, but also religious minorities in India, creating groups such as “Dalit Muslims” (Bhat, 2019).

Importantly, manual scavenging and its relation to caste has historically undergone a shift, and scholars hypothesise that British colonial rule exacerbated caste-based subjugation. For instance, the social obligation of certain untouchable castes to perform sanitation work became engrained in colonial law, and the municipality, which was staffed by local Indian officers, could prosecute a worker who “neglected his statutory duties” (Mandal, 2008, p. 92). Similarly, urbanisation has led to a decline in dominant-caste households claiming they are doing “favours” to Dalits by allowing them to clean their toilets (National Campaign for Dignity and Eradication of Manual Scavenging, 2011). The progression of modernity has continued to alter the nature of caste and caste-related sanctions, and the anonymity of the city has allowed some Dalits to exercise a freer choice of profession. As such, “the majority of the people within those particular communities are not scavengers”, but “daily-wage labourers and those who get monthly salaries by working in factories” (Ravichandran, 2011).

However, according to a 2021 survey by the Union Social Justice and Empowerment Ministry, 97.25% of those who do work as manual scavengers still are Dalits – and the remaining are lower caste or tribal – even though Dalits make up only 16% of the Indian population (Mahatme, 2021). Birth thus remains a clear determinant and trap. As government figures, particularly on manual scavenging,

are often unreliable, suffice it to say here that this estimate is corroborated by non-governmental actors, such as the National Law School of India, Bangalore, which in 2020 found that 92.33% of surveyed manual scavengers were Dalits (KJ, 2020, p. 4).

Manual Scavenging and Caste under Neoliberal Capitalism

As introduced above, the practice of manual scavenging has undergone several shifts, with those under neoliberal capitalism and urbanisation requiring closer scrutiny in the context of this thesis. While the cleaning of railway tracks is explicitly the responsibility of the Indian Railway, all other tasks along the sanitation chain fall under the jurisdiction of local governments (Urban Management Consulting Pvt. Ltd., 2015). As such, local governments are a major employer of sanitation workers, and with it manual scavengers – however, in recent years, there has been a trend of outsourcing sanitation work to third-party private contractors (Ramaswamy and Srinivasan, 2017; Dubey and Murphy, 2021). Several surveys of people doing manual scavenging tasks have consistently shown that only a minority of workers are formally employed with the local government, although exact figures can, for exactly that reason, not be ascertained. In Mumbai, two thirds of workers surveyed worked completely informally and without labour guarantees, hired on a day-to-day basis by contractors licensed by the government (Pankaj and Pandey, 2018). Elsewhere, as many as 89 percent of workers surveyed were employed on a day-to-day or contractual basis, with contracts rarely specifying more than the wage to be paid out (Harriss-White, 2017, 2020; Dubey and Murphy, 2021). With little regard heeded to whether private contractors respect the prohibition of manual scavenging, authors argue local governments place most importance on efficiently allocating budget to the cheapest bidder (Ramaswamy and Srinivasan, 2017; Dubey and Murphy, 2021; Gupta, 2021). While this legally does not absolve local governments from ensuring manual scavenging does not occur, government officials frequently claim that they are not the direct employer of a worker, and therefore not responsible for what happens to them, including death on the job (Dubey and Murphy, 2021).

As Dubey and Murphy (2021) and Ghosh (2019) convincingly argue, the outsourcing system is one of the most notable manifestations of how neoliberal capitalism has fused with caste. The harms of neoliberalism have not been central to critiques of manual scavenging, although authors such as Dubey and Murphy (2021), Koonan (2021) and Gupta (2021) have begun incorporating it convincingly into their bottom-up studies of manual scavenging. More broadly, authors such as D’Souza (2016), Mosse (2018), Berg (2019), and Yengde (2019) have shown how the advent of neoliberal policymaking in the 1990s, with its emphasis on privatisation and individual responsibility, has increased the vulnerability of Dalits. Their role as serving dominant-castes has only been reinforced, and they have thus become even more trapped in hazardous occupations. The Swachh Bharat Mission, for instance, is a high-profile flagship scheme meant to end open defecation, construct sanitary toilets and present India as ‘developed’ – and, as Ghosh (2019) highlights, “implicitly rel[ies] on this form of labour [manual scavenging], without concern for the lives, safety and working conditions of such workers” (p. 192). As such, caste-discrimination in contemporary urban India takes different forms than it did just a few decades ago, but very much exists in, for instance, the Swachh Bharat scheme itself, people doing manual scavenging tasks being denied promotions or regularised work despite years of regular service, Dalits being denied any government employment other than sanitation work, statistics on Dalit deaths not being collected or made public, or funds earmarked for sanitation workers being used for other staff (Narula, 2008; D’Souza, 2016).

The Prohibition of Manual Scavenging in Law

Although several Acts had criminalised hiring individuals to do manual scavenging before, the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act*, 1993 was the first to explicitly draw up a more comprehensive plan. The Act, however, interpreted manual scavenging narrowly as only involving dry latrines, and was also not immediately binding upon all states (Wilson and Singh, 2017). In fact, by 2005, still no state had implemented it, and Delhi took no action to adopt the Act until 2010 (Wilson and Singh, 2017). Additionally, authors

have highlighted that the motivation of the central government to eradicate manual scavenging has not stemmed from a deep desire to end the exploitation of manual scavengers and Dalits, but to present a developed and clean India (Doron and Raja, 2015). The 1993 Act, therefore, did not challenge caste discrimination in sanitation labour, but rather furthered it.

Following several petitions in the Supreme Court, accompanied by persistent activism appalled at the non-implementation of the Act, the Central Government passed the *Prohibition of Employment of Manual Scavengers and Their Rehabilitation Act* in 2013. Unlike its predecessor, the 2013 Act expanded the definition of manual scavenging beyond just dry latrines, was immediately binding upon all states, and is claimed to be rooted in a recognition of “a constitutional obligation to correct the historical injustice and indignity suffered by manual scavenging communities by providing alternate livelihoods and other assistance” (Human Rights Watch, 2014, p. 5).

A basic understanding of the Act’s content is crucial for the later analysis parts on the purpose NGOs ascribe to litigation: Apart from permitting criminal action to be taken against local government officials who allow manual scavenging, the Act creates legal entitlements for people working as manual scavengers that local governments must actively provide. The process follows several apparently simple and consecutive steps: First, every local authority must carry out a survey, first, of all existing insanitary latrines in their jurisdiction and order their demolition, and second, of all individuals working as manual scavengers. If a manual scavenger is missed out, they have the right to self-identify as one and be noted down as such. Second, once identified, such individuals are to receive an immediate cash assistance, be allotted a residential plot, receive life insurance, alternative livelihood training and/or a loan in order to choose a profession of their choice, and more. The Act sees a possibility for manual scavengers to continue working as sanitation workers, if they choose to, and specifically enumerates what protective equipment and gear is needed for the work to be ‘safe’. This has led several authors to criticise the Act for *de facto* permitting the continuation of manual scavenging in a whitewashed manner (Wilson and Singh, 2017; Wankhede, 2021).

Regardless of the flaws in the Act, reports from the ground show that it is simply not enforced: There have been barely any arrests, let alone convictions of people who employ manual scavengers. The exact figures are unclear, as the central government's crime statistics do not publish them, but data from the state of Karnataka show that 70 cases were registered between 2013 and 2019, with only one resulting in a conviction (KJ, 2020). Similarly, while the families of manual scavengers who have died during their work since 1993 are entitled to financial compensation, ground reports have shown that they receive none at all, or only a fraction (Ramaswamy and Srinivasan, 2017; Khan, 2018; Kothari *et al.*, 2020).

As shown above, the identification of manual scavengers is the most crucial step in the process. However, as ground reports have pointed out, the definition of who constitutes a manual scavenger is such that in practice, government officials can claim there is not sufficient proof a person is working as a manual scavenger, especially in cases of sewer workers, who as per the 2013 Act are not “manual scavengers” but “hazardous cleaners” (Mander, 2014; People's Union for Civil Liberties - Karnataka, 2019). As such, entire states consistently claim that there are simply no manual scavengers in their jurisdiction – even in official affidavits filed in court, and even when non-governmental organisations, or other departments of the same government, have clearly identified manual scavengers (Permutt, 2011; Kothari *et al.*, 2020). Even in cases in which individuals are featured on the list, government officials have emerged as apparently hostile in providing the cash assistance, loans and livelihood training to which they are entitled (Wilson and Singh, 2017). In fact, in Mumbai in 2021, the Municipal Corporation accused people doing manual scavenging tasks of violating special COVID-related laws when they demanded safety equipment, and police soon arrested them (Shantha, 2022).

Summary

Manual scavenging involves handling human faeces in any form, at any stage of the sanitation chain. Nearly all manual scavengers are Dalits, who have been historically assigned ritually polluting work, and who continue to be exploited and

discriminated against in new forms under contemporary neoliberal capitalism. Manual scavenging has been repeatedly outlawed, and the most recent 2013 Act additionally puts in place clauses meant to help manual scavengers find safe and alternative livelihoods. However, given increasing urbanisation, this work has become extremely lethal especially for sewer workers, and families are denied the compensation payment to which they are entitled following a sewer death. Bearing in mind that most sanitation work is outsourced to contractors, local governments do not fulfil the most basic requirement for the implementation of the 2013 Act, which is the identification of people working as manual scavengers.

Chapter 3

Challenging Manual Scavenging Through Courts?

Introduction

While there is an existing legal framework criminalising the employment of manual scavengers, and prescribing loans and opportunities for alternative livelihoods, the reality of caste along with neoliberalism and outsourcing have meant that there has been little tangible change, at least according to current scholarly consensus (Gupta, 2016; Dubey and Murphy, 2021; Koonan, 2021; Wankhede, 2021). As Koonan (2021, p. 162) writes, “right-holders often need to take proactive steps to get the laws implemented”, and social activist Harsh Mander (2014, p. 25) laments that the state must be “pressed and pushed by community organisations.” According to Eckert (2006, p. 48), NGOs have moved to the centre of the “constellation of actors who are now at the centre of adjudication” in urban India. However, while community organisations and registered NGOs have consistently “pressed and pushed” the government, and while this may have resulted in short-term wins, such pressure does not appear to have made much difference in the long-term.

In this chapter, I give a brief overview of the history of NGO leadership in litigation on manual scavenging, identify the types of cases they have filed, introduce the concept of Public Interest Litigation (PIL), and show that the government has ignored court orders. I then review literature that has been critical of this NGO leadership for allegedly failing to consider any path other than litigation, give reason to question this claim, and review literature that examines why groups have approached courts in other contexts. I show that it is not clear why litigation remains a key method within the struggle against manual scavenging, understanding which is an essential first step to moving on to evaluating and critiquing strategies. This is the gap that I carve out in this chapter, and intend to fill in the rest of the thesis. This chapter, by combining literature review with

primary data and further background information, serves the purpose of showing that existing literature has no concrete answer to the research puzzle, but also of introducing concepts that will form the theoretical lenses for this thesis.

Litigation on Manual Scavenging

Landmark cases

NGOs started putting pressure on the government regarding manual scavenging through litigation in approximately 1995, when the NGO *Navsarjan* successfully petitioned on behalf of a group of manual scavengers in the Gujarat High Court (Shah *et al.*, 2006). In 1998, advocates from the *Human Rights Law Network* started filing several petitions against municipal agencies (Mander, 2014). In 2003, *Safai Karmachari Andolan*, an NGO founded by Bezwada Wilson, himself from the manual scavenging caste, brought forward a Public Interest Litigation in the Supreme Court seeking the enforcement of the 1993 Act that is now considered a landmark case. The Supreme Court maintained the case for over a decade, and, as Wankhede (2021) argues, it was valuable because of its interim orders. In an interim order of 2005, for instance, the Supreme Court directed the central and all state governments to provide affidavits with details of all manual scavengers, and thereby compelled them to invest resources into identifying manual scavengers, leading to the first instance of data being made public (Wankhede, 2021). However, in another interim order of 2007, the Supreme Court gave all states two months to implement the 1993 Act and demolish dry latrines (Wankhede, 2021), which evidently did not succeed. Finally, the Supreme Court oversaw the preparation and ultimately passing of the new, 2013 Act, and in 2014 finally deemed that it had monitored the issue for long enough, and directed the High Courts to monitor enforcement instead (Wankhede, 2021) – as explained above, however, the 2013 Act resulted in little tangible change beyond the theoretical possibility for such.

While some petitions are filed by single NGOs, one considered a landmark case was brought about by thirty organisations from thirteen states that came together under the umbrella of the ‘National Campaign for Dignity and Rights of Sewerage

and Allied Workers'. After they won a case in 2009 against Delhi's municipal sanitation agencies on behalf of workers (Mander, 2014), the Delhi Jal Board appealed, and the case came to the Supreme Court. In 2011, and therefore while the *Safai Karmachari Andolan* petition was still ongoing before another bench, the Supreme Court concluded that the government agency was making excuses, and reaffirmed that compensation must be given in the case of sewer deaths alongside prevention to stop deaths from occurring at all (*Delhi Jal Board vs National Campaign Etc. & Ors*, 2011). Regardless, manual scavengers continue to die in Delhi's sewers, and cases continue to be filed regarding non-payment of compensation in Delhi. In the same year, 2011, the Delhi High Court directed the Indian Railways to rehabilitate manual scavengers paid to clean the train tracks, and technologically upgrade 172,000 toilets in trains, but there is no evidence that this ever occurred (Wilson and Singh, 2017, p. 313).

Litigation since 2013

While literature has discussed high profile litigation on non-enforcement and compensation, no data is currently available on the full spectrum of litigation on manual scavenging. In order to establish whether NGOs are at the forefront of all litigation or just of high-profile cases, and in order to inform the research design of the thesis, this section aims to create a solid foundation for further examination of manual scavenging litigation.

The government of India does not maintain data on cases filed under the Manual Scavenging Act – and has excluded even figures on arrests made under the Act in its annual crime report – let alone on cases filed *related* to manual scavenging.¹ I therefore manually identified as many cases as possible by going through two legal portals, *Indiankanoon.org* and *Casemine.com*, which only list already concluded cases, and noting down the cases NGOs themselves mentioned they had filed.² I

¹ Responding to my interest in knowing how many cases are filed at all, an acquaintance agreed to submit requests under the Right to Information Act with the National Crime Record Bureau, but it responded that while it maintains this information for other issues, it does not do so for manual scavenging (Appendix A) – ironically underscoring that manual scavenging is invisibilised.

² I used the search terms “safai karmachari/karamchari” (a cleaning worker more broadly), “sanitation worker” and “manual scavenging”, excluding judgments that were pronounced before

make no claim to completeness of the following data, but can say for certain that there have been *at least* 80 relevant cases at High Court and Supreme Court level across all of India concluded since 2013 (Appendix B).

As Figure 1 suggests, NGOs or their directors were the petitioner in cases adjudicated almost every year. In most cases, the workers themselves, or relatives of a deceased worker are noted as the petitioner, but importantly, these judgments were exact copies of each other and handled by the same lawyer, suggesting that they were part of a coordinated effort with a civil society organisation or NGO supporting it.

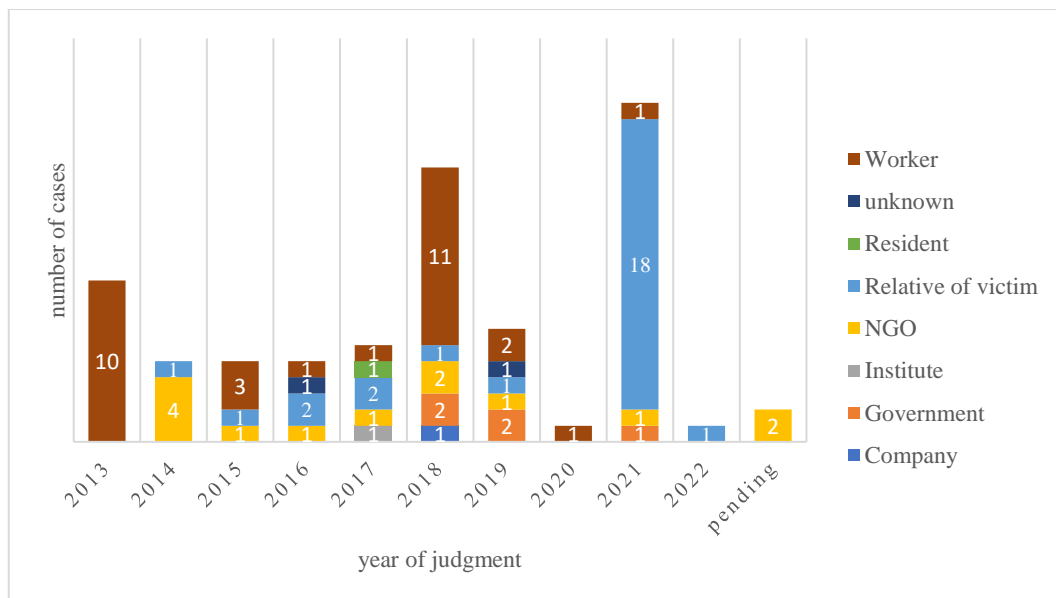


FIGURE 1. Nature of the registered petitioner in 80 identified cases across India on manual scavenging and sanitation work, by year in which the judgment was pronounced (see Appendix B).

The inclusion criteria mean that cases such as the *Safai Karmachari Andolan* case, filed in 2003 but concluded in 2014, are included. Looking at cases filed since 2013, the year of the passing of the newest Act, rather than at the year of judgment, shows that at least ten cases were filed by NGOs directly:

2013, cases which are clearly concerned with dry waste/garbage workers and sweepers, and bail applications of people arrested under the 2013 Act.

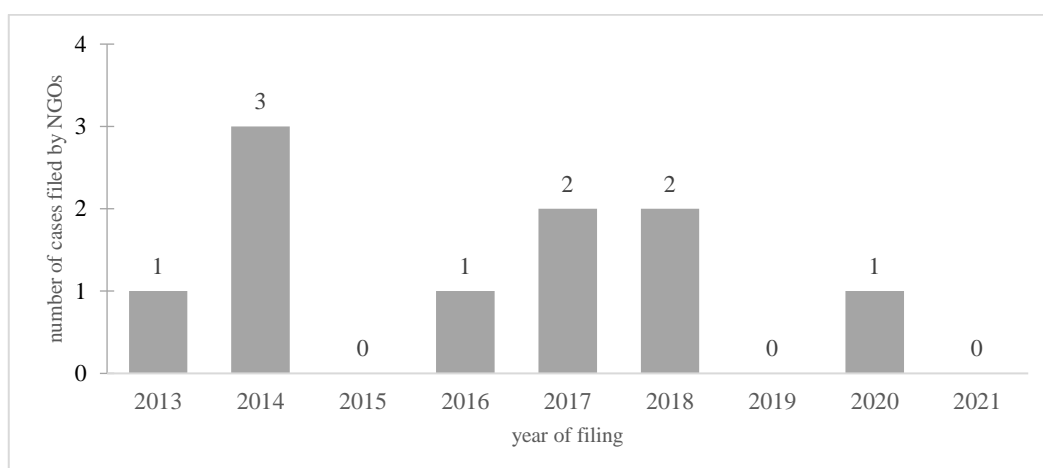


FIGURE 2. Amount of identified cases filed by non-governmental organisations on manual scavenging and sanitation work since 2013 (see Appendix B).

As Table 1 below shows, among the 80 total cases identified, some cases directly sought regularisation or the payment of loans, while others simply asked for a response to be given to or preference to be given in an application. Cases filed by NGOs primarily sought the release of information, and of funds to implement the 2013 Act. Given their temporal proximity and the same wording, the majority of cases seeking payment of loans, or seeking regularisation appear to have been part of a coordinated action, rather than individual actions.

TABLE 1. Overview of broad distribution of issues in 80 identified cases on manual scavenging and sanitation work (see Appendix B).

Issue	Amount
seeks response to application for regularisation through compassionate appointment	18
seeks payment of loan for rehabilitation	12
challenges order to do sanitation work as part of his job	9
seeks enforcement of relevant law in general	8
seeks registration of case/ charges against responsible persons	6
seeks payment of full compensation	6
seeks regularisation of daily wage/contractual employment	4
brings to attention sanitation system violative of MS Act	4
seeks release of information regarding recruitment of sanitation workers under RTI	3
challenges denial of formal employment as sanitation worker	2
seeks payment of compensation and appointment on compassionate grounds	1
orders resident who hired deceased manual scavenger to pay compensation	1
seeks release of funds to end manual scavenging	1
seeks preference in regularisation process for sanitation workers	1

seeks compassionate employment as sanitation worker	1
challenges dismissal from sanitation work	1
seeks payment of interest on delayed compensation	1
unclear	1
Total	80

Public Interest Litigation

Litigation on manual scavenging thus concerns a diversity of issues, and NGOs are sometimes themselves the petitioner, and other times just support in the background. As such, it makes sense that cases have also been filed in different forms, some being civil petitions, others appeals, and others Public Interest Litigations, as the full table in Appendix B shows in detail.

Public Interest Litigation (PIL) is a form of litigation developed by Indian courts in roughly the 1970s (Dhavan, 1994; Sorabjee, 1997; Chitalkar and Gauri, 2019) that makes it possible for a non-aggrieved person to approach a court to enforce fundamental rights. PIL differs from social action litigation in that while the latter simply allows a third party to file a case on behalf of a third group of aggrieved persons, PIL must not necessarily have any aggrieved person identified, and thus sets a low threshold (Sorabjee, 1997; Permutt, 2011). Additionally, PIL in practice is often not adversarial; instead, the Courts in many PILs, including those on manual scavenging, have sought it “necessary to [...] evolve a new procedure” (Sorabjee, 1997, p. 30), and especially the Supreme Court has appointed commissions for fact-finding and prescribed step-by-step schemes and programs (Dhavan, 1994; Sorabjee, 1997; Permutt, 2011). Indeed, many of the most well-known litigations on manual scavenging have been PILs. None of this is to question the basic premise of this research; it remains accurate that even non-adversarial court intervention through PIL have not generated long-term change on manual scavenging (Cossman and Kapur, 1993; Permutt, 2011).

Summary

Initial litigation on manual scavenging started in the 1990s, was entirely NGO-driven, and has led to several landmark cases, such as the *Safai Karmachari*

Andolan case, a PIL that lasted over a decade. Overall, issues of concern in litigations in the past nine years, since the enactment of the 2013 Manual Scavenging Act, have primarily been the provision of specific entitlements for manual scavengers if these were denied, or otherwise seeking action on behalf of the executive that abides by the 2013 Act. Claims directly on behalf of aggrieved persons are much more common than NGOs filing PILs, although this occurs as well.

Literature Review: NGOs and Litigation

Overall, while NGO-led cases on manual scavenging have almost consistently resulted in wins for the petitioners, judgments have resulted in little tangible long-term change, and the executive has consistently ignored court orders. However, rather than dismissing the legal system as ineffective or even questioning its role and power, Dalit writers, caste scholars and manual scavenging NGOs have continued to affirm that holding the government accountable through litigation is key, and also demanded in their writing that existing laws be strengthened and loopholes closed (Chandrasekharan, 1986; Cossman and Kapur, 1993; Narula, 2008; Niruphama, Mandal and Vasudevan, 2008; Hazarika *et al.*, 2009; Permutt, 2011; Ravichandran, 2011; *Social Inclusion of Manual Scavengers*, 2012; Human Rights Watch, 2014; Katiyar, 2014; Mander, 2014; Bhowmick and Purakayastha, 2016; Gupta, 2016; Louis, 2018; Mukhopadhyay, 2020; Shankar and Swaroop, 2020; Wankhede, 2021). Conversely, Narula (2008) and Mandal (2008) have criticised reliance on courts and formal law, arguing that “India’s social transformation project is stunted by its increasing dependency on courts as a source of redress” (Narula, 2008, p. 266). Arguing that the “rule of caste” trumps the “rule of law”, both question whether even sound and loophole-free laws will be of much use (Mandal, 2008; Narula, 2008). Indeed, law is never in practice what it is ‘in the books’, and even without discrimination as blatant as that based on caste, courts often reproduce inequalities as the “haves” tend to “come out ahead” (Galanter, 1974), and an overreliance on courts for social justice can inadvertently lead to overcrowding and clogging of the judicial system (Gloppen, 2008). In absence of

any tangible results of previous laws, disregard for court orders, and continued non-implementation despite strictly worded judgments, it is intriguing why courts appear to remain a central venue for remedies and change.

While I agree with Narula (2008) and Mandal (2008) that state law and courts are seriously limited in their potential to bring social change, especially given the caste context, I am wary of the specific claims especially Narula makes regarding reliance on courts. First, she gives no evidence to support her claim that Dalits “overrely” on courts and law. Statistically, in fact, as Chitalkar and Gauri (2019) find in their study, much more PILs have been filed on commercial and service-related issues than on social justice issues. Out of 177 PILs at the Supreme Court between 2009-2014, only one related to untouchability, and there has been an increase in recent years in individuals who are *not* disadvantaged bringing PILs (Chitalkar and Gauri, 2019, p. 82). Second, Narula’s conclusion that reliance on litigation has rendered “other paths and options for the realisation of human rights virtually obsolete” (Narula, 2008, pp. 337–338) is arguably oblivious to the fact that litigation only emerged out of a social justice movement. NGOs have been recorded to use diverse tactics, including a months-long ‘yatra’ (march, journey) across India (D’Souza, 2016), demolishing dry latrines through civil disobedience, and protesting by smearing human excreta on their face (Ravichandran, 2011). They thereby engage in activities ranging the entire spectrum of strategies Gloppen (2018) notes in her typology, i.e. seeking legislative change, using court-centred strategies leveraging existing law, and societal strategies such as awareness-raising campaigns and demonstrations. Third, Narula (2008) does not inquire into where this alleged over-reliance comes from, and asserts that the legal project will not be sufficient to trump caste – without showing that this is indeed what actors hope using law will accomplish. As Brierley (2019, p. 154) emphasises:

The legal mobilisation tradition has gainfully demonstrated that we cannot evaluate the consequences of litigation unless we first understand why and under what circumstances certain collective actors decide to approach the judiciary in the first place.

NGOs go to court not only for manual scavenging, but marginalised groups have mobilised using the legal system throughout the twenty-first century (Rosenberg, Krishnaswamy and Bail, 2019). As scholars conducting research on disputing have consistently highlighted, people seeing their problems as issues related to rights and law is not a given. As Olesen and Hammerslev (2020) have shown based on a systematic review of 572 studies, whether a problem transforms into a legal case depends on cultural norms and social, psychological and material conditions that frame the problem, as much as on the presence of a ‘mediator’, such as a friend, lawyer, or NGO, highlighting that the problem could also be seen through legal terms. As de Feyter et al. (2017) have shown, NGOs with a human rights lens have a strong presence and are embedded in marginalised communities in India. While this helps explain why Dalits and manual scavengers themselves have come to “couch” their “demands ... in the language of rights, equality and justice” (Pankaj and Pandey, 2018, p. 123), and why the Dalit movement tends to make demands “with specific reference to the constitutional state” (Berg, 2019, p. 8), it does not do much to understand why NGOs find it helpful to construct the problem as justiciable in court in the first place.

Although one author (Singh, 2020) has recently sought to understand strategies used to counter manual scavenging, he appears to only summarise the descriptions NGOs have given themselves. Singh (2020) argues that awareness-raising, both among government officials and among manual scavengers, is an aim underlying all actions of the three NGOs he lists. However, he claims that “publicity spotlight on explicit people [...] help(s) them getting justice as well as instant liberation”, suggesting he has not further interrogated strategies and moved beyond a sanitised and glorified view (Singh, 2020, p. 24). In the following section, I therefore delve into a review of literature on the intentions of actors when approaching courts, in order to establish the literature gap the rest of my thesis seeks to fill.

Seeking answers through other cases: Why do NGOs litigate in general?

In her research, Gloppen (2018) recognises that NGO tactics are diverse, and therefore among other questions is intrigued by “what leads activists towards courts

and law as sites of contestation rather than other forms of mobilisation” (Gloppen, 2018, p. 2). In addition to the material and social resources available, she shows that:

activists’ opportunity structure at the point at which a decision is made regarding whether and how to litigate, consists of the possible courses of action that they perceive as open to them, and the diverse set of factors that influence their assessment of the chances of succeeding with each alternative tactic, or combination of tactics. (Gloppen, 2018, p. 19)

Litigation is therefore chosen when it directly appears the most promising given the facts at hand, and Gloppen (2008, 2018) has consistently emphasised how this makes the choice to litigate context-specific. This echoes authors such as Brown and Halley (2002), who argue that what matters is “whether one gets any more from rights talk than from social welfare or morality or administrability talk” (Brown and Halley, 2002, p. 212). This resonates directly with findings from a study on the localisation of the right to water in urban Indian slums by de Feyter et al. (2017): There, slum dwellers have made compromises for accessing services through a patronage system. Only if this patronage system completely collapses, and “slum dwellers have nothing left to lose by confronting the State” do they even consider litigation, which is then supported by NGOs (de Feyter *et al.*, 2017, p. 181). Their choice in approaching courts so ‘late’ is therefore based on the opportunity structure they benefit from, with political patronage providing a viable non-legal route.

Existing research on litigation in the field of social justice in India shows that the choice to litigate is not just extremely context-dependent, but also that what is considered as a successful litigation differs vastly. In the PIL on the Right to Food in India, for instance, a major aim was to create a larger campaign and movement, and in other cases, the key aim has been to shift public opinion (Brierley, 2019) – here, NGOs considered litigation the most suitable path for specifically this aim. Intriguingly, two authors publishing in the book “A qualified hope: the Indian Supreme Court and progressive social change” have explicitly sought to answer “when and under what circumstances ... these groups choose to include legal petitioning as a part of their ‘repertoire of contention’” (Rao-Cavale, 2019, p. 151),

with Rao-Cavale (2019) focussing on street vendors, and Bhat (2019) on Dalit Muslims. Bhat (2019, p. 206) highlights that there is an extremely limited “maneuvering space for Dalit Muslim organisations to influence political decisions“, wherefore “litigation appears as a stronger strategy for reform”. Additionally, Bhat (2019) shows that Dalit Muslims cite one particular Supreme Court judgement from a case favourable to them as leverage when engaging with government officials and accessing services and entitlements. His conclusion suggests that actors may choose litigation to create concrete leverage for one-on-one encounters with hostile government officials. Rao-Cavale (2019, p. 154) highlights that courts, which can take long to make decisions, are useful in stalling imminent evictions, and also argues that

approaching a court of law acquires significance because it indexes the transformation of street vendors from subjects of local authority to citizens of the national state (with constitutionally guaranteed rights).

While these conclusions regarding litigation on street vending may bear important conclusions for manual scavenging due to its informality, and those on Dalit Muslims due to the caste context, they both concern only one single litigation event. Notably, however, the conclusions made on street vendors find resonance in other contexts: Based on field work in a Mumbai slum, Eckert (2006) argues that slumdweller resist oppression through reference to state legal norms in order to exercise “active citizenship” (2006, p. 68). Given that these slumdweller deal with hostile government officials, and the “state’s patterns of domination are often shaped by extralegal (or illegal) practices” (Eckert, 2006, p. 45), their use of state mechanisms serves to affirm citizenship, just as with the street vendors above. This resembles the patterns of domination present with contemporary manual scavenging, where government officials ignore legal obligations, for instance by denying compensation or continuing to have people do manual scavenging. Notably, in Eckert’s (2006) case, the symbolic importance of expressing this citizenship appeared to even trump practical considerations of what approach would

be most beneficial, as slumdweller she interacted with clearly knew that asserting rights could – and does – get people killed (Eckert, 2006).

If anything, these conclusions show that whatever conclusions are made about courts and manual scavenging must be nuanced. As such, Mandal's (2008) tentative conclusion that NGOs rely on law and courts only because of the symbolic function of law appears too simplistic, which makes sense given that he did not ground it empirically.

Summary

Overall, using courts to counter marginalisation and oppression is relatively common, especially in India, and NGOs have emerged as key players in this field. Given a trend of blatant non-abidance by court orders, however, it is unclear why NGOs remain committed to this strategy, and some scholars have argued that the struggle for Dalit rights and against manual scavenging relies too heavily on courts, impeding any progress. This claim appears to be inaccurate, given evidence of other NGO strategies, and it therefore becomes more intriguing and relevant to investigate when NGOs choose litigation as their strategy for a given issue, and what purpose they ascribe to it. Especially Gloppen's (2018) extensive work on factors that shape activists' decision to litigate have shown that the choice is extremely context-dependent, although usually oriented at finding the best way to achieve a specific purpose. In practice, the purposes underlying litigation on social justice topics in India have been manifold, from building a movement, to shifting public opinion, to delaying evictions of street vendors, to creating leverage material for engaging with hostile street-level government officials. Litigation has had clear symbolic intentions, most notably by showing that marginalised groups, such as slumdweller and street vendors, are citizens with entitlements. In other cases, however, litigation served clearly practical goals, and was chosen because it was simply the most viable path to achieve an otherwise unavailable outcome.

Rather than using these insights as hypotheses to be tested, I underscore the importance of a context-specific understanding of, as Rao-Cavale (2019, p. 151) so beautifully phrased, what considerations NGOs make when they “choose to include

legal petitioning as a part of their ‘repertoire of contention’” to eradicate manual scavenging. In the following chapter, I further examine two concepts from this chapter, legal mobilisation and active citizenship, and position them as the central theoretical lenses in my research, and then proceed to discuss how I operationalise the research methodologically.

Chapter 4

Theoretical Lenses

Introduction

Given that my research stems from a puzzle pre-identified through a careful literature review and an initial analysis of the content and nature of litigation on manual scavenging, I entered the research project with a certain understanding of the phenomenon, and therefore a theoretical lens that fundamentally shapes the questions I ask and the methods I use. Here, I briefly discuss legal mobilisation and active citizenship, two concepts that emerged as central through the literature review and constitute the theoretical lenses through which I approach the research problem, and describe how they inform my research by providing a social constructionist framework.

Legal Mobilisation

The concept of “legal mobilisation” is elusive (McCann, 2008), but generally refers to “when a desire or want is translated into a demand as an assertion of one's right” (Zemans, 1983, p. 700). In recent years, scholars have begun using the concept in a more narrow sense, namely as the “strategic” and “legitimate use of law to underpin political claims” (Handmaker and Matthews, 2019, p. 892). I use the concept in accordance with this narrow definition that emphasises deliberate strategy, and relation to politics, in order for the concept to provide as helpful of a lens as possible. As Handmaker and Matthews (2019) show, law is strategically used to underpin political claims especially in courts, ranging from Supreme to lower courts, which have

become an important site of democratic contestation, where citizens are able to express their dissatisfaction with the executive and significantly influence political outcomes without relying on

election cycles alone. (Handmaker and Matthews, 2019, pp. 900–901)

When they mobilise legally, NGOs, activists and civil society use courts to “surpass the limitations of informal political solutions by using new legal opportunities” (Brierley, 2019, p. 152). Authors such as Gloppen (2018) have shown that the choice to mobilise law – rather than other means – to make advances is inherently dependent on the opportunity structure at hand. This informs my methodological choice to examine considerations actors make when deciding to mobilise legally, which I discuss further in Chapter 5.

Active Citizenship

As litigation is an inherently political tool, and politics concern the representation and negotiation of interests, litigation can directly serve to implement certain partisan favourable outcomes and allow groups to access services. Therefore, litigation is a way of exercising “active citizenship”, as it allows otherwise silenced actors to participate in the democratic process (Eckert, 2006, pp. 46, 68). As active citizenship emerged as central in literature on legal mobilisation in Chapter 3, it also becomes central for the development of this thesis. Active citizenship contrasts the static conceptualisation of citizenship as “a basic relationship between citizens and states, expressed as rights to needs provision” (Sabates-Wheeler *et al.*, 2020, p. 135), and refers to the act of negotiation and claim-making. When people engage in active citizenship, they do so by “view[ing] themselves as actors and shapers, who have not only a right but also a responsibility to participate in the social and political arenas to hold the state and other citizens accountable” (Sabates-Wheeler *et al.*, 2020, p. 135).

What makes courts powerful as a tool for active citizenship is that, by elevating one party to a rights-holder whose views must be held more highly, they allow to disarm the idea that there are simply competing interests clashing (Hunt, 1990; Brown and Halley, 2002). As such, locating a political struggle in court can make policy implementation ‘work better’ for a certain group (Gloppen, 2008). Drawing on Fernandez-Wulff and Yap (2020), for instance, groups use litigation to redefine

what form state intervention takes. Active citizenship emerges as a central lens for the context of manual scavenging, where governance is characterised by state neglect, neoliberal capitalist free-market economics and caste discrimination.

Social Constructionism

As emerges from the above, litigation is not a “legal” struggle, as law holds no truth in itself, and both law and court cases are socially constructed to serve as political tools (Hunt, 1990). Legal mobilisation and active citizenship therefore fall within the wider theoretical lens of social constructionism, which considers all social phenomena to be commonly constructed through conventions as to what words and actions represent in context (Silber, 2013).³ As such, this idea that law is commonly constructed and exists to be intentionally deployed as a tool is well-established within the discipline of sociology of law (Deflem, 2008). As I discuss in the next chapter, this informs my research by narrowing my focus to the processes of social construction of court cases.

³ Social constructionism is not to be confused with *social constructivism*, which refers more to how researchers generate knowledge. I discuss my own epistemological position – what I can know and how I can obtain this knowledge – in further detail in the next chapter.

Chapter 5

Methodology

Introduction

In absence of effective implementation of laws and court orders, there is a lack of knowledge on the phenomenon of actors working to end manual scavenging involving courts in their struggle. I epistemologically acknowledge that absolute knowledge about the phenomenon is unattainable, but contend that I can work towards a best approximation of the subjective experiences of others and their socially constructed reality through a careful methodology (Andrews, 2012; Jackson, 2016). Based on the social constructionist lens discussed above, which sees court cases as socially constructed tools, and best practices of previous research on legal mobilisation such as Gloppen (2018) and McCann (2008), I aim to examine the subjective processes of social construction of litigation. I therefore ask:

1. What considerations do NGOs in India mention as important in their decisions to involve courts in their efforts to eradicate manual scavenging?
2. What purpose do these NGOs explicitly ascribe to litigation in these efforts?

Aim

As an exploratory, in-depth qualitative research project, I aim to construct a grounded theory that aptly illuminates what considerations NGOs make when deciding whether and how to involve courts, with a particular focus on what purpose they themselves explicitly ascribe to litigation. I do not aim to create generalisable knowledge, although conclusions are relevant for other topics, such as Dalit rights more broadly.

Delimitation of Study

Given the marginalisation of manual scavengers, those NGOs working on the topic take on broad responsibilities, ranging from protests to providing education to filing cases. I restrict my study to the involvement of NGOs in civil litigation, while acknowledging that there are other activities worth studying that relate to legal mobilisation, such as efforts towards formalising contracts between sanitation workers and government, and efforts towards legislative change. I acknowledge that a focus on factors that actors mention as important may side-line factors that are important but considered so obvious they are not mentioned, and recognise that this delimits the scope of the discussion. Given the importance of understanding why actors approach courts in the first place, I also do not focus on the outcomes of manual scavenging-related litigation, apart from the outcomes NGOs themselves mention, and apart from non-abidance with the orders raising questions about why approaching courts is seen as useful in the first place. As such, I look only at the tip of the iceberg of the “dispute pyramid”, to contribute to an understanding of disputes turning to courts (Felstiner, Abel and Sarat, 1980).

Data

I conducted a multi-method, qualitative research project, based on document analysis of and interviews with NGOs, and constructed a grounded theory using this data. I discuss each step, including sampling, my interview approach, the grounded theory process, and ethical considerations below. I make the conscious choice to not include a separate discussion of my positionality as a researcher, and prefer to weave this into the discussion of methodology in order to reflect that my positionality shapes my research.

Sampling

Given that the actors shown to be at the centre of litigation on manual scavenging in India have emerged to be NGOs, they are my main unit of analysis. I included those that are Indian, or an Indian branch of an international organisation, and have

had at least one project about improving the conditions of people doing manual scavenging tasks. As such, I did not require the entity to be formally registered as an NGO, or to work on manual scavenging specifically, or to have gone to court. I also included trade unions, community-based organisations, etc. By using the term “NGO”, I mean to show that I have excluded organisations working on behalf of the government, like the *National Commission for Safai Karamcharis*. As grounded theory research typically involves “purposively select[ing] participants and/or data sources that can answer the research question” (Chun Tie, Birks and Francis, 2019, p. 3), and I aimed to understand a breadth of NGO strategies and views, I used broad sampling criteria similar to those in a most-different systems design. Given that NGOs expressed repeatedly that they are working on the same struggle despite taking different approaches⁴, and given my interest in understanding what considerations lead up to the choice *not* to litigate – as much as to the choice to litigate – I also included NGOs who have not litigated (recently or ever).

I identified a total sample of 43 organisations, a majority of them by working backwards from High Court and Supreme Court websites as part of the primary data set presented in Chapter 3, where they were registered as petitioners, and the rest via newspaper articles, grey literature, academic literature, and ultimately snowball sampling. As the current Indian government is hostile towards especially human rights NGOs, it was often crucial for a trusted person to make an introduction and therefore advantageous that I have worked for several years with Indian civil society actors.⁵ After I interviewed one representative of each organisation, I asked them to refer me to a colleague or partner NGO, thereby snowball sampling. I continued contacting organisations until I reached “data saturation” – that is, until no significantly new codes emerged in the initial coding phase of the grounded theory analysis (confer below) – at 9 interviews with 13

⁴ This becomes clearer in subsequent chapters. In short, NGO representatives did criticise each other, but expressed that this complex struggle requires all possible methods to be mobilised. Additionally, some NGOs provided support in the background for others actively pursuing litigation.

⁵ In fact, I am at the time of writing working as a consultant for one of the NGOs included in the sample, Foundation The London Story, although on a different topic.

representatives, and after downloading documents from 21 organisations. I therefore had insights from a total of 23 NGOs (Appendix C).

Use of Documents

After sampling NGOs as discussed above, I analysed relevant parts of their annual reports, court petitions, articles by directors, websites, newsletters, strategy plans, etc. (Appendix D). I define “documents” as accounts that were prepared or scripted solely by the organisation, and therefore also draw on Ted Talks and attended two webinars. I drew on documents in three ways: 1) *Classification*: Using *NVivo*, I classified each NGO by whether its documents showed it had used litigation, whether it self-describes as a human rights NGO, and similar classifiers. 2) *Interview Guide*: The documents served as the basis for the interview guides in order to specifically tailor each interview to each interviewed NGO. 3) *Grounded theory analysis*: Given the COVID-19 pandemic, political pressure on civil society organisations, my own ‘foreignness’, and a lack of mutual connections, I was not able to reach all NGOs I initially sampled, and therefore relied only on the documents they make available online. I therefore ascribed documents the same importance as interview data during the analysis by thoroughly coding documents of NGOs I did not interview.

Interviews

The 9 interviews with a total of 13 representatives took place in January and February 2022, lasted approximately 30 minutes to 1.5 hours. Given the COVID-19 pandemic ongoing at the time of data collection, interviews were conducted in English via Zoom, WhatsApp or Google Meets. Interviews took place with either one representative of an organisation, or several at a time in which case they took turns speaking on what they considered their area of expertise, providing for rich data. I created an interview guide template based on the literature review, the documents and the primary data presented above about the nature and frequency of NGO-led litigation, and tailored this template to each NGO (Appendix E), but did not rigidly follow it. Interviews were semi-structured or unstructured, a choice

made intuitively during the first minutes of the interview depending on the proactiveness and comfort level of the interviewee. My choice of semi- and even unstructured interviews primarily stems from my positionality – as I consider my interviewees to have more expert knowledge than I do – as well as the ethical implications that arise from interviews: Kvale (2006, p. 485) points out that the interview may be a “manipulative dialogue” as the researcher follows a more-or-less hidden agenda, analysing every word and gesture of the interviewed. That I, a privileged researcher from the ‘West’ and outsider to the caste system, did not know in advance whether the representative would be Dalit or a person from an otherwise marginalised community only increased my responsibility to have an interview design that gives room to the interviewees to tell their story. As one interviewee said, and I hope to have done him justice:

99 percent of people from abroad contact upper-caste people, so they hear their version of untouchability, manual scavenging and such. That's why I immediately emailed you back when you contacted me: I have to tell her the version of manual scavenging from the Dalits, our version. (Sagar)

I manually transcribed the interviews, correcting grammatical mistakes for the sake of clarity during analysis, and omitting filler words and repetitions in order to focus on content, not the ways in which a message was delivered.

Grounded theory analysis

Given the context-specificity of the choice and purpose of litigation discussed in the previous chapter, I designed my thesis project as an exploratory qualitative project with a “grounded theory” approach, which generally refers to making sense of data by inductively constructing a tailored theory from iterative consideration of the data itself (Chun Tie, Birks and Francis, 2019). Using the software *NVivo*, I manually coded interviews and documents, the latter especially of those NGOs I did not interview, by assigning data excerpts, quotations, or entire passages one or several labels that summarise the key claim made, underlying assumptions, etc. (Chun Tie, Birks and Francis, 2019). I created the codes as I went along, without having predefined them, thereby following the steps of grounded theory analysis of

Corbin and Strauss (2008). Additionally, after coding each interview, I created a one-paragraph summary of the main arguments. This helped me identify which codes to focus on in the “selective coding” process, which is the selection of codes that are central to my research question (Corbin and Strauss, 2008). Next, I physically mapped out these codes’ relations first via *NVivo*, and then by manually sketching visualisations in *OneNote* into a storyline on considerations NGOs make before litigation, and purpose they ascribe to litigation. Finally, I used the theoretical lens of legal mobilisation, which I discussed above, to flesh out the nuances.

Use of Theory

I used the theoretical lenses of social constructionism, legal mobilisation and active citizenship both to inform my methodology and in order to flesh out my grounded theory, which is compatible with grounded theory analysis (Andrews, 2012): I used theory “abductively”, which means that I did not analyse the data without any previous theoretical lens whatsoever, but also did not impose these lenses. Rather, my aim throughout was to identify which theory is best suitable to explain the facts (Tavory and Timmermans, 2014), as I contend that “the world can only be known in terms of available descriptions”, and seek to make a judgment on which description is “better than others” (Sayer, 2000, p. 47). My choice of theory also crystallised from discussions with Dalit and Ambedkarite researchers, and was overall iterative alongside the grounded theory approach. As Tavory and Timmermans (2014) highlight, abductive use of theory helps overcome the issue of grounded theory conclusions often lacking innovation, as it resembles using theories as “coat hangers” to bring together “particular pieces of data, which otherwise may seem unconnected or irrelevant” (Maxwell, 2005, p. 43), and thereby helps come to nuanced and innovative conclusions.

Additional Ethical Considerations

As a Master’s thesis, this research did not require an ethics approval from the Swedish Ethical Review Authority. It is therefore important that I spell out the

ethical considerations I have made. In addition to those I have woven into my discussion above, I acknowledge that mapping NGO strategies and identifying at least superficially ‘hidden’ intentions behind litigation may inadvertently contribute to the current Indian government’s project of shutting down civil society organisations. Additionally, one interviewee explicitly asked me for my research to make a difference and help them with their advocacy, thereby prompting me to engage with ethical questions regarding the extent of my involvement as a researcher, and the nature of the relationships with NGOs (Israel, 2015). While I clearly communicated I cannot assist NGOs through donations, as this felt like payment in return for information, I felt that my general ethical stance of conducting research in order to ‘do good’, not simply to ‘do no harm’, would otherwise be overshadowed by the one-sidedness of this relationship and by the personal benefits it brought me for my thesis, and thus personal enrichment (Mackenzie, McDowell and Pittaway, 2007). I therefore offered my support in networking and decided to remain committed to eradicating manual scavenging and casteism after submitting my thesis. Additionally, I acknowledge that some of the NGO representatives I spoke with were not themselves from a marginalised background, whether Dalit or not, and that their approaches may not resonate with manual scavengers (confer Yengde, 2019). I therefore restrict my research questions to examining the claims NGOs make, taking their responses seriously while acknowledging that this delimitation is closely linked with an ethical consideration. Finally, I have taken informed consent from all interviewees, and otherwise used data from publicly available sources, such as annual reports and speeches. I ensured informed consent either orally or by email, and offered interviewees anonymisation after the interview, and therefore after they knew what they had said.

Chapter 6

Considerations in the Pre-Litigation Phase

Introduction

This chapter explores what considerations NGOs in India mention as important in their decisions to involve courts in their efforts to eradicate manual scavenging. These are in no way all considerations made prior to litigation, but merely those that featured most prominently. I show that considerations concerned factors such as caste (through for instance external threats by dominant castes and anticipated hostility from government officials when pursuing other means), the existence of concrete victims in need of help and the risk of the litigation further victimising them, and more. These in turn affected whether to involve courts at all, the type of litigation chosen, and the wording of the plea. I then build on the framework by Gloppen (2018), and present a visualisation to contribute to a grounded theory of considerations specific to manual scavenging litigation and answer my first research question.

Exploring Alternatives Through Caste Capital

None of the NGOs expressed a preference for litigation as the go-to method, and consistently mentioned exploring alternative routes before considering involving courts, regardless of differences among their ultimate aims and foci. The response given by authorities, and the treatment the NGO receives while exploring these routes feature as a prominent consideration when considering litigation. For instance, as *Thamate* writes in its 2017 3rd Quarterly Report,

Mr K B Obalesh and Mr. Ramchandra, SKKS member from Bellari met the official of Directorate of Municipal Administration and urged them to modify this rule. But the DMA has refused to modify this rule and therefore, SKKS members have sought an appointment with the Chief Secretary of Government of Karnataka to push for the matter. (Thamate, 2017, p. 16)

showing that they first consider how to achieve change through direct engagement with responsible officers. In conversation, Obalesh of *Thamate* clarified:

As part of my knowledge, on what we are struggling for the last 15 years about this issue, the court cases are not fully helpful actually. It's not ultimate, actually, it is not the ultimate solution.

Similarly, as Ena of *DASAM* explained:

So, what we are trying is to get it done through the representatives, and if still we do not get the status or satisfactory response for the community, then something can be done, then, as a last resort, we have to go to the court.

Her colleague Umesh Babu (*DASAM*) echoed this, clarifying that “if the assembly ensures compliance, then we are not going to take the matter. And we will guarantee then, no need to go to the court.” One interviewee who prefers anonymity expressed faith in her network to achieve results from directly engaging with responsible government officials:

Like, we have a good network, we have good friends, we have good other officials, government or non-governmental people are with us. So definitely even if some problem comes, but I think we can overcome this problem.

Similarly, Ena of *DASAM* contended that they have sufficient social capital to engage directly with politicians and thereby achieve change quickest through this means:

See, in India, the thing is getting your date for a court hearing is quite long, it's not a one-year or a two-year process. You have to keep in mind that it's a long fight then you know, so, getting the legislation passed is a less time-consuming fight as compared to the court fight.

This stands in stark contrast to the experiences of Dalit-led NGOs, who emphasised that they receive little to no productive outcome from engaging with the executive and legislative itself. Contemplating the very first PIL they filed, Martin Macwan of *Navsarjan Trust* explained:

So my colleague [...] led people to the local government office in the village and when he approached it, the chairman of the council,

[...] he shouted on the top of his voice, you know, very derogatory, saying, don't bring those people here. Very derogatory.

The lack of respectful engagement therefore made him turn towards considering litigation. In fact, several NGOs led or staffed by Dalits emphasised that they had consistently hostile encounters with government officials, and while they considered litigation a last resort, did not feel motivated to first explore other means, anticipating that they would be a dead end. NGOs notably acknowledged their different caste capital, whereby NGOs more based in the Dalit community expressed they have little space for making changes without involving courts. Caste-based considerations also featured in other ways, however, as for instance Sagar from the *Centre for Equity Studies* highlighted that caste discrimination also made litigation *less* viable:

The Dalit NGOs rarely have enough money to file a case against the contractor, they have to pay so much.

While Dalit NGOs therefore consider litigation one of the few ways to advance in any way whatsoever, given bad experiences with other means, financial limitations also featured among the considerations leading up to litigation.

Type of Petition

As regards the form of litigation chosen – civil remedy petitions, PIL, etc. – considerations concerned the resources available, threats each would pose to manual scavengers, as well as the existing legal basis. Arvind of *People's Union for Civil Liberties* considered the existence of a solid legal basis a reason to invest in cases helping individuals reap benefits from the legal basis:

I think it began with the PIL strategy. So the PIL strategy, in essence, which was filed in the Karnataka High Court, led to the entire question of the use of for example, the technology we were referring to, the machines, came in with the PIL being filed. [...] And post that, the individual cases about entering the implementation of these, these orders in individual matters, right.

Ena of *DASAM* echoed this, describing that where a solid legal basis exists, filing issue- and victim-specific cases is the way forward:

Right now, what we are trying is that if you go through the Gujarat High Court guidelines, they are very elaborate. They map out all the necessary things. [...] The guidelines are very elaborate and very descriptive, and we are trying to get that only implemented right now.

Practical considerations were mentioned as well, as for example Martin of *Navsarjan Trust* emphasised that preparing a PIL requires extensive preparatory work:

And in the public interest litigation, you have to do all the investigation yourself and build your arguments.

NGOs also expressed that they make considerations regarding harm reduction when exploring litigation, and deciding whether to invest effort into a PIL. Sanjeev of *DASAM* highlighted that NGOs engaging directly with manual scavengers can inadvertently endanger their lives:

If you tell them directly, please come, we will fight for your issue, they immediately will be fired and lose the job also. So lot of time we face this problem. Some contractors and officers know this, and they know us, so four or five people have lost their job.

As such, a PIL – which as discussed above is not filed on behalf of a group of victims, and is therefore different from a class action suit – can bring about improvements for identified manual scavengers without directly endangering them by putting their name on the petition. Sanjeev therefore reiterated repeatedly throughout our conversation that he only moves those issues “that are not harmful” for manual scavengers to court, and preferred to file PILs that do not identify individuals, or to file cases regarding budget allocation and tenders more abstractly.

Wording of Plea

NGOs mentioned several noteworthy considerations that factor into the concrete formulation of a plea, once litigation has been deemed the path forward. As Raman of *WaterAid* summarised:

The action plans should be carved out without, you know, removing this context of reality. So, how much can we expect, what needs to

be expected, and if at all we are going for a litigation, in that litigation, what should be the ask there.

Sanjeev of *DASAM* argued that because of the undeniable reality of caste discrimination among judges, litigation should only concern small issues and make marginal gains:

And because the judge in India, you know, well, that most of the judges are biased. So they have the caste thing in their mind. [...] Because some small issues will need to go to the court, but not a full fledged case.

Ritumbra of *Foundation The London Story*, who filed a PIL on access to hygienic facilities and water for manual scavengers during the COVID pandemic, explained why she had kept her demands to a minimum:

See, one of the key things in this was also that at least, the government cannot deny that this is a problem.

Notably, reservations about demanding ‘too much’ in a petition featured both among NGOs that were extremely distrustful of the government, and among NGOs who have a positive track record of engaging with government officials. Raman of *WaterAid*, for example, called for petitions seeking marginal changes arguing that one must “ask for what is feasible and within the current framework”. Conversely, Sagar of *Centre for Equity Studies* simply expressed no hope in courts responding positively to larger pleas, as “the institutions, the legal, the parliamentarians, social justice, they are all broken.”

To nuance this, both Arvind of the *People’s Union for Civil Liberties* and Martin of *Navsarjan Trust* emphasised that litigation can also make more radical pleas in the presence of serious media attention. As Martin said:

Well, because when we went to the court, the judges were well-trained. So they had read everything that was on the papers already. So it was as if they were just waiting for someone to file a case.

In this case, a win was perceived as certain given the existing media attention, and NGOs therefore considered a favourable outcome for their large demand certain even in the presence of dominant-caste judges swayed by caste discrimination.

Arvind of *People's Union for Civil Liberties* highlighted that a PIL can be particularly powerful if the judges can be trusted to act “in the interest of justice”:

And the court has that kind of power to do anything in the interest of justice, according to the Constitution. Anything in the interest of justice, so they can expansively interpret. Again, because of PIL jurisdiction. Others are limited by what the petitioner is asking, but under the PIL jurisdiction, you're not limited by that. You can creatively think beyond that.

Additionally, NGOs considered litigation within their larger strategy, and considered other objectives they intended to fulfil. Sanjeev of *DASAM*, for example, highlighted that as litigation is final, it would make it virtually impossible to afterwards negotiate further on certain issues:

Usually getting a decision from the court is not very harmful. But sometimes, people say the court is there, why are you here and not there? And sometimes you negotiate with the authorities, and then they say you already went to the court, why are you coming here?

Overall, the formulation of the plea is therefore not only based on the issue underlying the litigation, but also the factors such as trust NGOs have in judges and the potential for caste-based thinking to adversely impact a judgment. Other important considerations include whether there is previous media coverage and public outrage, as they create potential for asking for more than just the mere basics in the plea.

Summary

The considerations discussed above within each broad category are merely notable examples, and are not to be taken as an exhaustive list. Overall, considerations made in the pre-litigation phase therefore broadly fall within two categories: First, different paths forward and whether to involve courts at all, and second, the type of litigation chosen and the wording of the plea. This therefore generally resonates with the opportunity structure and factors actors consider according as visualised by Gloppen (2018, fig. 2a) in her draft paper, reprinted below in Figure 3. Here, Gloppen (2018) creates a very general conceptualisation of considerations, and argues that actors consider their capacity, both financial and social, the

responsiveness of the political system, and the specifics of litigation as a venue in the pre-litigation phase. Even if my interviewees did not mention their financial resources, for instance, and my research is for practical reasons delimited to what NGOs explicitly mentioned, it is highly likely that all of the factors Gloppen includes also impact the opportunity structure of NGOs I engaged with. Notably, NGOs working on manual scavenging also mentioned normative considerations, which Gloppen also includes in her conceptualisation, but I discuss these further below as they require deeper scrutiny.

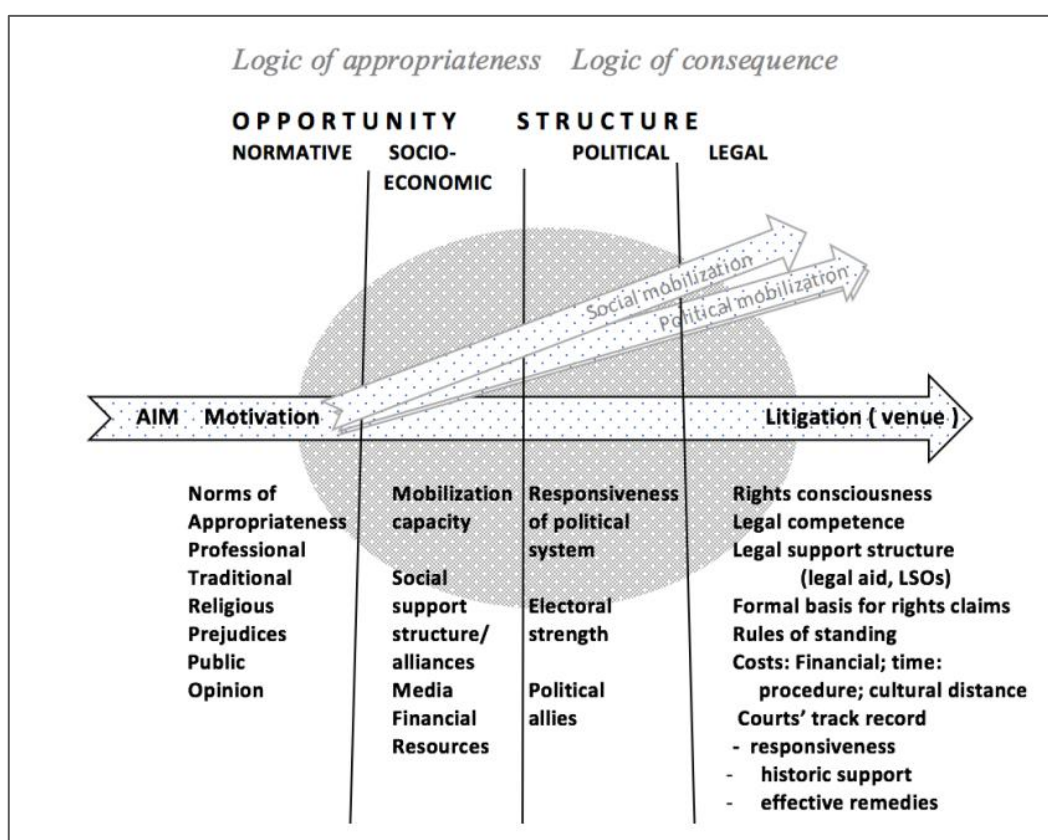


FIGURE 3. Reprinted from Gloppen, S. (2018) 'Conceptualising Lawfare: A Typology & Theoretical Framework'. Bergen, p. 17: "Figure 2a. Activists' choice situation – 'mere' legal mobilisation." Copyright Siri Gloppen.

Given the need for context-specificity for which I argued above in Chapter 3, I seek to create a similar visualisation specific to the NGOs sampled in this research. After all, for instance, Gloppen's conceptualisation sees social, political and legal mobilisation as paths that diverge, whereas NGOs working on manual scavenging appeared to first approach other paths, and then legal mobilisation, in a more

chronological manner. Additionally, my research suggests that the type of litigation pursued, for instance whether to file a PIL or pursue a civil remedy, depends on factors not included in Gloppen's conceptualisation. In Figure 4 below, I therefore visualise notable considerations that NGOs mention as important in their decisions to involve courts in their efforts to eradicate manual scavenging. I broadly divide the considerations into two groups, and distinguish between different means considered and what to aim for in the first place, and, once other means had failed or were expected to fail, considerations regarding the type and wording of a petition. For the sake of novelty, I do not repeat in detail what Gloppen (2018) already laid out. The most notable nuances I add to her listed factors include that NGOs working on manual scavenging mentioned that they considered their own caste position and external threats from dominant castes. Additionally, NGOs strongly considered the balance of harms and risks inherent to litigation, and external factors that would mitigate or exacerbate these risks.

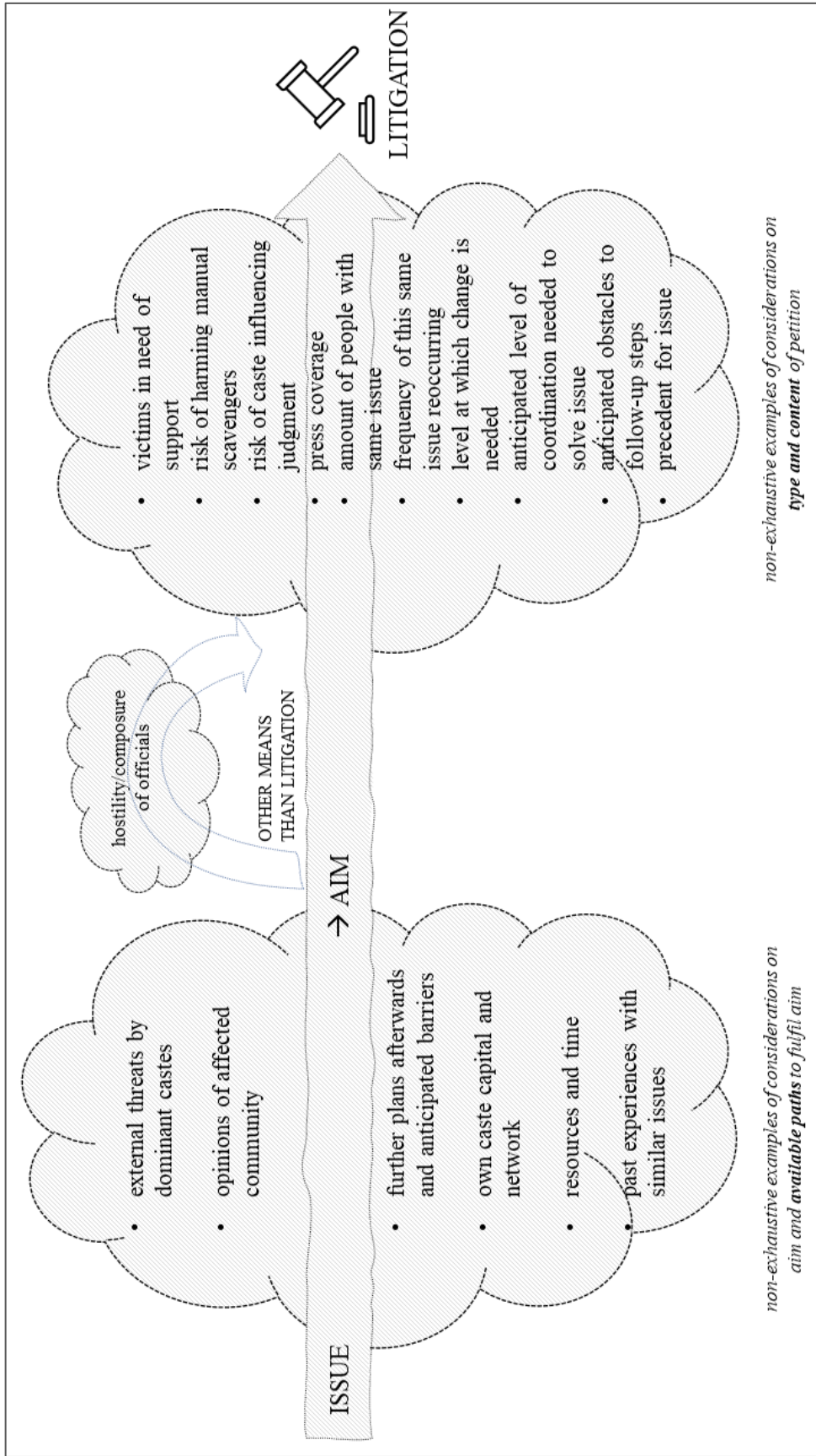


FIGURE 4. NGO's pre-litigation considerations specifically regarding manual scavenging. By author.

Chapter 7

Naming the Purpose of Litigation

Introduction

In this section, I construct a grounded theory on the purpose NGOs ascribed to litigation within their wider struggle to eradicate manual scavenging, and thereby answer my second research question. Importantly, I do not seek to underplay the differences between NGOs. Throughout conversations, NGO representatives criticised other NGOs, with some alleging that others are not fully committed to eradicating manual scavenging and want to enrich themselves by seeming socially ‘woke’, and others criticising an alleged hyper-focus on, or ignorance towards, caste. However, NGOs gave explicit indications that they are all working towards the same broader goal. As discussed in my methodology section, several of the NGOs included have not litigated for several years, or have not resorted to litigation at all. They nonetheless had vocal opinions about courts and litigation, and ascribed it an explicit purpose that I discuss here. I contend there is an overarching narrative that emerged as regards the purpose of litigation, and discuss the nuances and different strands of argument in turn when they become relevant.

Overall, I conclude that the purpose NGOs ascribe to litigation is, at its core, to participate in the political and policy process and advance the interests of manual scavengers, thereby changing the relationship between the government and manual scavengers. Litigation was argued as serving the purpose of reminding the state of its duty to serve Dalits or manual scavengers, who are citizens with entitlements. Through court intervention, NGOs argued they seek to shift responsibility to the government, for instance by countering specific symptoms of neoliberalism. While this indeed underlies all NGO actions, not just litigation, the difficulty discussed above of Dalit NGOs and Dalits in affecting the policy process through other political means suggests litigation emerges as the main venue through which to assert active citizenship and participate politically. I construct this argument in

segments, discussing first more general aims that NGOs can oftentimes only achieve with the involvement of a court, and then the specific features of litigation and the purpose they are seen as being capable of serving.

Incremental Changes

First, it was noticeable across interviews that NGOs did not explicitly mention that the purpose of litigation is to achieve an outcome enforced across space and time. Acknowledging the extremely limited scope for change to improve the lives of manual scavengers, they asserted that the purpose of litigation itself was to resolve or address concrete, imminent issues. Sanjeev of *DASAM* described how

Finally, after a long struggle, the family got 10 lakh rupees. This was a small, well, not a small victory, because we fought for this, and the children would otherwise be on the road.

There was therefore a concrete issue to be addressed, and the purpose of litigation was to prevent the children of a deceased manual scavenger from becoming homeless – which worked, and was considered a victory. In another case, Ena of *DASAM* argued that their current aim is to stop a municipal tender for machines from going public:

And now we are hoping that after deliberation, the 300 machines will at least reach the sanitation worker instead of the people who can afford it and all of those persons who are from the creamy layer. So this was a very big achievement that okay, they thought that we need to postpone this tender otherwise we will get in trouble.

That she calls this a “very big achievement” shows that, again, the purpose is to achieve a very concrete result and resolve a concrete problem.

NGOs did, however, keep the bigger picture in mind, and clearly saw litigation as part of a larger struggle, and as serving to inch towards progress through incremental change. Arvind of the *People’s Union for Civil Liberties* asserted that NGOs addressing smaller issues and making marginal gains was important in order for obligations to “crystallise”:

But I think that’s the way this system works, you push, push, push to finally get rights recognised. How do rights get recognised? Rights

get recognised once you push the state to deliver it, and you push the state. And finally, over a period of time, certain norms crystallise, the norm about compensation crystallises in this way.

Similarly, Obalesh of *Thamate* asserted that NGOs' actions were crucial in order for any progress to happen:

Because, like me, human rights activists who are there like me, who are doing intensive work like I am in Karnataka, there at least 20-30% of implementation has happened.

Ena of *DASAM* echoed this, saying: "Yeah, the government orders a lot of things. But again, as you rightly said that, until and unless it's tapped out by NGOs, it's hardly taken care of." No NGO representative asserted that litigation serves the purpose of bringing major change, as exemplified most blatantly by the commentary of Obalesh from *Thamate*:

See, 2014 we got a Supreme Court judgment from the Safai Karmchari Andolan. What's happened? The major states, UP, Haryana, Jharkhand, if you go and see, nothing has been implemented. Even in Delhi, the SKA [Safai Karmachari Andolan] head office is there in Delhi, but has Delhi government implemented this judgment? Still not implemented.

All NGO representatives acknowledged that final court orders usually remain unimplemented, or that if they are implemented, this does not necessarily permanently impact the performance of the executive in the future. Overall, NGOs therefore did not ascribe great long-term importance to one *specific* instance of litigation, but appeared to consider it a necessity for any progress to happen at all on the larger issue.

The State as Servant

Here, I turn to a closer examination of NGOs wanting to construct the state as a servant, and Dalits as citizens with entitlements. Importantly, this is not an aim underlying litigation specifically, but one underlying all NGO activities. However, as has emerged from the sections above, litigation often emerges as the only viable path for making any advances, however small and incremental they may be.

In a *TedTalk* (Wilson, 2017), Bezwada Wilson of *Safai Karmachari Andolan*, petitioner in the 2003 PIL, exclaims:

The state is a servant for the citizens. [...] Then you must feel very clearly that you are doing your fundamental duty.

That the state is a servant explicitly featured in the argumentation the *Criminal Justice Society of India* gave in its petition initiating a PIL, where they wrote:

It is imperative to note and thus stoutly emphasised thereupon that the Respondents are duty bound towards the safety and security of the Manual Scavengers as embodied under the Fundamental Rights in the Constitution of India. ('Writ Petition (Criminal) in Criminal Justice Society of India v Union of India & Ors in the Supreme Court of India', 2019)

The notion that the state is a servant also reoccurred in responses to my questions on litigation in the interviews. Martin of *Navsarjan Trust*, for instance, exclaimed:

[The state should] get into our lives more. It is the constitutional duty of the state. To make sure that everybody gets justice.

Sanjeev of *DASAM*, while clarifying that he saw litigation as the last resort, explained that he would likely have to file a case in order to achieve the result he intended, i.e. the introduction of a minimum wage. He lamented:

We raised this issue continuously, we wrote to bodies, why are you not giving the minimum wage? You are allotted power!

By emphasising that officials are given power, he stressed that government officials should be serving citizens, and saw litigation as the only likely way to achieve this. A recurring angle to this broader notion of constructing the state as a servant concerned the explicit mention of wanting to use court interventions to shift responsibility to the government, specifically to counteract neoliberal governance, which I discuss in the following.

Shift responsibility to government

The *People's Union for Democratic Rights (PUDR)* in its fact-finding report on sewer deaths in several places mentions that its legal actions seek to shift responsibility to the government. Criticising that "there has been an overall

withdrawal of the state from sanitation especially in the last few years” (People’s Union for Democratic Rights, 2019, p. 21), they demand that “the state should take primary and direct responsibility for sewerage, and waste management systems and ensure that provisions are made for the proper (safe and dignified) working conditions for all sanitation workers” (People’s Union for Democratic Rights, 2019, p. 23). In the same report, PUDR emphasises that they filed a case against the Delhi Jal Board because “the liability was sought to be shifted on to the contractor” by the government in a sewer death case (p. 21), with which they disagreed. Given the shift towards outsourcing municipal sanitation, several NGOs have specifically mentioned that they use litigation in order to counter increasing neoliberalism and retraction of the state. Ashok of *DASAM*, for instance, highlighted that

we are trying to stop this system, that this irregular nature of work should be in the public sector. Not any outsourcing system should exist in this field.

Referring to an existing order by the Delhi High Court that sanitation work should not be outsourced, as it forms part of the regular work of a municipality, Ashok saw litigation as a means to directly counter the outsourcing system. *PUDR* agreed, writing in its report on sewer deaths that:

Contractual employment and public-private partnership models (that cannot be regulated or made accountable) should not be used for essential infrastructure like sanitation. (People’s Union for Democratic Rights, 2019, p. 23)

Other NGOs did not discuss neoliberalism and outsourcing specifically, but nonetheless sought to shift responsibility towards the government. A joint report by *WaterAid* and the *Centre for Equity Studies*, for instance, narrates how NGOs were told to do tasks the government should be doing:

In another field site in Madhya Pradesh, when field researchers asked local authorities about the survey, their response was [Hindi original omitted] (if you need any information, do the survey yourself, we won’t provide any information from our end.) (Mander et al., 2020, p. 21)

The report then expressed frustration at the lack of responsibility on behalf of the government. Admittedly, the state becoming a servant and assuming responsibility

was an aim across NGO actions, and not one restricted to litigation. For instance, as Martin of *Navsarjan Trust* narrated,

We also asked people to donate one rupee for the construction of the Parliament Building Fund. Now, people said, now the government has got 20 thousand crores. What is a one rupee? So that my grandchildren can say that in this building, my grandmother or my father had donated one rupee in a democracy, no matter how powerful you are.

The purpose underlying a campaign to donate to a fund for a new Parliament building therefore resonates directly with that of litigation, namely to construct the state as a servant of its people. However, as discussed in the previous chapter, especially Dalit NGOs are faced with caste-based barriers to achieving this aim through political and social means, and therefore consider litigation the most feasible way to achieve this goal, especially when there are specific lives at risk or people in need of support. It is this dynamic that I explore in the following section, where I contend that NGOs indicate the purpose of much litigation is to have a say in the political and governance processes.

Political Participation

As emerges from above, the larger aim of NGOs working on manual scavenging appears to be to influence the relationship between the state and manual scavengers, or Dalits more generally. As visualised in the previous chapter, many NGOs do not receive satisfying responses from government officials when engaging directly with them, especially given existing caste barriers, and struggle to voice their demands towards the government. As I show in this section, the unique features of Indian courts, in particular their problem-solving attitude, lead to NGOs referring to them as suitable venues to finally have a say in the policy- and political process, however small and short-lived it may be.

In conversation, Sagar from the *Centre for Equity Studies* narrated his experience with trying to get responses from the government. Faced with hostile responses, he considered whether he had any other means to get a response:

The problem is that the government officials are aware of the thing that "he cannot come back every day." It's not possible to come every day. And at last, the person can do only one thing, he can file again the request under the Right to Information Act 2005. But it will take another 3 months!

Given dominant-caste refusal to provide him with information, he was therefore exasperated with an inability to shape the political process, which had been his reason for seeking the information in the first place. Meghna from the *Urban Management Centre*, an NGO that has not itself been involved with litigation but provides trainings to government officials on implementation of the 2013 Manual Scavenging Act, gave a similar narrative in a webinar I attended, asserting:

If sanitation workers want to voice a grievance against a contractor, they have no platform to voice this. They have unions, or so-called unions, but there are no formal channels to voice grievances to the local government. (Urban Management Centre, 2021)

A joint report by *WaterAid* and the *Centre for Equity Studies* had yet another example of how NGOs working to eliminate manual scavenging struggle to influence the political and policy process:

When SKA [Safai Karmachari Andolan] pointed out that no camp was set up in Amanganj, a Jan Sahas activist went to enquire about the same to the local authorities. But he was told that they take orders from the Collector's office, not from Jan Sahas. (Mander et al., 2020)

Notably, this report by two NGOs (who do not usually litigate) referred to the experiences of two other NGOs (who litigate relatively frequently), which reiterates my own argument that differences between NGOs exist, but that they all consider themselves part of the same larger struggle.

Ultimately, in all three quotes above, the actors asserted that involvement of some third party would be needed to participate in the policy process and achieve the change desired. As I argue in the following, NGOs thus see an opportunity in litigation to force the government to have a conversation with them and consider the aspects they find important. The conversation with Ritumbra from *Foundation The London Story* best illustrated this. Discussing the PIL she and her colleagues had filed, she explained that

when the clients are present and the stakeholders are present in the proceedings, then they do have a say to consult their lawyer then and there, and say that, OK, no, this is not what we want, this is what we want. Because the judiciary will give you certain offers, and say, OK, the Government of India is now doing this, do you want to take it further or you don't want to take it further?

She explained that filing a PIL, especially in absence of a large media campaign, resembles mediation rather than confrontation, and therefore allows an NGO to have an active say in how much of a response the government should give. Arguing that “the court is always going to come to a middle ground and try to see whether this is an acceptable solution or not”, Ritumbra explained that PILs provide an opportunity for a petitioner to continue framing demands to which the government must respond, and thereby have a conversation. Sagar from the *Centre for Equity Studies* gave similar insights, although he saw this as a risk – Sagar’s disenchantment with dominant-caste lawyers, who often lead manual scavenging cases, led him to argue that people with little lived experience of oppression would then engage in conversation with the government. He did, however, see litigation as potentially valuable for similar reasons as Ritumbra, but only if led by Dalit lawyers:

There is a little bit more hope when Dalit NGOs bring their own lawyers, because today Dalits are capable to fight against caste discrimination, and are fighting against upper caste domination. I can see when it comes to Dalit activists, they give their 100%.

Notably, both *Janvikas* in its annual reports (2014, 2015), and Ritumbra of *Foundation The London Story* explicitly mentioned the concept of “active citizenship”. In her discussion of litigation, Ritumbra argued:

So, like, the bottom line is that even in the process of the court, you need to assert your active citizenship there. You can't just take the case to the court and then just sit back that now the court will do whatever it needs to do. That is not the case for any public interest litigation. You have to have this active citizenship there.

She therefore again reiterated her view that litigation did not serve the purpose of giving responsibility away to the court to solve an issue according to its own principles, but that litigation served to involve the petitioner in the process. In fact,

the purpose of litigation would only be accomplished, in her view, if the petitioner asserted “active citizenship” during the litigation.

Reshift focus of government

As follows from the general purpose of litigation being to finally have a say in the political process, a key function of litigation as expressed by interviewees appears to be to reshift the focus of the government. As politics concerns the representation of interests, and as government officials arguably prioritise whatever interest groups are directly engaging with them, litigation is seen as a way to directly tell government officials to reshift their priorities or approaches. Notably, this does not mean that this is indeed the *outcome* of litigation; rather, it is one of the underlying purposes and roles ascribed to litigation.

As one interviewee who prefers anonymity lamented:

The people who are handling the higher position, they are all coming from upper caste background, and therefore they want to indirectly maintain this caste-based system in the society and therefore they are least bothered about what these people are doing, why these people are doing or what are the strategies can be useful to take them out from this profession.

Here, she therefore suggests that government officials, given their caste biases, currently simply do not care about manual scavengers and Dalits, and do not consider them in their decision-making. This was echoed across interviews and reports: Raman of *WaterAid*, for instance, assessed that government officials’ priorities lied not on eradicating manual scavenging, but on meeting targets and figures:

No, they're [most local government officials] not bothered. They just run the system, you know, tick boxes in their administration. They have their priorities, they will focus on them. Stopping manual scavenging, that's not their issue. [...] The government priorities are on getting these numbers right.

A *People’s Union for Democratic Rights* report (2019, p. 17) assessed that:

Another aspect that policy makers and planners seem to have lost sight of in the much advertised policy push towards sanitation in the present regime is the need for continuous maintenance of sanitation systems and for safe working conditions for those involved in it.

Similarly, Ashok of *DASAM* argued that policymakers were focussing on catering to some needs and policies while ignoring others, thereby perpetuating manual scavenging:

Sewer lines have gone everywhere, the rural areas, the urban areas, there is not any part remaining without sewer line. So, the manpower has decreased, work has enlarged, but the manpower which is required for the cleaning operation is very less and all work is being done by the contractor system.

On a larger scale, Bezwada Wilson of *Safai Karmachari Andolan* in his *TedTalk* criticised the government's approach to urban governance:

It is not just enough to build the smart cities. We have to make the sanitation also smart, where the human being don't need to enter into the sewer line and die. (Wilson, 2017)

Martin of *Navsarjan Trust* agreed, venting his frustration at governments claiming to be making progress while failing to provide basics for large parts of its population:

Governments across the world, they will boast about the development that they have been able to bring. [...] And on the other side, you see something which you can't believe. You know, you talk of the landing on the Moon, but you can't build the toilets, you know?

Overall, NGO representatives therefore expressed that the government currently only catered to specific interests, and called for reshifting the government's focus to consider manual scavengers' lives as well.

Even regarding the implementation of the 2013 Act on manual scavenging, NGO representatives criticised that the government's focus lies on implementing certain clauses while ignoring others. After first rejoicing that compensation payment for sewer deaths is given routinely, Obalesh of *Thamate* explained why they nonetheless filed a petition at the High Court:

Yeah, still we went to court. Because we are not happy, we are not happy. Because the government still have not done full work on the manual scavenging Act legislation.

Specifically, while he commended that cases had been registered for all incidents of manual scavenging-related deaths, Obalesh complained that “there was no trial, trial has not happened still. No one was following up.” As he explained, *Thamate* therefore filed a PIL in order to force the government “to implement every section, survey, rehabilitation, every single section”, and especially those that actually mattered: “Survey and rehabilitation are the most important, and penalising the people who are violating the core act.” *Janvikas* provided a very similar argument in their annual report when they discussed why they filed a PIL:

Not a single case of death of manhole worker is convicted by courts in India so far. In this context it was thought to follow up a few cases in courts. (Janvikas, 2019)

Finally, NGOs conveyed that litigation served the purpose of reorienting the government’s approach to interpreting the individual clauses of the 2013 Act and related legislation. Since laws are merely instruments and must always be operationalised by individuals, NGO representatives argued that government officials had to be reminded of the intentions behind the Act in order to not let them use their pre-existing mindset and biases decide how they implement the provisions.

For example, the *People’s Union for Civil Liberties* (2019), Raman of *WaterAid*, Sagar of the *Centre for Equity Studies*, and others all criticised the legal definition of who qualifies as a “manual scavenger” for being too permissive to the discretion of individual government officials, who will let their caste biases influence their judgment. Additionally, as a joint report by *WaterAid* and the *Centre for Equity Studies* critiques:

To begin with, there is a gap in the wording of the clause that mandates a survey be conducted in that it leaves it on each municipality if they have reason to believe that manual scavengers are engaged or employed in their jurisdiction, only then shall a survey be ordered. Therefore, it does not clearly mandate that every municipality must conduct a survey to identify manual scavengers. (Mander et al., 2020)

Raman of *WaterAid* clarified this further in our personal conversation, also reiterating the links to the underlying aim of shifting responsibility to the government:

So the definition, of course, you know, gives space for officers at the local level excusing themselves from responsibility. So you can use any gap, any of those loophole you will use. So this loophole was one major loophole that was used by the implementers.

To summarise, NGOs argued that because the government either focusses on things other than eradicating manual scavenging, and when it does focus on the 2013 Manual Scavenging Act, then with a hyperfocus on certain clauses at the expense of others. Litigation, then, served the purpose of reshifting the government's focus towards the lives of manual scavengers.

Mandamus and non-adversarialism

The involvement of courts was not just mentioned as abstractly serving the purpose of shifting the government's focus to the points that NGOs thought should be focussed on more, but was ascribed a very concrete role. Through specific features of Indian court interventions, such as *mandamus*, court intervention was described as being capable of concretely reorienting the focus of implementing officers to what NGOs want them focus on. Arvind of the *People's Union for Civil Liberties* alluded to this when he tied together why involving courts was helpful in shifting responsibility to the government and forcing the state to perform its "duty" towards its citizens:

There's this obligation that the executive has under the law, and they're not performing the duty. What do you then do? Mandamus is to compel the state to perform its duty as mandated by law.

The concept of "mandamus" that Arvind mentions refers in most basic terms to the practice of a Court issuing interim orders to oversee the fulfilment of a right. Upon initiating litigation, petitioners can explicitly ask for a Court to use its mandamus powers in order to "oversee the implementation of its decision and intervene periodically to ensure the fulfilment of the concerned socio-economic right" (Alva, 2014, p. 209). Mandamus has existed in the Indian legal system since approximately

the 1990s (Poddar and Nahar, 2017), and thus since approximately when manual scavenging litigation emerged as a phenomenon.

Indeed, several of the NGOs frequently requested the court to use mandamus powers to give specific orders for smaller tasks, accompanied by deadlines, to the relevant government entities. Obalesh of *Thamate* explained that “our prayer with the court is to give the proper instructions to the government to the implement this Act” and that “we're demanding the government to make rehabilitation in time, time-bound, not to delay,” thereby showing that he saw the role of the court as monitoring the government in taking concrete steps.

Importantly, mandamus and PIL are not the same thing, and non-PIL petitions can also request for the court to issue a mandamus remedy. However, it is up to the Court to decide whether to grant the plea for mandamus. As Alva (2014) has shown, at least the Indian Supreme Court is more likely to grant such a plea when there is an absolute lack of realisation of a certain right. Through a close study of existing jurisprudence, he shows that the more ignored a right, the more likely the Supreme Court is to issue a mandamus remedy (Alva, 2014). As has become blatantly obvious in the past sections, the eradication of manual scavenging is plagued by an absolute ignorance of existing law and a disregard for obligations to prevent the death of manual scavengers. Mandamus therefore is a realistic path open to litigants.

Mandamus arguably involves the Court “tip-toeing around the constitutional separation of powers” as it engages with politicians, the administration and others and seeks to find ways to overcome inertia in a non-adversarial way (Poddar and Nahar, 2017, p. 555). This, in combination with the argument I made in the sections above that litigation allows NGOs to continue issuing demands until they are satisfied, further underscores that litigation can be seen as serving to allow participation in the political process. However, a court issuing a mandamus remedy and therefore issuing several interim orders without closing the case does not mean that the executive responds in a satisfactory manner. The premise of this research remains accurate, as the executive rarely commits to enforcing interim orders (Poddar and Nahar, 2017). Additionally, courts themselves remain influenced by

caste, and therefore take decisions that the petitioners may not be happy with. It is also not the case that the Court can necessarily punish the executive for not implementing its orders; while it is true that the Court can threaten the executive with contempt-of-court charges, in practice government officials can easily find excuses that would preclude personal liability (Poddar and Nahar, 2017). By referring to red tape, bureaucratic delays, or lack of technical knowledge, the threat of contempt of court is easily evaded. However, even while final judgments may remain unimplemented, the process of mandamus and the court issuing concrete steps to be taken can serve to force the executive to at least make a plan, and thereby requires them to at least for a short moment focus their attention on manual scavenging. Overall, what appears to matter more is the *process*, not the outcome.

Similarly, the fact that an NGO may address their petition towards several government entities – for instance the State Government, the Central Government *and* the Municipal Corporation – can result in authorities from different government bodies to be told to come together and discuss the steps they are taking to address manual scavenging. Particularly in a context like the one in Delhi, where sanitation governance is fragmented and characterised by overlapping and conflicting responsibilities (de Feyter *et al.*, 2017), mandamus can help “inter-cooperation among governmental departments and agencies to reach more effective solutions” (Poddar and Nahar, 2017, p. 606). While bringing together different actors is something that NGOs such as the *Urban Management Centre* and *DASAM* are already attempting through roundtables, litigation can serve to ensure that representatives from all relevant ministries and bodies come together, if only abstractly through the filing of affidavits. Finally, by asking the court to issue interim orders and exercise its mandamus powers to monitor the implementation in detail, litigation can serve to force several entities along the decision-making chain to focus attention on making a plan on how to eradicate manual scavenging. Additionally, the fact that the court evaluates the response of the government, takes feedback from the petitioners, and issues further orders, can serve to prompt the executive to align their actions more on the underlying purpose of the 2013 Act –to

eradicate manual scavenging – and discourage a hyper-technical or caste-biased approach.

Carving out implementation clauses

NGO representatives also expressed that in some cases, involving a Court could help with creating implementation mechanisms where there are none, and thus plan out specific steps. NGO representatives repeatedly asserted that there is a lack of linkage between the law and concrete planning.

A *People's Union for Democratic Rights* report (2019, p. 21), for instance, lamented the “absence of interlinkage of the law pertaining to sanitation workers with sanitation plans of the capital city.” In an interview featured in a documentary, Bezwada Wilson of *Safai Karmachari Andolan* summarised the importance of interlinking law with planning:

No person should enter into the sewer line and septic tanks, that is mentioned. In the next line it says 'In case of emergency, you have to adopt all these precautions'. So what does emergency mean? Emergency, it means it has to occur beyond whatever the plans we have. When you don't have any plan, then you can't claim that it's an emergency. (Unscripted, 2017)

He therefore clearly criticises the absence of planning. Similarly, a report by *Thamate* assessed:

In not a single instance of rehabilitation examined by us, has this ideal process been followed. The implementation of the SRMS scheme in the state has been marred by large instances of incomplete/stalled rehabilitation process and the delays between each successive steps. (KJ, 2020)

Meghna of the *Urban Management Centre* in an introductory course on sanitation management had similar conclusions, and additionally highlighted that while manual scavengers oftentimes receive loans to start a new livelihood, the interest rates are too high to pay back, and the loan therefore in fact pushes them further into poverty and dependence (Urban Management Centre, 2021). This reiterates that the different parts of the “package” for eradicating manual scavenging have not

been harmonised, and that a procedure is needed through which different actors come together and harmonise their actions.

Raman of *WaterAid* had an interesting take on what role courts could take in creating implementation mechanisms:

I was saying you ask for something that is very easily feasible within the current legal framework, but where the processes for that ask include some of the difficult things, and then you may be able to advance the agenda, one step further or something like that.

He therefore highlighted that while some things were *feasible* within the current legal framework, they were not easy or obvious, and therefore needed the court as a third party to ensure energy went to making them happen. Raman also expressed that the existing law on manual scavenging and its rules did not cover every possible scenario, that “processes for implementation of these kinds of laws are not yet in place”, and called for specific tailored implementation mechanisms to be created first:

So, each one of these categories requires some specific set of rules, how you can address them if you are a municipal authority, how you can address prohibition, or rehabilitation of this person, and what kind of technology was to be employed...

He further explained that this was not simply an issue of the law and its rules not spelling everything out. Rather, implementation rules were not adapted to the technological advances and changes in how sanitation is provided.

So, the framework of action is still on the 1993 premises, whereas the actual objective of the Act has been expanded to cover cleaners of sewer lines or railway tracks. [...] If I have to add them, the pathway of implementing the law becomes totally different than what is written in the act.

Ashok of *DASAM* agreed, highlighting that implementation mechanisms needed to address changes in sanitation provision:

Actually, when the 2013 Act of the Manual Scavengers was passed by the Supreme Court, the condition and the situations were different. Now, totally wherever the court order has to be implemented, the system has changed, privatisation has come and outsourcing labor is deployed everywhere.

In this regard, Raman of *WaterAid* considered especially PIL and/or mandamus, given how non-adversarial these often play out in practice, suitable to create tailored implementation mechanisms. He argued that since there was no implementation path yet, court-based “joint action” would be needed:

Whatever is that could be done within the current framework is also not happening. So, in that sense, it is adversarial, but whatever cannot be done within the current framework, that could be a kind of, you know, joint action, joint effort kind of thing that is needed.

NGO representatives also expressed that they used previous court orders and guidelines, which they commended for being very specific, and sought their enforcement in other parts of the country in order to carve out implementation mechanisms everywhere. Ena of *DASAM* said, for instance:

The high court has passed several orders and guidelines, which are applicable throughout the country, it's not limited to that. And what we are struggling is to get that only implemented, you see.

Again, seeing the role of litigation as institutionalising the law by seeking tailored implementation mechanisms is directly related to mandamus, which Indian Courts can be requested to put in place. The argument that courts can serve to put in place tailored implementation mechanisms also does not mean that this is the way NGOs want them to be put in place; rather, they continued to be outraged at the lack of resources local governments put into making implementation procedures happen, and linked this to manual scavengers being Dalits. Therefore, the court again served as the last resort, and through its unique features is seen as a way to finally participate in governance and ensure attention goes where it should.

Additionally, there were nuances among NGO representatives whether they had sympathy for government officials, claiming they were overburdened with responsibilities, or whether they had little patience for government officials' failure to eradicate manual scavenging. Ena of *DASAM*, for example, explained that narrowing down what exactly legal clauses mean, and concretely identifying whose responsibility which part of the implementation is, is *helping* the government rather than attacking it:

We say that we are trying to help the government by getting its guidelines implemented, you know, because if we put it like that, that we are in a fight with government, it won't do any good to anyone. So, we are helping the government in getting the things implemented.

Martin of *Navsarjan* Trust agreed that interventions by NGOs serve as “strengthening” the government, which again ties into shifting the responsibility to the government, as discussed above:

But you see, this is what we do is through campaigns like this, you raise the question of law, its ineffectiveness, the strengthening of the government system.

Ultimately, despite differences in general views of government officials, both ultimately saw the role of involving courts as being to have a monitored process of carving out implementation pathways.

Summary

Overall, I have argued that the purpose NGOs ascribe to litigation is to participate in the political and policy process and advance the interests of manual scavengers, thereby changing the relationship between the government and manual scavengers. Indeed, NGOs did not exaggerate the role of courts, and usually framed the purpose as being to achieve a very concrete result and resolve a concrete problem – however, they emphasised the wider framework this would contribute to through incremental changes. In the preceding sections, I have argued that the larger aim of NGOs is to remind the state of its responsibilities to serve its citizens, which includes Dalits, for instance by countering the neoliberal governance of sanitation. With these broader aims underlying all activities, litigation often emerged as the only viable path for making advances. Concretely, the purpose of involving courts therefore emerged as being to force the government to have a conversation with Dalits, who are otherwise excluded from political and governance processes. Specific features of litigation that I discussed above, such as mandamus and the mediation-like approach of courts, enable Dalits and affiliated NGOs to exercise active citizenship, contribute to the political process, and demand responses from the government until

satisfied. As the government's focus lies not on manual scavenging at all, or on certain clauses while ignoring others, litigation is seen as a way to directly tell government officials to reshift their priorities or approaches, and assume responsibility towards manual scavengers as citizens. Additionally, the process of litigation, in which the government needs to file response affidavits, is seen as forcing different actors within the government to come together, temporarily invest resources in focusing on the issue, and at least create an implementation plan, thereby making first steps towards linking law with planning and tailored implementation mechanisms.

Chapter 8

Legal Mobilisation against Manual Scavenging

Introduction

When I set out to conduct this research, it was because I was motivated by deep curiosity as to why NGOs continued to file cases in courts as part of their efforts to eradicate manual scavenging. In this thesis, I have zoomed into specifically the considerations NGOs make when deciding whether and how to involve courts. In doing so, I have responded to the practical requirements of the wider observation that the choice to litigate in the field of social justice in India is extremely context-dependent. Additionally, as Gloppen (2018) has shown that actors pursue litigation when it appears the ‘best’ way to achieve a specific purpose, I have put specific focus on the purpose NGOs explicitly mention as underlying their engagement and litigation. In this last major chapter, I discuss and consolidate the insights from above chapters through the lens of legal mobilisation, which I understand the as “strategic” and “legitimate use of law to underpin political claims” (Handmaker and Matthews, 2019, p. 892). In the following, I flesh out my grounded theory by linking it to the argument that litigation is an inherently political struggle (Hunt, 1990), as courts have across contexts served as “an important site of democratic contestation” (Handmaker and Matthews, 2019, p. 900) – and contend that it is therefore the process that appears to matter more than the implementation of the court order.

Limited Manoeuvring Space

Involving courts is generally seen as a way to “influence political outcomes without relying on election cycles alone” (Handmaker and Matthews, 2019, p. 901), and specifically in the context of manual scavenging, as I argue in this thesis, it is considered one of the few ways to influence political outcomes at all. Indeed, the Indian political system is governed by a structure that arguably does not ‘work’ for

Dalits (Yengde, 2019). Existing research has directly tied this lack of “maneuvering space” to a turn towards litigation (Bhat, 2019, p. 206), and especially Bhat’s (2019) research on Dalit Muslims, who are arguably intersectionally marginalised, conceptualised litigation as the most realistic venue through which they can achieve change. As I have shown in the preceding chapters, and particularly Chapter 6 on considerations made leading up to litigation, especially Dalit NGOs are faced with caste-based barriers when attempting to achieve their aims through political and social means, and therefore occasionally turn to litigation in order to participate politically. Their expectation that doors will be shut in other paths, mediated through a balancing of risks and threats through each possible venue, feature prominently as considerations made when exploring litigation as a venue. This reaffirms and adds to Gloppen’s (2008, 2018) argument that litigation is chosen when it directly appears the most promising given the facts at hand. Indeed, the diversity of court cases – with differences in form, registered litigant and content – discussed in Chapter 3 appears to be directly linked to the considerations I have discussed.

Importantly, Gloppen’s (2018) framework highlighted that in addition to practical constraints, such as those I visualised in Chapter 6, actors’ choices are also constrained by normative considerations. From my discussion in the preceding chapters, it has emerged that such normative considerations most prominently take the form of NGOs’ expectations of what the government “should do” and how the situation “should be”, as seen in the extreme prevalence of claims by NGO representatives that the “state is a servant”, “duty bound”, and has a “constitutional duty”. Additionally, NGOs quite strongly expressed that they felt compelled to act, showing that normative considerations also included expectations of what makes a ‘good’ NGO – and, as Corbridge et al. (2005, p. 43) have argued, “NGOs in India have been committed to an ideology of improved service delivery to the poor which makes demands of the state”. Additionally, it is possible that these considerations are also mediated through middle-class normativity; as Yengde (2019) has criticised, middle-class Dalits – which NGO-leaders oftentimes are – begin from a position of considering the state legitimate, and thereby do not consider options that

would operate outside of the state framework entirely. This again reiterates that the arguments I make here regarding the purpose ascribed to litigation is not a recipe to Dalit liberation, but an examination of NGO's claims.

Active Citizenship

The insights from the previous chapters show that the conclusions from existing research on litigation must be nuanced and adapted to the context. As such, existing studies that argue litigation has a predominantly symbolic purpose, for instance by showing that marginalised groups are citizens with entitlements (Rao-Cavale, 2019), must be nuanced to recognise that showing citizenship is not at all purely symbolic. The concept of active citizenship discussed in Chapter 4, which refers to the acts of negotiation and claim-making (Sabates-Wheeler *et al.*, 2020), further illuminates my findings.

Engaging in active citizenship clearly resonates with the narration cited by NGO representatives above, who explicitly stated they feel obliged to “hold the state accountable”; Obalesh of *Thamate* as cited above expressed that because of “human rights activists who are there like me [...] there at least 20-30% of implementation has happened.” In that sense, litigation aims to not just reshape the relationship between the government and one single manual scavenger, but also to “push, push, push”, as Arvind of *PUCL* said, until it “crystallises” that the entire group is part of the citizenry. Notably, initial litigation on manual scavenging was entirely NGO-driven, while at least the officially named petitioner in current litigation are predominantly manual scavengers themselves, supported by an NGO. This shift suggests that more and more manual scavengers could be reconceptualising their relationship with the state, and exercising active citizenship, a hypothesis that can be further examined in subsequent research.

Admittedly, Corbridge *et al.* (2005) in their work on state-citizen interactions in India emphasise that active citizenship is only possible because the state first defines citizens as rights-holders. Engaging active citizenship through litigation and legal language could therefore be only superficially empowering (Cummings and Eagly, 2000). Neocosmos (2006), however, nuances this, and argues that it is only

such when appealing to courts is a passive process of asking for the fulfilment of rights through the state's own framework. "[W]hen one is struggling for rights against any injustice or oppression," Neocosmos (2006, p. 373) writes, "one is exercising active citizenship and asserting one's humanity." Explicitly citing active citizenship, he delimits a political, emancipatory struggle for rights, showing that litigation can indeed be political despite using terms of reference from the state's legal system – especially so when the state itself disregards the same legal system (Eckert, 2006). My findings therefore resonate with those of Fernandez-Wulff and Yap (2020), who argue that the groups engaging with urban policy processes they interviewed use rights language in order to exercise agency and become political.

Democratic Participation

Building on the section above in which I argued that the purpose of much litigation on manual scavenging is to exercise active citizenship, I here examine in depth how it allows participation in democratic political and governance processes.

Additional insight into the importance and form of democratic participation is gained from considering the statements NGO representatives made regarding their resistance towards dominant-caste imposition, and the inspiration they take from Ambedkar. Dr. Bhimrao Ambedkar, a prominent Dalit-leader, lawyer and key figure in drafting the Indian Constitution, featured repeatedly in conversations. For example, both Sagar from the *Centre for Equity Studies* and another anonymous interviewee told me that they kept pictures of Ambedkar on their desks, just as many Dalit families in Berg's (2019) research. Their references to Ambedkar are in no way rare; literature on manual scavenging frequently cites Ambedkar, who because of his own status as a Dalit has evolved into the explicit inspiration for Dalit struggles (Berg, 2019). Ambedkar both placed great faith in the legal system, although without asserting it would magically solve problems (Narula, 2008), and as Yengde (2019) nuances, it is not the case that the Indian Constitution is fully a tool for Dalit liberation, as it maintains caste-based identities. The crux here is that the Constitution is the basis of India's democracy – and Ambedkar contended that manual scavenging and caste-based oppression cannot end without true

participatory democracy (Berg, 2019). As Berg (2019, p. 6) argues, Dalit activists' "repertoire" draws heavily on Ambedkarite thought, and Dalits oftentimes express that they feel ownership for the Constitution, given that Ambedkar, one of their own, contributed heavily to framing it and the promise of political participation it contains. Ambedkar's "anti-caste approach was characterised by a commitment to universalising democratic principles" (Berg, 2019, p. 39), and his view of democracy consisted in demanding social democracy (Jaffrelot, 2003). His frequent mentions by NGO representatives therefore point towards the importance they put in political participation and underscores that a main aim is to make their perspectives heard.

The claim from over twenty years ago that PIL is a "democratisation of judicial remedies" (Sorabjee, 1997, p. 29) clearly finds resonance with the responses of NGOs working on manual scavenging – in fact, democratisation appeared to be a hope from the wider approach of courts, based on its tendency to be more mediating and evolve new procedures, but also to issue mandamus remedies, monitor the implementation of schemes, and prescribe step-by-step programs. It is these same features that authors twenty years ago hypothesised as being potential 'game-changers' when they first emerged (Dhavan, 1994; Hossain, Malik and Musa, 1997; Sorabjee, 1997).

The importance NGOs ascribed to mandamus remedies, interim orders, a court putting implementation under its own monitoring, and demanding implementation pathways be devised where there are none cannot be understated. As explained in the preceding chapter, NGOs expressed that involving a court promises to allow them to engage in conversation with the government, and also to express whether they are satisfied with a solution devised in court, or want to take the case further. Drawing on Dawood's (2007) work on judicial oversight of the legislature, the judiciary demanding written responses is arguably valuable because

the very process of having to produce the paper trail will mean that the legislature has engaged in certain actions, such as consulting citizens groups and other interested parties, paying attention to neutral redistricting criteria, justifying why it rejected alternative proposals. (p. 1443)

Similarly, the judiciary demanding that the executive submit written responses in court is therefore arguably valuable because it forces it to consider that there could be alternative paths forward. This strongly resembles the intentions with which citizens' groups in Europe studied by Fernandez-Wulff and Yap (2020) mobilised legally:

Instead of simply demanding more intervention by the state after it violated rights, in the context of social rights in urban policy processes, groups like PAH and VLTP are *redefining state intervention processes*. (p. 420) [emphasis added]

As Fernandez-Wulff and Yap (2020) examine, groups involved in litigation on the rights to water and housing condemned the state framing these rights as simply technical problems that technocrats should solve, and aimed to politicise them – and thereby allow more stakeholders to be involved. They therefore directly aimed to reshape not only how the government provides certain services, but also reshape how the public would be involved in this provision. In South Africa, an NGO chose to litigate to highlight that the government's actions did not align with the underlying values they should align with, and litigation thus served as a renegotiation of government strategy and focus (Handmaker and Matthews, 2019). Similarly, Eckert (2006, p. 45) argues that slumdweller in Mumbai “negotiate with or struggle for the state to act according to certain norms of governance, namely those prescribed by law”, thereby also aiming to influence governance. These conclusions arguably find direct resonance with litigation on manual scavenging, in which NGOs expressed they wanted to involve courts in order to, for instance, counter neoliberalism within the sanitation sector. As discussed in detail above, NGOs criticised that sanitation is simply considered something technical to be solved by contractors, ignoring the lives of the people doing sanitation work. After all, as authors such as Dubey and Murphy (2021) and Ghosh (2019) have argued, this system is one of the most notable manifestations of how neoliberal capitalism has fused with caste, leading to a loss of Dalit lives in urban India's sewers. As Lerner (2000, p. 12) summarises, “neo-liberalism may mean less government, it

does not follow that there is less governance”, and involving courts thereby is seen as a way to influence governance, and the relation between the state and its citizens.

As existing literature shows, the use of constitutional rights language in petitions within a court setting serves as a powerful tool to achieve recognition of a group’s struggles, as petitioners referring to a legal basis can give leverage to their interests: By elevating them to a rights-holder whose views must be held more highly, they can disarm the idea that there are simply competing interests clashing (Hunt, 1990; Brown and Halley, 2002). NGOs appear to see this as particularly valuable in the present scenario; after all, as Raman, Ashok, *PUDR* and more exemplified, manual scavengers and Dalits arguably do not feature in the government’s planning at all. Through litigation, their interests – ending the outsourcing system, getting permanent contracts, being surveyed and identified as manual scavengers – therefore become more than just interests, and are elevated to an immediately remediable right.

Reorienting the focus of the executive is therefore a concrete step on the path to several goals, as it involves manual scavengers, or the NGOs purporting to represent them, representing their interests and finding tools to get the relevant authorities to consider them at all.

Chapter 9

Conclusion

Given that court orders and laws on manual scavenging have limited impact, and since NGOs also use other methods ranging from civil disobedience to education, I have sought to better understand the nuances of NGOs involving courts in their struggles. As existing literature on legal mobilisation contends that understanding the underlying purpose behind litigation is a prerequisite for further analysis, such as assessing ‘success’, I have aimed to illuminate what considerations NGOs make when deciding whether and how to involve courts, with a specific focus on the purpose they ascribe to litigation. In responding to ongoing scholarly curiosity about the pre-litigation phase and the dispute pyramid, my research has zoomed into why NGOs, who in India are at the forefront of litigation and who overall play a significant role in translating problems into justiciable disputes, chose to construct a problem as justiciable in the first place. I have shown that the choice to litigate has as much to do with the issue at hand, as with the opportunities NGOs themselves have to affect any change, and several normative considerations.

I have argued that NGOs, whether they focus only on manual scavenging, or on Dalit rights more broadly, overall aim to responsabilise the government, remind it of its duty to serve its citizens, and affect governance in favour of manual scavengers, which has both symbolic and practical connotations. Notably, given the difficulties especially Dalit-led NGOs face in participating politically, litigation emerges as the main venue through which they can exercise such active citizenship. Importantly, litigation is not homogenous, and depending on context, further risk of creating harms for manual scavengers, NGO representatives’ own social standing, and more, petitions take on different forms and ask for different things. In distinguishing between different types of litigation, I have overcome previous research’s focus on just PIL, and laid out considerations that factor into what form of litigation, and within it what wording and demands NGOs choose. Ultimately, the state and its courts carry with them a promise of duty of care, and leading up to

the choice to litigate, normative considerations surrounding what the state should do appear to be just as central as practical considerations. The choice to litigate, then, is not purely rational and calculating, and NGO strategies while thought through are not necessarily absolutely coherent, but also an exercise of active citizenship building on normative considerations about how the state and its most marginalised citizens should be interacting.

The inherent caste nature of manual scavenging also means that many involved in the struggle against it also identify as Dalit rights and anti-caste activists, and see manual scavenging as merely one of many things they struggle against. Importantly, NGOs' and activists' approaches on manual scavenging may not directly correspond to the preferences of manual scavengers, and this thesis does not necessarily provide a recipe to Dalit liberation but examines the claims of people acting on their behalf – bearing in mind that these sometimes do come from a manual scavenging background themselves. Existing research has already established that the Dalit movement tends to make demands by referring to constitutional rights, and certain scholars have criticised that this is too limited of a perspective. In response to this, I have highlighted how in spaces of practically non-existent scope for political participation, NGOs working on manual scavenging and Dalit rights can come to see courts as vital tools. Litigation is seen as a way to participate in renegotiating government strategy especially in the context of neoliberal governance, which is marked by state absence and neglect. This directly resonates with previous findings on Dalit Muslims resorting to litigation, but also links to conclusions cited earlier in this thesis from South Africa and Europe. Therefore, while I emphasise that I have not aimed to create generalisable knowledge, and agree with Gloppen (2018) that the concrete choice to litigate is context-dependent, legal mobilisation and the importance of courts as a political tool are central worldwide. In light of shrinking space for civil society, and decreasing judicial independence around the world and in India, I contend it is vital courts remain and become even more accessible for marginalised groups.

In this research, I have zoomed into the involvement of NGOs in civil litigation. As NGOs' repertoire of activities is vast, further research investigating other law-

related strategies, such as efforts towards legislative change, could nuance what role involving the legal system – not just courts – is seen to have within the struggle to eradicate manual scavenging. Additionally, no complete dataset is available on cases filed related to manual scavenging, and the dataset I have provided in this thesis is not complete, but only what I could access. Research with the explicit aim to provide such a dataset can be valuable to help coordinate inter-NGO collaboration, and can also respond to claims I have cited above that NGOs “overrely” on litigation. Finally, having established the perceived purpose of litigation and role of courts, it may now be beneficial to turn to the empirical outcomes. For instance, I have suggested through my research that courts are seen as forcing the executive to at least briefly consider the perspectives of manual scavengers, as they must file affidavits and appear in court; further research engaging with the executive could investigate whether this indeed occurs, how they engage with the litigation process, and afterwards with court orders.

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Appendices

Appendix A: Right to Information Requests (selection)

NCREB/R/E22/00044

Request submitted by interviewee:

Please provide the state wise numbers of FIRs filed under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, from the year 2013 to 2021, and the copies thereof.

Response:

आरटीआई मामला
RTI MATTER

न. एसटीटी(200)/आरटीआई/293/2022/एनसीआरबी/No.STT(200)/RTI/293/2022/NCRB

भारत सरकार/Government of India

गृह मंत्रालय/Ministry of Home Affairs

राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो/National Crime Records Bureau

राष्ट्रीय राजमार्ग-8, महीपालपुर/National Highway-8, Mahipalpur,

नई दिल्ली-110037/New Delhi – 110 037

दिनांक : 03.03.2022 / Dated : 03.03.2022

To,

विषय : सूचना का अधिकार अधिनियम 2005 के तहत मांगी गई जानकारी

महोदय,

कृपया अपने ऑनलाइन आरटीआई आवेदन पंजीकरण सं. NCRB/R/E/22/00044 दिनांक 01.02.2022, जोकि राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो, नई दिल्ली को संबोधित है, का संदर्भ गृहण करें।

- आवेदक द्वारा मांगी गई सूचना सीपीआईओ के पास उपलब्ध नहीं है।
- इस जवाब के खिलाफ 30 दिनों के भीतर श्री संजय माथुर, संयुक्त निदेशक, राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो, राष्ट्रीय राजमार्ग-8, महीपालपुर, नई दिल्ली-110037 (फोन - 011-26782252) को अपील की जा सकती है।

भवदीया,

दिव्या सिंह
3/3/22
(दिव्या सिंह)

सॉडियकीय अधिकारी/केन्द्रीय लोक सूचना अधिकारी (CPIO)

फोन न. - 011-26735572

Translation:

Subject: Right to Information; Information sought under the Act 2005

Sir,

Please refer to your Online RTI Application Registration No. NCRB/R/E/22/00044 dated 01.02.2022 addressed to National Crime Records Bureau, New Delhi.

The specific information you have sought is not available with the CPIO. An appeal against this reply can be made within 30 days to Shri Sanjay Mathur, Joint Director 'National Crime Records Bureau' (...).

NCREB/R/E22/00049**Request submitted by interviewee:**

According to Section 4 (i) (j) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, whoever, not being a member of scheduled caste or scheduled tribe, makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose, is committing an offense. Accordingly,

- A) Please provide the court disposal data for cases registered under this provision, per year, including a. cases sent for trial during each year, b. cases pending trial at the end of each year, c. cases withdrawn by prosecution during each year, d. cases disposed of by plea bargaining during each year, e. cases disposed of without trial during each year, f. cases disposed of during each year, with acquittal rate and/or total number of acquittals among cases disposed of.

Response:

आरटीआई मामला
R T I MATTER

न. एसटीटी(200)/आरटीआई/293/2022/एनसीआरबी/No.STT(200)/RTI/293/2022/NCRB
भारत सरकार/Government of India
गृह मंत्रालय/Ministry of Home Affairs
राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो/National Crime Records Bureau

राष्ट्रीय राजमार्ग-8, महीपालपुर/National Highway-8, Mahipalpur,
नई दिल्ली-110037/New Delhi - 110 037
दिनांक : 24.02.2022 / Dated : 24.02.2022

To,

विषय : सूचना का अधिकार अधिनियम 2005 के तहत मांगी गई जानकारी

महोदय,

कृपया अपने ऑनलाइन आरटीआई आवेदन पंजीकरण सं. NCRB/R/E/22/00049 दिनांक 02.02.2022, जोकि राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो, नई दिल्ली को संबोधित है, का संदर्भ ग्रहण करें।

- आपके द्वारा चाही गई विशिष्ट जानकारी **CPIO** के पास उपलब्ध नहीं है।
- इस जवाब के खिलाफ 30 दिनों के भीतर श्री संजय माथुर, संयुक्त निदेशक, राष्ट्रीय अपराध रिकॉर्ड्स ब्यूरो, राष्ट्रीय राजमार्ग-8, महीपालपुर, नई दिल्ली-110037 (फोन - 011-26782252) को अपील की जा सकती है।

भवदीया,
दिप्ता सिंह
24/02/2022
(दिप्ता सिंह)

सौख्यिकीय अधिकारी/केन्द्रीय लोक सूचना अधिकारी (CPIO)
फोन न. - 011-26735572

Translation:

Subject: Right to Information; Information sought under the Act 2005

Sir,

Please refer to your Online RTI Application Registration No. NCRB/R/E/22/00049 dated 02.02.2022 addressed to National Crime Records Bureau, New Delhi.

The specific information you have sought is not available with the CPIO.

An appeal against this reply can be made within 30 days to Shri Sanjay Mathur, Joint Director 'National Crime Records Bureau' (...)

Appendix B: Total relevant cases identified on manual scavenging since 2013

78 cases were identified using the search terms “safai karmachari/karamchari”, “sanitation worker” and “manual scavenging”, excluding judgments that were pronounced before 2013, cases which are clearly concerned with garbage workers and sweepers, and bail applications of people arrested under the 2013 Act. These 78 cases have been concluded since 2013. 2 additional cases are not yet concluded, and were identified from statements of NGOs.

Nr	Year filed	Year of judgment	Name	Outcome	Type of case	Type of Court	Court	Nature of petitioner	Is it definitely related to manual scavenging?	Issue
1	2003	2014	Safai Karamchari Andolan And Ors V Uio And Ors	granted	Public Interest Litigation	Supreme Court	Supreme Court	NGO	yes	non-enforcement MS Act 1993
2	2006	2016	National Campaign On Dalit Human Rights And Ors V Union Of India And Ors	granted	Civil Petition	Supreme Court	Supreme Court	NGO	included	seeks mandamus for implementation of SC/ST Atrocities Act
3	2010	2013	Jamna & Ors V Municipal Council, Udaipur & Ors	dismissed on jurisdictional grounds	Civil Petition	High Court	Rajasthan High Court	Worker	likely	seeks preference in regularisation process for sanitation workers
4	2012	2013	Rajesh Kumar Sharma & Other Petitioners V Union Of India And Others	rejected on grounds of no legal basis	Civil Petition	High Court	Allahabad High Court	Worker	likely	seeks regularization and reversal of termination of casual labour without grounds
5	2012	2015	Campaign Against Manual Scavenging Vs The State Of Maharashtra & Ors	granted	Public Interest Litigation	High Court	Bombay High Court	NGO	yes	use of riverbed for waste disposal and construction
6	2012	2018	Rajesh And Anr. Petitioners V. Delhi Jal Board And Ors. S	granted	Civil Petition	High Court	Delhi High Court	Relative of victim	yes	full compensation not paid, entitlements not given, petition for blanket obligation in the future
7	2013	2013	Ramratan Katariya V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
8	2013	2013	Ramavtar Saini V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
9	2013	2013	Yogendra Singh V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
10	2013	2013	Ramniwas Saini V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
11	2013	2013	Dinesh Kumar Saini V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
12	2013	2013	Subhash Chand Saini V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
13	2013	2013	Mahesh Kumar Gurjar V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
14	2013	2013	Lalit Kumar Deedvania V State Of Rajasthan & Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges order to do sanitation work as part of his job
15	2013	2014	Mr Pradeep More & Ors V State Of Maharashtra & Ors	granted	Civil Petition	Special Tribunal	National Green Tribunal	NGO	yes	release of funds to end manual scavenging
16	2013	2015	Shri Mukesh Kumar V. North Delhi Municipal Corporation	rejected due to period of limitation	Administrative Appeal	Special Tribunal	Central Administrative Tribunal	Worker	likely	seeks retroactive regularisation as sanitation worker
17	2013	2017	Elangbam Ongbi Gitarani Devi V. State Of Manipur And Two Ors	granted	Civil Petition	High Court	Manipur High Court	Relative of victim	yes	full compensation not paid

18	2013	2017	Elangbam Ongbi Amubi Devi V. State Of Manipur	granted	Civil Petition	High Court	Manipur High Court	Relative of victim	yes	full compensation not paid
19	2013	2021	Smt Meena V General Manager N C Rely	dismissed	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	challenges dismissal from sanitation work of deceased husband
20	2014	2014	Shri B.C. Parchha, Delhi V Shri Binod Kumar	granted	Challenge	Commission	Central Information Commission	NGO	yes	seeks release of information regarding recruitment of sanitation workers under RTI
21	2014	2014	B.C. Parchha V Jain Higher Secondary School	granted	Challenge	Commission	Central Information Commission	NGO	yes	seeks proper response to RTI on sanitation workers employed
22	2014	2014	M. Mariammal V Superintendent Of Police	granted	Criminal matter	High Court	Commission Madras High Court	Relative of victim	yes	seeks FIR to be filed under MS Act 2013
23	2014	2015	Shri Rajaram Rajendra Parsu Kamble Petitioner V. The State Of Maharashtra And Others S	granted	Civil Petition	High Court	Bombay High Court	Worker	yes	seeking compassionate employment as sanitation worker, employer claims they were never formally employed
24	2014	2015	Vijay Kumar Karosiya V. Commissioner, Regional Employee Provident Fund Indore	rejected	Civil Petition	Special Tribunal	Central Administrative Tribunal	Worker	likely	seeks regularisation
25	2014	2016	Smt. Chinnamma And Others V. State Of Karnataka, Rep. By Its Chief Secretary And Another	granted	Civil Petition	High Court	Karnataka High Court	Relative of victim	yes	full compensation not paid
26	2014	2016	Chinnamma Others V. State Of Karnataka Represented By Its Chief Secretary Vidhana Soudha, Dr.B.R.Ambedkar Veedhi Bangalore Another	granted	Civil Petition	High Court	Karnataka High Court	Relative of victim	yes	full compensation not paid
27	2014	2016	Vijay Kumar V Union Of India	rejected	Civil Petition	Special Tribunal	Central Administrative Tribunal	Worker	likely	challenges order to do sanitation work despite training to do other work
28	2014	2017	National Dalit Movement For Justice Vs Union Of India & Ors	not entertained/withdrawn	Civil Petition	Supreme Court	Supreme Court	NGO	likely	unclear
29	2015	2015	Ramadevi V. State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Relative of victim	yes	seeking writ of mandamus for payment of compensation and appointment on compassionate grounds
30	2015	2016	Ratneshwar Prasad Singh V. Banka Municipality Ors.	dismissed	Civil Petition	Special Tribunal	National Green Tribunal	unknown	yes	negligent construction of sewer system
31	2015	2017	Virender Singh V South Delhi Municipality Corporation	dismissed but financial relief granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Worker	likely	seeks regularisation of daily wage employment which was given on compassionate grounds
32	2016	2017	Dr. K.M. Ravichandran V. The Commissioner, Namakkal Municipality, Namakkal - 637 001	dismissed	Civil Petition	High Court	Madras High Court	Resident	yes	municipality told resident who hired deceased manual scavenger to pay compensation
33	2016	2019	Manav Garima V State Of Gujarat And Ors	granted	Public Interest Litigation	High Court	Gujarat High Court	NGO	yes	non-enforcement MS Act 2013 (?)
34	2017	2017	National Institute Of Rock Mechanics V. Assistant Commissioner And Executive Magistrate	dismissed	Civil Petition	High Court	Karnataka High Court	Institute	yes	criminal charges against responsible persons
35	2017	2018	Change India V Gov Of Tamilnadu	granted	Public Interest Litigation	High Court	Madras High Court	NGO	yes	interest on non-paid compensation
36	2017	2021	Safai Karamchari Andolan V Uio	granted	Civil Petition	High Court	Madras High Court	NGO	yes	criminal charges against responsible persons
37	2018	2018	Santosh Kumar V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
38	2018	2018	N Babu V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
39	2018	2018	Seenu V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
40	2018	2018	S Ravi V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
41	2018	2018	Vinay Kumar V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
42	2018	2018	K Raju V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
43	2018	2018	C Prasad V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
44	2018	2018	Velram V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid

45	2018	2018	Deenakandal V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
46	2018	2018	Jayanandan V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
47	2018	2018	Prasad V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
48	2018	2018	M/S Sharp Watch Investigation And Security V. State Of Karnataka	rejected due to jurisdictional issues	Civil Petition	High Court	Karnataka High Court	Company	yes	identified manhole with manual scavenger
49	2018	2018	Kumar Kant Garhwal V Central Public Information Officer, Central Bank Of India	granted	Challenge	Commission	Central Information Commission	NGO	yes	seeks release of information regarding recruitment of sanitation workers under RTI
50	2018	2018	Sri C Somashekar V The State Of Karnataka	granted	Criminal matter	High Court	Karnataka High Court	Government	yes	seeks criminal action against local government official
51	2018	2019	Abhishek Dutt And Anr. V. N.C.T. Of Delhi And Ors.	dismissed due to alleged mootness	Public Interest Litigation	High Court	Delhi High Court	unknown	yes	Plea for provision of safety gear, health check ups and rehabilitation
52	2018	2019	Union Of India V. State Of Maharashtra And Others	orders issues and withdrawn	Review petition, Criminal Appeal	Supreme Court	Supreme Court	Government	included	enforcement of Scheduled Castes Atrocities Act
53	2018	2019	Surender V State Of Rajasthan	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges denial of formal employment as sanitation worker on hypertechncal grounds
54	2018	2019	Kausalya Bai And Ors V State Of Rajasthan And Ors	granted	Civil Petition	High Court	Rajasthan High Court	Worker	likely	challenges denial of formal employment as sanitation worker on hypertechncal grounds
55	2018	pending	High Court Legal Services V State Of Karnataka	interim order issued	Public Interest Litigation	High Court	Karnataka High Court	NGO	yes	seeks implementation of MS Act and status report by the government
56	2019	2018	Sri Ram Prakash V The State Of Karnataka	granted	Criminal matter	High Court	Karnataka High Court	Government	yes	seeks criminal action against local government official
57	2019	2019	B Panju Selvarani V Secretary To Government, Department Of Home And Ors	granted	Civil Petition	High Court	Madras High Court	Relative of victim	yes	full compensation not paid
58	2019	2019	Ganesh S/O Shankar V The State Of Karnataka	granted	Criminal matter	High Court	Karnataka High Court	Government	yes	seeks criminal action against hotel owner who employed manual scavenger
59	2019	2020	Ms Supriya V State Of Karnataka	granted	Civil Petition	High Court	Karnataka High Court	Worker	yes	loan for rehabilitation not paid
60	2020	pending	All India Council Of Trade Unions V Union Of India	interim order issued	Public Interest Litigation	High Court	Karnataka High Court	NGO	yes	seeks implementation of MS Act and status report by the government
61	2021	2021	Vimla Govind Chorotiya And Others V. State Of Maharashtra And Others	granted	Civil Petition	High Court	Bombay High Court	Worker	yes	full compensation for death not paid, non-enforcement of MS Act 2013
62	2021	2021	Reena V. East Delhi Municipal Corporation (Edmc)	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
63	2021	2021	Rahul Kumar V. East Delhi Municipal Corporation (Edmc)	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
64	2021	2021	Vishal V. North Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
65	2021	2021	Sunil V. North Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
66	2021	2021	Sandeep Kumar V North Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
67	2021	2021	Sunil Kumar V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
68	2021	2021	Jitendra Kumar V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
69	2021	2021	Mukesh V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
70	2021	2021	Ankit Kumar V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment

71	2021	2021	Amardeep V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
72	2021	2021	Ajay V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
73	2021	2021	Kiran Devi V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
74	2021	2021	Praveen Kumar V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
75	2021	2021	Indresh V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
76	2021	2021	Amrish V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
77	2021	2021	Shakuntla V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
78	2021	2021	Mahaveer Vs State Of Rajasthan	granted	Civil Petition	High Court	Rajasthan High Court	Relative of victim	likely	seeks response to application for regularization through compassionate appointment
79	2021	2021	In Re: Deaths Of Sanitation ... Vs Chief Secretary And Others On 30 October, 2021	granted	Civil Petition	High Court	Orissa High Court	Government	yes	seeks immediate investigation into recent sewer deaths and compensation
80	2021	2022	Suman V East Delhi Municipal Corporation	granted	Civil Petition	Special Tribunal	Central Administrative Tribunal	Relative of victim	likely	seeks response to application for regularization through compassionate appointment

Appendix C: Final sample of NGOs included

Organisation	Representatives interviewed	Documents analysed
1. Centre for Equity Studies	1	Yes
2. Centre for Social Justice	-	Yes
3. Change India	-	Yes
4. Criminal Justice Society of India	-	Yes
5. Dalit Arthik Adhikar Andolan	-	Yes
6. DASAM	3	Yes
7. Human Rights Law Network	-	Yes
8. Human Rights Watch	-	Yes
9. International Labour Organization	-	Yes
10. Jan Sahas	1	Yes
11. Janvikas	-	Yes
12. National Campaign on Dalit Human Rights/ Swadhikar	-	Yes
13. National Dalit Movement for Justice	-	Yes
14. National Institute of Urban Affairs	-	Yes
15. Navsarjan	1	Yes
16. People's Union for Democratic Rights	-	Yes
17. PUCL	2	Yes
18. Safai Karamchari Andolan	-	Yes
19. Safaikarmachari Kavalu Samithi/Thamate	1	Yes
20. Anonymous, newly founded women's rights foundation	1	No
21. The London Story	1	No
22. Urban Management Centre	-	Yes
23. WaterAid	2	Yes
Total (interviews / representatives)	9 / 13	

Appendix D: Final sample of documents analysed

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- Chronic 'Accidents': Deaths of Sewer/Septic Tank Workers Delhi, 2017-2019* (2019). Delhi: People's Union for Democratic Rights.
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Appendix E: Sample interview guide

1. PUCL has been working on manual scavenging since 1995. Has there been a **change of strategy over time**?
 - a. Has anything changed in strategy since the enactment of the 2013 Act? Has this opened any doors?
 - b. Compared to other topics you work on, how are your strategies on MS particular?
2. I saw PUCL has “brought 74 sewer deaths to the attention of the authorities”. What did this entail, and how did the authorities respond?
 - a. Has PUCL been involved with any litigation or filing cases?
3. PUCL advocates for a “**right to truth**” for sanitation workers. What does this mean concretely?
 - a. Are court judgments a way of documenting the truth? Governments refuse to acknowledge that manual scavenging even exists, and fail to document even the basics, does it help when the court demands action from the Gujarat government?
4. In one of the PUCL bulletins from a few years ago, I saw an interesting quote that said **activism must imagine the best-case scenario**, as Dalits have been deprived of any inspiration. Does this mean that strategies you use are not willing to find compromise, and are maybe detached from realistic goals?
5. You have the unique approach of demanding a **formal apology** for historic injustices. We know from transitional justice and post-colonial contexts, that this takes decades to negotiate. How are you working towards this?
6. There has not been a single conviction of a contractor. Is this something that is absolutely essential to eradicating manual scavenging? Should we be working together with government officials and contractors, instead of being adversarial?
7. **Strategies when seeking justice**
 - a. When does it make sense to file a PIL, compared to a retroactive petition seeking for example compensation?
 - b. I noticed that the SC cases by SKA and against the Delhi Jal Board were just seeking the enforcement of existing law. Why not go beyond this and demand more?
 - c. Even if the 2013 Act was enforced, it would still allow governments to send people into sewers, just with safety equipment. So what good does enforcing this do?
 - d. Does the way in which demands are formulated change the likelihood of success? Invoking human rights, or just domestic law? Invoking caste discrimination or just poverty?

8. Impacts of court cases

- a. The DJB case standardized the compensation amount in sewer deaths. Otherwise it has an awkward language, and blames MS on poverty. What do you overall think about it?
 - b. We know that nothing much has happened since the SKA SC and the Delhi Jal Board case. What tangible difference does it make to win a court case?
 - c. What did it mean that the SKA SC petition was treated as a mandamus? Will it always need the court to take the executive by the hand and demand they produce results, like homework?
 - d. Does one always have to follow up with a court after a legal win in order to have actual enforcement?
 - e. Have court wins or official backing by the government helped the social movement?
9. Manual scavengers are quite dependent on government officials for rehabilitation schemes, certificates, loans, and also alternative livelihoods. How does one counteract this power imbalance?
10. The SC claims that it stands up for the disadvantaged. Has it been able to live up to that? What about the High Courts?
11. Swachh Bharat shows that the government approach obviously ignores the role of caste in causing and perpetuating MS. How do we get the government apparatus itself to recognize caste?
12. The government briefly said in 2020/2021 it would amend the MS Act, then cancelled these plans. Do you think amending the existing law will help? If yes, what needs to be amended?