

POLICY NOTE

Dialogues On Sanitation:  
Legal Perspectives  
on Sanitation in  
Urban India

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Centre for Policy Research  
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SCI-FI  
SANITATION  
SCALING CITY INSTITUTIONS FOR INDIA

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On 23 October 2018, the Centre for Policy Research organised the Dialogues on Sanitation: Legal Perspectives on Sanitation in Urban India. In the workshop sanitation experts, lawyers and activists discussed legal and regulatory issues associated with urban sanitation in the Indian context, focussing on issues and challenges related to non-sewered sanitation, or Faecal Sludge Management (FSM). The Inaugural Session of the workshop featured an Inaugural Address by Ms. Madhu Krishna from the Bill and Melinda Gates Foundation. The panellists included Mr. Santhosh Raghavan, IIHS; Mr. Rajesh Rangarajan, WaterAid; Ms. Arkaja Singh, Centre for Policy Research; Vishnu Sudarshan, J Sagar Associates; and Krishna K, CDD

The videos of the panel discussions are available on the link below:



# SESSION 1: OPENING SESSION

## The Role of Law and Regulation in FSM

In the opening session, Ms. Madhu Krishnan laid down the necessity of improving the status of FSM, and its role in sanitation. She stressed the need to eliminate manual handling of faecal sludge and unsafe disposal, even within the infrastructural, legal and institutional contexts and constraints within which we live. She further commented that the role that the law has to play in this is extremely important, at various stages. The lack of standards and regulations mar the FSM space, as there are no specific environmental standards applicable to various aspects of FSM. This creates regulatory hurdles such as difficulties in acquiring lands for FSTPs. All of these issues arise due to a lack of regulatory clarity, which needs to be looked at.

Madhu Krishna also shed light on the need to consider the role of law in institutionalizing FSM, in terms of a commitment on the part of local authorities to ensure that services are made available, that the sanitary workers work in safe conditions etc. This does not mean local authorities have to provide all the services themselves, but that the state and local authorities have a critical role in coordinating the larger picture where a large number of Private Sector Participants are available to provide these services. The state has a role of regulation – to ensure services are available, and service providers are able to provide services that are of adequate quality, and that sanitary work is done safely. Madhu Krishna commented on the need of active engagement with the civil society to achieve the final goal.

How to intervene in the current legal and regulatory framework is also a question of strategy. It is usually not possible to change everything, but if we build a better understanding of the legal rules, we can also plan which are the critical issues that we can intervene in, and how best this intervention can be planned. In some cases, it may be good to go for an ambitious strategy, where we have the opening, and at other places a more conservative approach may be preferable. For this we need many such conversations between the legal specialists and the sanitation community.

## Experience from the States: Tamil Nadu

Santhosh Raghavan, IIHS followed this with examples of experience from Tamil Nadu. The Tamil Nadu District Municipalities Act, 1961 and Building Rules regulate new latrine constructions and as per this local authority is obligated to construct and maintain sufficient number of public sanitary latrines. The Tamil Nadu Public Health Act, 1939, mandates that the owner of the property is obligated to maintain latrines and that local authority health officer is empowered to impose fines if necessary, for violating the same.

These laws provide clear roles and responsibilities identified for approval, construction, O & M and supervision. For building plan approval, the applicant needs to provide a plan for effective draining of sewage and sullage. The Local Authority is responsible for construction and maintenance of public drains. Health officer and Executive Authority are empowered to direct/ take action against defaulters.

The Tamil Nadu Pollution Control Board (TNPCB) enforces the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the rules and orders made under the Environment (Protection) Act, 1986. The Water Act, empowers the TNPCB to: supervise and receive necessary information on the construction and installation of any treatment or disposal system and provide the necessary approvals for its operation as per the Act; and prescribes the standards of treatment of sewage to be discharged into a water body/stream as per permissible limits preventing pollution.

Despite these efforts a few constraints remain. There is a need for regular revision of rules to match current needs, lack of provisions for inclusions of overlooked or newly evolved components through new bye-laws or Rules. The adequacy of bye-laws and rules provisioned for the enforcement of many Acts is a matter of concern. The penalties stated in all the Acts are outdated and meagre, and do not match with current rates; procedures and responsibilities for collection of penalties has not been clearly stated. Furthermore, although the local bodies are authorized by law to stop violators, the implementation of the same is complicated due to a lack of capacity and practical remedial measures.

# SESSION 2: LAW OF SANITATION

## Environmental law for sanitation

Rajesh Rangarajan, WaterAid further delved into the experiences with FSM in Tamil Nadu. In peri-urban Chennai, both formal and informal operators desludge septic tanks and are supposed to bring it to effluent treatment plant in South Chennai – the dump yard receives 4000-4500 tons of waste per day. In many cases it is dumped by informal operators at a site near the treatment plant. A similar problem plagues the healthcare waste management sector wherein healthcare institutions try to ensure that waste is handled well, but there can be no certainty to whether or not the waste actually reaches the treatment center.

Furthermore, the TDS (total dissolved solids) an important parameter for trade effluent – often sewage is being mixed with trade effluent to bring down TDS and industries are being asked to purchase raw sewage by Chennai Metro Water to be treated and reused for industrial plant processes

Where law formulation in the context of Chennai is concerned, compliance issues pervasive to various sectors – important to unlearn business as usual. The previously written laws were designed from an engineering perspective, but there an increasing understanding of innovative multidisciplinary approaches and the need to move away from a one-size-fits-all approach. The presence of both chemical and biological contaminants must be accounted for, and this makes the standard setting task more complex and challenging.

Industries dumping sludge led to a case being brought about concerning non-implementation of Hazardous Waste Rules, 2003. The Supreme Court acknowledged the failure of the Pollution Control Boards, and SC (Supreme Court) Monitoring Committees were set up in all states. The SC Monitoring Committees in turn created Local Area Environment Committees (LAEC), highly localized to industrial estates, in order to ensure implementation of the rules. The Monitoring Committees found mismatch between the actions of the industries and the perception of the communities. LAECs were highly instrumental in shifting the paradigm which left PCB feeling that its role had been taken away. Furthermore, the PCB increasingly started to venture in and set up a centralized model with

Toxic Sludge Disposal Facility (TSD) located outside industrial estates. All operations related to functioning of TSD are contracted out in Chennai, including conveyance, training of operators, and collection – with the onus of collection placed on the operator.

The solid waste management order by NGT followed a similar approach to monitoring – instituting monitoring committees at the national level, state level, local level with a combination of governmental stakeholders and members of the civil society.

The Biomedical Waste Rules are a good lesson in structure, standards, handling, etc. based on the size of the healthcare institutions, it takes a DIY approach. In terms of structure, for a completely new piece of legislation, it might be easier to bring it into a regulatory structure which can be appended to the EPA Rules with a set of accompanying guidelines – given the fragmented jurisdiction.

To ensure waste comes to specified point, GPS tracking can be employed but adoption remains a significant hurdle. Co-financing to upgrade vehicles and equipment could be an option, as it may not be possible to pass on these costs entirely to private operators.

Additionally, the urban poor bear maximum cost of the non-networked solution and it needs to be ensured that the processes for monitoring and subsequently penalizing those who are already marginalized and will be further marginalized by placing the onus upon them. Informal service providers only emerge when government fails to provide services at scale.

To conclude, the technical standards for solid wastes need to be set at the national level, and there needs to be a clear legal framework for penalties and violations, which can be independent or embedded within existing mechanisms. There is a need for simplification of building regulations with less cross referencing of regulations from different stakeholders. Existing standards need to be revisited particularly in the context of smaller towns and standards need to take into account recovery and reuse. Furthermore, scheduled desludging needs to be revisited given the diversity of on-site structures.

## Law for sanitation work: developing legal principles for safe sanitation work

KB Obalesh from Safai Karmachari Kavalu Samithi provided his insights from the field experience relating to the deaths of manual scavengers in the state of Karnataka. As a part of manual scavenging committee, they are trying to revise the already established legislation. He explained the practice of manual scavenging as a banned occupation - cognizable and non bailable offence under the law. Approximately, the number of insanitary latrines sums up to 98,533 which estimates to over a lakh worker employed as manual scavengers in Karnataka alone. However, the Government of Karnataka has only identified 935 workers combined in rural and urban areas. From 2008 till 2018, 78 workers have died while cleaning the manholes and the Sewerage Treatment Plants. Taking the example from the city of Bengaluru, he strongly made a point that well-educated civilians place workers inside their STPs and escalates the deaths owing to lesser extent of awareness amongst them. Citing to the defunct institutional machinery, it was noted that the Pollution Control Board, the Bangalore Water Supply and Sewerage Board and the Bangalore City Corporation have inadequate information on the number and the subsequent maintenance of the FSTPs. Geographically, 50 percent of the total 119 wards lacks sewerage system in Bengaluru. There are various interlinked laws established over the years. In the name of public toilets, thousands of dry latrines have taken place as the supply of water halts after few months.

Following this, Arkaja Singh from the Centre for Policy Research suggested that the nature of this work is keeping on getting changed over a period of time. Initially, a lot of municipal workers were employed in this line of work which is getting lesser and lesser as the time progresses. Obalesh, then highlighted the fact that Safai Karmacharis and municipal workers (contractual or permanent) are supposed to be a completely different dimension as per the 2013 Act. Meanwhile, 90% of these municipal contractual workers are involved in the manual scavenging work after their working hours. Due to the nature of outsourcing and non-recognition from the municipalities, these contractual workers are often not given regular salaries and not even minimum wages. While majority of manual scavengers are contract workers, the rest of the workers come under the category of casual or ad hoc manual scavengers—who are engaged on a spot basis, and usually this is done privately by owners and RWAs. He also emphasized on migrants' workers coerced in this line of work by contractors.

As per the Protection Civil Rights Act 1979 and the Bonded Labour Act 1976, a person cannot be forced to work in insanitary and hazardous conditions. He informed that District Commissioner is the implementing officer held accountable if there is a violation of 2013 Act. He draws out from his experience that implementing authorities are ill-informed about the scope of the Act, hence limited assistance accessible to workers. While there are several inquiry committees established since many years to eliminate this inhuman practice and preserve the dignity of the workers but cost mindedness of legislators and officers led to the poor implementation of the Act. In conclusion, he recommended that a cohesive ecosystem of policy advocates and the need for an evidence-based solution to protect and rehabilitate vulnerable communities of our society.

This was followed by a presentation on Manual Scavenging: Review of Legal Strategies and Emerging Principles by Arkaja Singh, Centre for Policy Research. In December 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act ("the Act") was notified by the Central Government. The Act is a Parliamentary law, binding on all states. While an earlier 1993 law prohibited the employment of manual scavengers and construction of dry latrines, the strength of the new Act is that it brings hazardous cleaning of sewers and septic tanks under its ambit. However, it is noteworthy that the definition of 'manual scavenging' had been extended to apply to manual cleaning of septic tanks and sewer networks by the Courts in cases such as *A Narayana vs. State of Tamil Nadu* (2008), long before the 2013 Act was introduced. Between 2003 and 2014, the Supreme Court engaged extensively with the issue of manual scavenging in the case of *Safai Karmachari Andolan vs. Union of India*, laying down several principles including those relating to compensation in case of death of the manual scavenger. Several other cases such as the National Campaign for Dignity of Sewerage and Allied Workers v. MCD, and *ChangeIndia (through A. Narayana) v. Govt of Tamil Nadu* (2017) have shed light on the issue of Manual Scavenging, directing States to fulfill their obligations towards sanitary workers. Arkaja Singh, in her presentation discussed various strategies adapted by litigants through time, the courts' response to them, and the concurrent changes in the law. She pointed out that most of the cases came up only where manual scavengers had died, and that cases focused

on rehabilitation and compensation, and leaving out the criminal liability of owners and employers. It was not clear whether the focus on compensation was a conscious strategy – it is possible this was because of the need for compensation for the families of the deceased workers.

Legally, there is a clear liability of local authorities for compensation and rehabilitation of manual scavengers, the principle of which was established by the Supreme Court in the case *DJB v. National Campaign for Dignity* (2011); and the *Safai Karamchari Andolan v. UOI* (2014). All of the subsequent cases also rely on principles established in these cases. On the other hand, the criminal liability provisions of the same law were neglected, until recent cases in Karnataka and Delhi, where we do see more emphasis on criminal liability, and perhaps this is a sign of change or an emerging legal strategy?

There is no clarity in the law about the responsibility to ensure the availability of infrastructure to ensure that there is no manual scavenging. This is distinct from the responsibility to provide protective equipment – which is clearly articulated in the law. But there are many situations in which the need for manual entry could be eliminated through better infrastructure and maintenance protocols. This should be the responsibility of the owner of the infrastructure. Moreover, the legal principles established by many of the cases do not apply directly in the context of non-network sanitation and increased informalisation. Chennai was once less than 90% seweraged, which is now around 70% requiring greater attention to the issue of cleaning of septic tanks. The Madras High Court's rulings are not as easy to apply in this changed scenario. In *Praveen Rashtrapal vs. Chief Officer Kadi* case, Gujarat municipalities were

told to discontinue using contractors for sewer cleaning, while clear institutional responsibility for deaths was established. However, there was no reference to non-sewered sanitation in that case, and contractualisation has increased rather than decreased almost everywhere.

Another issue that emerged from Arkaja's review of manual scavenging cases was that many of the court's directions for protection, rehabilitation and compensation of manual scavengers seemed to presume that the work was being done by municipal (or water authority) employees or contract workers. Newspaper reporting of manual scavenger deaths however pointed to the trend of increased informalisation of the work, and the presence of ad hoc workers. For example, in *National Campaign for Dignity of Sewerage and Allied Workers v. MCD* and others (2008, & continuing), the Delhi High Court had directed Delhi Jal Board to provide various labour law benefits to workers, and to provide regular medical check ups and medical cover, but in fact it is likely that the most dangerous manual scavenging work in Delhi is being done by ad hoc workers to whom these rulings would not be applicable.

There is a need for a more sophisticated operational definition of manual scavenging and what actually constitutes mechanisation. And this should be reflected in the legal frameworks that apply to sanitation, not just legal to be addressed through the manual scavenging law, which has a particular perspective and purpose. There is an inherent embedded nature of caste-based work associated with manual scavenging, but this does not mean it should be addressed only through caste based mobilisation. Mobilisation in the manual scavenging community is critical, but it is also the business of everyone working on sanitation to ensure the business of sanitation is safe and dignified.

# SESSION 3: MANAGING PUBLIC AND PRIVATE SECTOR ROLES IN FSM

Krishna summarised the landscape of FSM in Leh and Devanahalli and provided insights based on field experience with private sector partnerships in the same. FSM is a major concern and has high visibility in Leh being a tourist place with revenue sharing between ULB and private partner in contrast with Devanahalli where FSM is not highly visible and assets belong to ULBs. Contextually, a configuration of two distinct FSM scenery is laid down that makes way to build an understanding of social, legal, technical and financial issues and challenges different stakeholders face, and also deliberated on the ground challenges of potential for and alternative private sector participation in the sanitation value chain.

Vishnu Sudarshan spoke about the various regulatory issues plaguing the FSM sector in India, and how learnings from the thriving public-private-partnership sector in India could be applied to the area of FSM. He suggested that the states should attempt to create long-term certainty and performance standards in FSSM to encourage better private participation. Learning from the existing PPP sector in India, with respect to financial and regulatory models would be useful. Vishnu Sudarshan also gave examples of existing PPP in FSM, in Malaysia and in Dakar, Senegal.

In previous discussions during the day, there were several mentions of upgrading FSM services and developing a formal legal framework for such services. Institutional responsibility for FSM remains unclear, with ULBs considering FSM only a tangential responsibility while parastatal agencies like water and pollution boards do not consider FSM their responsibility at all. The net result is a sector characterized by fragmented service provision, increasingly informal workers and the lack of benchmarks or service standards.

Using perspectives from both service providers and legal experts, this session attempted to lay out the 'key pillars' that an FSM policy might address to incentivise private investment and outline a coordinating framework which allows for the provision and upgradation of sanitation services. In both the description of existing FSTP projects, at Devanahalli and Leh, and a broader prescriptive analysis of facilitating legal frameworks, three consistent themes emerged.

## Enabling Policies and Coordinating Framework

FSTP projects such as the ones at Leh and Devanahalli have benefitted from a degree of coordination between private providers and municipal or state governments. Enthusiasm on part of the local governments, especially in Leh, smoothed the land acquisition process and the creation of an enabling framework for desludging which ensured consistent demand. In the case of Leh, tourism contributes significantly to the local economy and helped ensure that the local government remained responsive to the concerns of both the private sector and citizen voices. It serves as a good example for the particular convergence of factors that draw in private sector investment- credible government intervention, smooth land acquisition process and a clear division of responsibilities between government and private sector, with the government serving as a forum for implementation issues and the private sector rolling out innovative finance and technical issues.

Going forward, FSM policies need to have a clearer stance on issues like pricing and rate of return, which stakeholder bears the final cost burden, the investment regulatory model and the extent to which private sector interests can segment the FSM market. It is worthwhile to examine the development of related sectors, such as electricity and telecom, especially with respect to questions of firm entry and exit, dispute redressal mechanisms and performance related issues. To sum up, FSM policies need to clearly define the institutional structure governing FSM (given the fragmented nature of institutional responsibility), the policy on tariffs (whether private sector can choose tariffs or these will be set by policymakers), the quality of standards and performance regulation, and how to ensure consumer voices and choices are heard and addressed.

## Financing of FSM Services

The cases of Leh and Devanahalli exhibit different financing models. In Leh, both capital expenditure and operational expenditure are the responsibility of the private provider with a revenue sharing agreement inked between the municipality and the provider. In Devanahalli, operational expenditure is now the responsibility of a private operator, under an integrated services contract while the initial capital expenditure was provided via a BORDA grant. No revenue sharing is present in Devanahalli. Other FSTPs in the country are also driven by the grant-based model- to scale up the creation of FSTPs, and drive private sector innovation across the sanitation value chain, innovative financing mechanisms will be needed.

One place to start is the development of a credible credit rating system which smoothens access to long term capital at a potentially lower cost. Project investors need to experiment with a new set of financial instruments to mitigate the high risks which are part of such projects- deep discount bonds are one such option or securitized annuity payments. Innovation in financial products need not be the only option to bring down the cost of capital. Structural changes could also reduce counterparty risk, for example, city, state and private sector provider could form an SPV together as has been done in some other cases. Each segment of the FSM chain needs a detailed evaluation and a specification of standards, as well as understanding the kind of regulatory model which would be followed.

## Technology Provision and Financing

FSM policies need to recognize that underlying each step of the FSM value is a certain configuration of technologies and therefore the potential for technical innovation. Private sector roles need not be thought of as only about de-sludging and treatment. There is also potentially a role in understanding extant technologies or promoting the growth of new technologies by technology incubation and technology delivery in all aspects of the FSM value chain. Until policies explicitly address the issue of technologies and technology incubation, the quality of developers and promoters will remain restricted to the 'civil contractor' model typical of past infrastructure projects.

Linked to this is the issue of due diligence of the promoter. If the sector has to develop and mature, we need to develop some criteria for the kind of pedigree possessed by infrastructure developers that are building this infrastructure. Technology, track record etc. should come into play, rather than simply net worth or a projected ability to construct a given number of FSTPs. FSM needs to set itself apart and begin prioritizing technology providers and operational efficiency in the awarding of contracts.

In Leh and Devanahalli, technical innovation has allowed the treatment of raw sludge that was previously dumped in farmland. In Leh, where the operator has more autonomy, technical innovation is also moving faster.

To conclude, it is important to recognise FSM as a public service and stakeholders need to hold governments at all levels accountable and work within these systems. Additionally, there is a need for better IEC efforts around FSM and move away from perceiving it as a type of waste management. Finally, communities need to be at the centre of this discussion and decision-making.

#### SCALING CITY INSTITUTIONS FOR INDIA: SANITATION (SCI-FI)

The Scaling City Institutions for India: Sanitation (SCI-FI: Sanitation) Project falls under the urbanisation vertical at CPR. The project aims to inform and support the formulation and implementation of the Government of India's urban sanitation programmes and investments. The research programme will study cities and states to understand the reasons for poor sanitation, and inform and support the state and city governments in modifying their urban sanitation programmes so that they are supportive of alternative technologies and service delivery models, with the goal of increasing access to safe and sustainable sanitation in urban areas.