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E-Waste Handling by Informal Sector: The Modern Form of Manual Scavenging and Murder of Article 21

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ABSTRACT

“to abolish the hazardous and demeaning practice of handling the E-waste in the informal sector, no one should be involved in life hazardous and demeaning handling of E-waste just for roti.”

In India, about 90% of E-waste is handled by the informal sectors which are mostly done by the lower strata of the society without any safety measures. It is a clear violation of Article 17 and Article 21 of the Indian constitution. When the constitution of India came into effect both Articles 17 and 21 also came into force. Article 17 came as civil rights for the annihilation of caste and division of class in the country. Article 21 is the protection wall for the human right which is the right to life. Although they look alluring and demonstrate welfare on paper, it is contrary to society. When the informal sector’s workers handle toxic substances, it drags them to severe diseases and death when they come into direct contact with those toxic substances. The workers involved don’t acknowledge the extent of danger to their life when handled by their exposed bodies. The Varma system in ancient India forced the lower strata to manual scavenging which is pervasive till today and now in modern times, due to working in filthy environments, the upper strata has developed hate and repugnance for lower strata causing untouchability as most of the workers belong to the latter. The informal sector of E-waste handlers can be called the modern form of manual scavengers. India has not been able to abolish manual scavenging despite The Prohibition of Employment of Manual Scavengers and their Rehabilitation Act, 2013. The new form of manual scavenging should be abolished before it blossoms. State under the constitutional obligation needs to protect Article 17 and Article 21.

Keywords: E-waste, Technology, Untouchability, Health, Informal Sector

I. INTRODUCTION

In ancient India, the Varna system was pervasive and was a strong force in society. It forced the

lower strata of the society to engage in activities that were inhumane and hazardous to life. The best example is the practice of manual

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scavenging which has survived for centuries in our country. Though manual scavenging is illegal after enforcement of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 but it continues to be pervasive in the Indian society which is a gross violation of Article 17 and Article 21 of the Indian Constitution as it encourages the practice of untouchability and is hazardous to human health. Even in the 21st century, manual scavengers face the same hate and repugnance from society because of their engagement in filthy, dirty and hazardous workplaces.

With the advent of technology, urbanization, economic growth, consumerism and a higher rate of obsolescence of electrical and electronic equipment (EEE), there has been ever-escalating demand for electric and electronic equipment. With the increasing population, the number of electric equipment have raised sharply making. The problem is not when the consumers are using these devices but the real problem begins once the user's needs cannot be fulfilled and the purpose of the devices cannot be met which means they are discarded. Unlike, normal waste, E-waste is of complex nature that needs modern technology, tools and techniques to handle them. In case, they are handled without the required technology, tools, methods and techniques, the E-waste is too hazardous to both humans and the natural environment that we live in.

India is the third-largest producer of E-waste after China and the US which produced 38% of the total 53.6 million tonnes in 2019.² India alone produced 3230Kt of E-waste with 2.4kg per capita while India recycled 30Kt (2016)³. 3230Kt is merely the generated waste beside these, thousands of tonnes of E-waste is imported every year illegally as the import of E-waste is banned under Hazardous and Other Waste (Management and Transboundary) Rules, 2016 and hence there is no record of the illegally imported E-waste in India.

However, second-hand electronic and electric goods can be legally imported for refurbishing but due to lack of infrastructure, skilled human and resources, it is difficult to differentiate between second-hand electronics and E-waste. Although, there is a provision to re-export the goods back within 3 years. Unfortunately, there is no mechanism to check whether they are re-export to the country of origin. A report by NEC Technologies India Pvt. Ltd and Associated Chambers Commerce of India in the annotation of 2016's report by UN's Global E-waste Monitor which indicated generation of 2 million tonnes of E-waste stated that out of the 2 Mt generated by India, 1.58 Mt (79 percent) was unorganized, whereas only 0.42 Mt (21 percent) was organized.⁴ According to data by Central Pollution Control Board from February 2020, around 1,553 producers were provided EPR and there are only 35 registered Responsibility

² Ewastemonitor.info. 2021. *E-waste Monitor*. [online] Available at: <<http://ewastemonitor.info/>>

³ Id.

⁴ In.nec.com. 2021. *ELECTRICALS & ELECTRONICS MANUFACTURING IN INDIA*, NEC

Technologies India Private Limited. [online] Available at: <https://in.nec.com/en_IN/pdf/ElectricalsandElectronicsManufacturinginIndia2018.pdf> [Accessed 11 October 2021].

Organizations.⁵ Hence, it can be said that over 90 percent of the E-waste handling is done by informal sector workers.⁶

Since 90 percent of the E-waste is handled by the informal sector workers, that means that the workers handling them are not registered and hence cannot be tracked and their exact number cannot be figured out. It is estimated that millions of workers are involved in the informal sector which is one of the most crucial problems with E-waste management as the informal sector's workers are exposed to toxic elements while reclaiming, reprocessing and recycling. The workers are often unknown of what they are dealing with. Processes like dismantling components, wet chemical processing, and incineration are used which results in direct exposure and inhalation of harmful chemicals. These workers have almost don't use or have no idea of gloves, face masks, and ventilation fans. For example, the opening of printed wiring boards increases the concentration of dioxins in the surrounding areas increasing the risk of cancer if inhaled by workers and local residents. Toxic metals and poison can be infused with the bloodstream during the manual extraction and collection of precious metals, and workers are continuously exposed to poisonous chemicals and fumes of highly concentrated acids. Neurological disorders may be caused because of recovering reusable copper by burning insulated wires. While recovering cadmium, found in

semiconductors and chips resistors can damage the kidneys and liver and cause bone loss⁷ and there are thousands of other implications that are caused due to unsafe handling and dealing of the E-waste.

Under survey for a research article⁸, the researchers found that nearly 52% of the workers working in recycling plants were recycling with bare hands in Seelampur, Shastri Park and Mayapuri which are WEEE recycling hubs of Delhi and neighbouring states. 68% used bare hands for processing, 11% used gloves, 3% used masks and only 18% both masks and gloves. A quarter of the respondents reported unawareness about the proper disposal of Hazardous E-waste and its consequences.

In India, due to poor infrastructure and ineffective implementation of legislation, the life of the workers is in danger and they face untouchability day to day life just because they are poor. No one should risk their lives and lose their dignity for survival.

II. CONSTITUTIONAL PROVISIONS

Since E-waste handling workers belong to the backward section of society and the nature of the E-waste is harmful to the human body, they are entitled to some special rights apart from rights under the Indian constitution. Some of the important and relevant constitutional provisions are as follows:

⁵ Cpcb.nic.in. 2021. *Annual Report 2019-20*. [online] Available at: <<https://cpcb.nic.in/openpdffile.php?id=UmVwb3J0RmlsZXZMvMTI0M18xNjE2NTYxOTAxX21lZGhlcGhvdG8xMTgzNi5wZGY=>>> [Accessed 3 November 2021].

⁶ Id.

⁷ Encyclopedia Britannica. 2021. *electronic waste*. [online] Available at: <https://www.britannica.com/technology/electronic-waste> [Accessed 8 November 2021].

⁸ 1424.pdf (ijramr.com)

- “Article 21: Right to life and personal liberty.”
- “Article 14: Equality before law (Right to Equality)”;
- “Article 16(2): Equality of opportunity in matters of public employment”;
- “Article 17: Abolition of Untouchability”;
- “Article 19(1)(a): Right to practice any profession, or to carry on any occupation, trade or business”;
- “Article 21: Protection of life and personal liberty”;
- “Article 23: Prohibition of traffic in human beings and forced labor, etc.”;
- “Article 41: Right to work, to education and public assistance in certain circumstances”;
- “Article 42: Just and humane conditions of work”;
- “Article 46: Promotion of educational and economic interests of scheduled castes, scheduled tribes and other”.
Weaker sections;
- “Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health”;

III. INTERNATIONAL CONVENTION

With the overarching objective of protecting human health and the environment against the adverse effects of hazardous wastes, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was adopted on 22 March 1989 but came into effect on from 5 May 1992 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and others parts of the developing world of deposits of toxic wastes from the developed nations of the world.⁹

The provisions concentrated on the following aims¹⁰:(a) the reduction of hazardous waste generation, wherever the place of disposal is situated; (b) promotion of environmentally sound management of hazardous wastes, wherever the place of disposal is situated (c) restriction of transboundary movements of hazardous wastes based on the principles of environmentally sound management where it is perceived to be; (d) application of a regulatory system where transboundary movements are permissible.

The Basel Ban Amendment was adopted by the third meeting of the Conference of the Parties (COP) in 1995. But it was on 5 December 2019, the Basel Ban Amendment came into force as recognized international law. The Ban

⁹ Wedocs.unep.org. 2021. *Basel Convention of the Control of Transboundary Movement of Hazardous Wastes and their Disposal*. [online] Available at: <[https://wedocs.unep.org/bitstream/handle/20.500.11822/8385/-Basel%20Convention%20on%20the%20Control%20of%20Transboundary%20Movements%20of%20Hazardous%20Wastes%20-](https://wedocs.unep.org/bitstream/handle/20.500.11822/8385/-Basel%20Convention%20on%20the%20Control%20of%20Transboundary%20Movements%20of%20Hazardous%20Wastes%20-20113644.pdf?sequence=2&isAllowed=>)

20113644.pdf?sequence=2&isAllowed=> [Accessed 25 October 2021].

¹⁰ Basel.int. 2021. *Basel Convention > The Convention > Overview*. [online] Available at: <<http://www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx>> [Accessed 24 October 2021].

Amendment prohibits the export of hazardous wastes from member states of the European Union, the Organization for the Economic Cooperation and Development (OECD), and Liechtenstein of all other countries.¹¹

The Ban Amendment is still pending to be ratified by India which means India can still import E-waste from the parties that have not ratified the ban yet¹². The ratification of the ban will shape the E-waste trade industry.

The Basel Protocol on Liability and Compensation was adopted on 10th December 1999 at the Fifth Conference of the Parties (COP5).¹³ The talks on the protocol began in 1993 in the response to the concerns of the developing countries when they realized are imported with E-waste in massive quantities and they lacked funds and technology for coping with illegal dumping or accidental spills. The purpose of the protocol is to provide for comprehensive liability and compensation damages resulting from the transboundary movement of hazardous wastes and other wastes that includes the illegal traffic of those wastes.¹⁴ But the protocol is pending for ratification and is not in force.¹⁵

One of the most important contributions of the Basel Convention over the past number of years is the elaboration of a significant number of

policy instruments with non-binding character. Many bodies of technical guidelines on the management of specific waste streams have been developed by technical government expert groups under the framework of the Convention and approved by the Conference of the Parties (COP)¹⁶. These non-binding instruments are well designed for the use of the governments of the Parties at all levels to provide practical guidance and facilitate the management of the relevant waste streams.

India has signed the convention and made legislation and policies under the frame of the non-binding policy instruments and guidelines by the Basel Convention. A large number of E-waste is legally exported in the name of refurbishing equipment and second secondhand goods.¹⁷ Due to lack of skilled manpower and required technology to distinguish refurbing and second-hand, India has been a dump yard of Europe and America. Moreover, E-wastes are exported illegally too which has no records on paper. According to the 2015, United Nations Environment Programme up to 90 percent of the world's electronic waste is illegally dumped in India; this is on top of the estimated 1.8 million metric tonnes of E-waste produced domestically each year.¹⁸ Co-convener of the World making

¹¹ Basel.int. 2021. *Ratification of the Basel Convention Ban Amendment*. [online] Available at: <<http://www.basel.int/Countries/StatusofRatifications/BanAmendment/tabid/1344/Default.aspx>> [Accessed 30 October 2021].

¹² Id.

¹³ Supra note 9

¹⁴ Basel.int. 2021. *Basel Convention > The Convention > Overview > Liability Protocol*. [online] Available at: <<http://www.basel.int/TheConvention/Overview/LiabilityProtocol/tabid/2399/Default.aspx>> [Accessed 7 November 2021].

¹⁵ Basel.int. 2021. [online] Available at: <<http://www.basel.int/Portals/4/Basel%20Convention/docs/meetings/cop/cop9/docs/39e-rep.pdf#ix24>> [Accessed 1 November 2021].

¹⁶ Id.

¹⁷ Content.dgft.gov.in. 2021. [online] Available at: <<https://content.dgft.gov.in/Website/dgftprod/a913d6f4-7830-42f6-822c-66fd85ac74f7/FTP%20Chapter2-Updated%20as%20on%20%2010.08.2021.pdf>> [Accessed 5 October 2021].

¹⁸ Id.

and the environment in the Asia-Pacific region Conference, Dr Assa Doron said "India has become the dumping ground for our E-waste.".... "Everything from computers, phones, televisions and white goods are illegally being exported to India."....."The country has also become a huge consumer hub itself where a lot of the electronic goods are being disposed of as India adopts a 'throw-away society'.¹⁹

The Basel Convention can be supportive in the interest of the workers involved by curtaining the export of E-waste in India as per its objectives to protect human health and the environment.

India in pursuit of being one of the biggest power in the international community has not ratified the Basel Ban Amendment. India treats E-waste as a treasure to uplift the economic conditions of the country but it is done at the risk of the human dignity and life of the worker in informal sectors which is a violation of Article 17 and Article 21 respectively.

IV. LEGISLATIONS ON E-WASTE IN INDIA

There are many legislations that directly or indirectly deal with e-waste but none of them has successfully shown the efficacy intended to be achieved due to lack of strong mechanism and inefficient and improper implementation of the legislation. There is an immediate need for a strong mechanism to implement these legislations that can check the implementation. The following are the legislations dealing with E-waste.

¹⁹ Id.

²⁰ Ibid.

E-waste (Management) Rules, 2016

India is the only country in South Asia to have legislation on E-waste. Before the E-waste (Management and Handling) Rules, 2011, E-waste was covered under the Hazardous Waste Management (HWM) Rules. E-waste (Management and Handling) Rules, 2011 were brought into force to enable recovery and reuse of useful material from E-waste. The concept of Extended Producer Responsibility (EPR) was introduced which makes the manufacturer liable for the sale disposal of their electronic goods produced under Rule 4 of the E-Waste(Management and Handling) Rules, 2011.²⁰

E-waste (Management) Rules, 2016 were enacted in supersession of the 2011 Rules. Under these new enacted Rules, a manufacturer, dealer, refurbisher and Producer and Producer Responsibility Organization (PRO) were also brought under its ambit. PROs were given as additional channels for implementation of EPR (Extended Producer Liability) was given as instrumentality Rule 5(1)(g) of 2016 rules. The application of Rules was expanded to cover components, consumables, parts and spares of EEE in addition to the equipment covered under Rule 16(1) of 2016 Rules.²¹

The E-waste Management Rules, 2016 was amended by the Centre; vide notification G.S.R 261 (E), dated 22nd March 2018 to facilitate and effectively implement environmentally sound management of E-waste in India. The amendment was made towards authorized

²¹ Ibid.

dismantlers and recyclers to proliferate the formalize the E-waste recycling sector.

Under these new Rules, the PROs shall apply to the CPCB for registration which is a significant and crucial amendment as the requirement of PROs to register with CPCB would ensure that CPCB can constantly supervision and have an eye on the activities of the PROs under Rule 2(b)(I)(XVII) of the new amendment.²²

The new amendments can be ameliorating if the execution is carried out efficiently. These new amendments have great efficacy on paper but are rare to see in society because of corruption and non-execution, this conclusion can be drawn by the data that in February 2020, 1553 producers were provided with the EPR and only 35 were only registered organizations despite the clear amended rules of E-waste Management Rules in 2018.²³

The Environment (Protection) Act, 1986

In India, the most important legislation that directly deals with electronic waste is the Environment (Protection) Act, 1986. There are three penal provisions are mentioned (i.e. sections 15, 16 and 17). The E-waste (Management) Amendment Rules, 2018 are also the product of this umbrella Act as it is clearly stated under section 15 of the Environment (Protection) Act that it provides for the contravention of the Act, rules, orders and even directions passed under it.²⁴

Section 15 is a penal provision against individuals that prescribes imprisonment for a term that may extend to five years or with a fine which may extend to one lakh rupees, or with both.²⁵

Section 16 and 17 deal with companies and department of government respectively and in both sections it is mentioned “shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.” which means the punishment and fine are to be determined in each case with the facts of the case in consideration.

The Air (Prevention and Control of Pollution) Act, 1981

The Air (Prevention and Control of Pollution), Act is ingrained a total of five penal provisions namely sections 37, 38, 39, 40 and 41 when read along sections 21, 22 and 31A gives effect to the spirit of the legislation. Section 37, 38 and 39 deal with individual liability under sections 21 and 22 (restrictions on the use of certain industrial plants) and directions issued under section 31A of the Act which punishes a person who fails to comply. Similarly, 40 and section 41 creates liability on the part of the companies and government respectively.²⁶

Section 7 of the Air Act prescribes imprisonment for a term not less than one and six months but which may extend to six years with fine, and additional fine which may extend to five thousand rupees in case of failure.²⁷

²² Ibid.

²³ Supra note 4

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

The Water (Prevention and Control of Pollution) Act, 1974

The Water Act has seven penal provisions in total under sections 41, 42, 43, 44, 45A, 47 and 48 read with sections 20(2), 20(3), 24, 26, 32(1)(c), 33(2) and 33A brings several offences within the ambit of the Act. Section 41 of the Water Act, is prescribed for an even lesser degree of punishment and penalty which is imprisonment for a term that may extend to three months or with a fine which may extend to ten thousand rupees. The imprisonment may extend from two to six years maximum.²⁸

Analyzing and understanding the provisions asserting liability under all the Legislation in India

When we look into the provisions of all the Acts above mentioned, we find various shortcomings within these provisions. firstly, section 15 of EPA, 37 of the Air Act and 41 of the Water Act provide neither stringent nor strict punishment or penalty. It seems that the legislators have underestimated the impact of hazardous methods through which E-waste is being managed in India. The health of workers in the informal sector and environment are of great significance and thus, the penal provisions need to be amended as per the present needs and conditions of the workers and environment affected by the E-waste. The quantum of imprisonment and pecuniary penalization doesn't seem rigorous enough for the present times. And it should be noted that all the legislations The Environment Act, The Air (Prevention and Control) Act and

The Water (Prevention and Control) Act except E-waste Management Rules only talks about the damage to the environment, it doesn't talk about the deteriorating effect on the human health especially on the health of the workers involved in the handling them. There is an immediate need for legislation that can protect the right to live under Article 21 of the Constitution.

Moreover, in India, the principle of the "Polluter Pays Principle"²⁹ of International Environment law states that the polluter should pay in proportion to the damage caused to the environment. In consideration of the hazardous effect of E-waste on the workers of the informal sector, there should be a similar principle to the "polluter pays principle" where the compensation should be given based on the damage to the health of the workers involved. But the question is that can money compensate the life of a human being? can we allow the deteriorators of the health of the workers to pay and deteriorate again and again? Isn't it a license to the capitalists and industrialists to pay and deteriorate and risk the life of the workers? This must be brought and taken into account in the sight of the legislators and if they fail to do so, it is a clear violation of Article 21 and Article 17 of the Indian Constitution.

V. INFORMAL SECTOR AND VIOLATION OF ARTICLE 21 AND ARTICLE 17

The consumption and use of electronics are deemed to be increased post-pandemic due to reliance on smartphones, computers, SSDs, HDDs and other electronics and electric related

²⁸ Ibid.

²⁹ (1999) 2 SCC 718

to them as a consequence of this, India will import more e-waste than before. India in 2015 imported more e-waste from developed nations which are 90 percent of the world's electronic waste is illegally dumped in India; it is estimated 1.8 million metric tonnes of E-waste produced domestically each year.³⁰ And poverty has increased after the Second wave of Covid-19 compelling the lower and weaker section most like to involve in the hazardous, filthy and dirty informal sector of e-waste handling resulting in violation of Article 17 and Article 21.

Article 17 and 21 look alluring on paper but in society, they have ceased to function as 90% of people who mostly belong from the lower strata have their life and dignity at risk and this is an opportunity for the E-waste handling bodies and government to generate huge revenue.

In **Kharak Singh v. State of Uttar Pradesh**,³¹ the Supreme Court asserting the significance of Article 21 quoted and held:

By the term 'life' as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an armored leg or the pulling out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

The constitution of India grants us the right to live with human dignity under Article 21 as the

Supreme Court gave a new dimension to Article 21 in **Maneka Gandhi vs. Union of India**³² where the Court held that the right to live is not merely a physical right but includes the right to live with human dignity and the same was elaborate in the case of Francis Coralie v. Union Territory of Delhi and the following was observed:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

In **Bandhua Mukti Morcha v. Union of India**,³³ broad formulation of life to dignity was found and characterized Article 21 as the heart of Fundamental Rights, the court gave it an expanded interpretation, In this case, Justice Bhagwati observed: -

“It is the fundamental right of everyone in this country... to live with human dignity free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of

³⁰ Supra note 15

³¹ AIR 1295, 1964 SCR (1) 332

³² AIR 597, 1978 SCR (2) 621

³³ AIR 802, 1984 SCR (2) 67

the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government-has the right to take any action which will deprive a person of the enjoyment of these basic essentials.”

The workers in the informal sectors are of the lower strata of the society engaged in E-waste management and handling and they don't only bear the risk to their life and health but also face discrimination in the society as the E-waste is scrap in layman language and understanding. The embellishment is when these workers when they are not provided with modern technology, equipment and methods causing them to look and feel subjugated by the upper strata of the society.

The Varna system was pervasive and gave birth to untouchability in ancient India but the condition doesn't seem soothing even in modern times. The lower strata is facing the same hate and repugnance from society for centuries that began in the name of Varna system and in modern times, the same is faced by E-waste handling workers.

In **Laxman Jayaram Shant vs The State of Maharashtra on 17 April 1980**,³⁴ it was stated that “Article 17 of the Constitution doesn't define

“untouchability”. The Protection of Civil Rights Act, 1955 also doesn't define “untouchability”. Section 2(a) defines “Civil Rights” meaning thereby any rights accruing to a person by reason of the abolition of “untouchability” by Article 17 of the right Constitution. It appears that the word “untouchability” has not been purposefully defined under Article 17 of the Constitution because it is historically very well known to the one and all what is “untouchability”.”

In **People's Union for Democratic Rights vs Union**,³⁵ the Supreme Court held that whenever a fundamental right contained in Article 17, 23 or 24 was being violated by a private individual, it would be the constitutional obligation of the State to take necessary steps to interdict such violation and ensure that such person should respect the right. Merely because the aggrieved person could himself protect or enforce his invaded fundamental rights, did not absolve the State from its constitutional obligations.

Why handling of E-waste by the informal sector is so serious issue?

Indian society is well accustomed with the practice of manual scavenging. Manual scavenging through the lower strata of society has been in practice since ancient times. Though manual scavenging is prohibited in India under The Prohibition of Employment of Manual Scavengers and their Rehabilitation Act 2013 directly and indirectly under The Protection of Civil Rights Act, 1955 and The Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Act, 1989 though this practice so pervasive in our

³⁴ (1981) 83 BOMLR 15, 1981 CriLJ 387

³⁵ AIR 1473, 1983 SCR (1) 456

country especially with the advent of the Swachh Bharat Mission which was India's bigger cleanliness drive where 3 million employees, students and civil societies participated³⁶. Under this mission of septic tanks were built in the rural areas but the question remained is who would clean those tanks and it was not answered in the mission.

Handling of E-waste by the informal sector may take the modern form of manual scavenging and to be more precise and true, it is even more serious issue as manual scavenging does not have direct and severe hazards on health and life as compared with E-waste. The crux of the problem is that not much attention is given to the risk of the life and health of workers in the existing legislation, especially of the informal sector. India looks at the electric and electronic trash as a treasure which is evident from the non-ratification of the Basel Ban Amendment and this is all done in pursuit of becoming one of the superpowers of the world. The question is can this country afford to be materially rich and spiritually poor. India has always reflected the premise "we can't afford to be materially rich and spiritually poor" but this spirit of the State has failed to demonstrate in case of handling E-waste by risking the health and life of the workers.

VI. ROLE OF JUDICIARY ON MANUAL SCAVENGING

Judiciary under several Directive Principles of State Policy into enforceable fundamental rights for the development and the upliftment of the lower and weaker sectors of the society. Under Article 21 of the Indian Constitution interpreted liberally creating numerous rights and giving new directions to the social welfare.

The courts have adopted a new stern attitude about the judicial response related to manual scavenging forcing the authorities to eliminate scavenging.

In **Safai Karamchari Andolan v. Union of India, (2014) 11 SCC 224**,³⁷ The Supreme Court in this case acknowledged the problem of manual scavenging as a degrading, undignified and inhuman profession. The Supreme Court held that PEMSAR Act, 2013 and EMSCDL Act, 1993 neither dilute the constitutional mandate Article 17 nor does it condone any inaction on the part of the Central and the State governments under the EMSCDL Act, 1993.³⁸ The court made it clear that under PEMSAR Act, 2013 expressed that Article 17 and 21 acknowledges the rights of the person who are engaged in cleaning tanks and sewage cleaning along with those who clean the human excreta on the railway.

In **Delhi Jal Board vs National Campaign for Dignity and Rights of Sewerage and Allied Workers**,³⁹ The Supreme Court identified and

³⁶ Sulabhenvi.nic.in. 2021. [online] Available at: <http://www.sulabhenvi.nic.in/Database/SwachhBharatAbhiyan_6943.aspx?format=Print> [Accessed 16 October 2021].

³⁷ Ibid.

³⁸ Id.

³⁹ (2011) 8 SCC 568

highlighted the plight and apathy of the manual scavengers and sewage workers, who go down the drain risking their lives without safety equipment and safety depriving the workers of their fundamental rights of life and equality.

State action is required for the protection of Article 17 before the E-waste handling shapes into the modern form of manual scavenging. The constitutional obligation of the state should be fulfilled immediately with the stringent provisions with regard to E-waste management.

Why are the government and E-waste handling bodies not investing in safe and modern technology?

The government and the E-waste handling bodies are well aware of the fact that in India, a large portion of the population is in poverty which compels them to engage in such works. The weaker and lower strata see no other way to feed themselves. The condition of the lower and weaker strata has even worsened more after Covid-19. This is an opportunity for these bodies to have workmen with minimum wages and the government gets revenue from these bodies and want them to be in this market. But in this course, the life and dignity of the workers in the informal sector are at stake and their rights under Article 17 and Article 21. This is high time for the judiciary to take *Suo Moto Cognizance* being the guarantor of fundamental rights.

VII. SUGGESTION

a. Ratification of Basel Ban Amendment

Looking at the intensity of the problem, India needs to ratify the Basel Ban Convention which has become international law after its adoption in

2019 under the Basel convention. It will curtail and limit the amount of E-waste in India. India's approach to the trash as treasure needs to be kept pending until all the necessary technological and scientific development are made and available to the informal sector or until the informal sector is made extinct through policies and legislation. The Basel Ban Amendment need to be enforced with a strong mechanism across all the borders and airports. Basel Ban Amendment will be a boon to the informal sectors in terms of health.

b. Prohibition act of handling of E-waste without safety and precaution

This is high time for an Act to be legislated prohibiting the handling of E-waste without the prerequisite for the tools, technologies and methods. The legislation should be framed based on the danger occurring on the health of the informal sector which is 90 percent and discrimination they face due to working in such filthy informal sector. The formal sector in order to save their money from expensive technologies and methods prefer cheap informal sectors who do manual labour to get their works done. This illegal and unauthorized practice should be strictly prohibited under the new Act with a proper and applicable mechanism to check on these formal sectors.

c. Development, awareness and availability of the technology and methods for handling E-waste safely

The government should carry out awareness programmes in association with NGOs and INGOs and local bodies on the health hazards of handling E-waste without safety measures and their consequences to the workers and the general

public. E-waste should be made a part of the syllabus. The pace with which the technological world is developing with the use of electronics and electric equipment if this issue is not introduced to the informal sectors and lower strata of the society, it will further result in more causalities of life with the developing world and the State's guarantee to the right to equality and prohibition of untouchability will fail. Thus, the State needs to work for the development, awareness and availability of the technologies and methods for handling E-waste.

Under Digital India, the Ministry of Electronics and Information Technology (Meity) has initiated an E-waste awareness programme along with the industry association since 2015 to create awareness in the public on hazards of E-waste handling by the informal or unorganized sector and educate them through scientific alternative methods.⁴⁰ The programme needs to be properly implemented and executed as a large fraction of the society is involved in the informal sector which needs planning, policies, efforts and implementation on the ground level as most of the unorganized sector's workers are from the lower strata that need to be the central point during its awareness.

d. Expansion of formal sector

The informal sector has the most access to E-waste and hence there is an urgent need for inclusion in the formal sector as soon as possible. A manufacturer, dealer, refurbisher and Producer and Producer Responsibility Organization (PRO)

are also brought under EPR in E-waste (Management) Rules, 2016. The Rules for inclusion and expansion of the formal sector are present in India but the proper implementation and effective mechanism of these rules are absent in this country. The authorities such as CPCB should understand the seriousness of hazardous consequences on the health of workers informal sectors, looking at the seriousness of the problem, different layers of committees under such authorities should be made for check and balance among them. And a monthly report should be sent to the Ministry of Environment and Forest.

VIII. CONCLUSION

The focus of the State needs to be drawn to the hazardous health faced by the informal sector and importance need to be given to the health of the workers as asserted by Article 21. Similarly, due to working in a dirty and filthy environment, they are seen with an eye of inequality as a large number of workers are from the lower strata and hence, face untouchability. There is an urgent and immediate need for the inclusion of the informal sector in the mainstream organized sector that requires proper implementation of new amended rules of E-waste Management. The import of E-waste from developed nations needs to be banned through ratification of the Basel Ban Amendment. Looking at the worsening condition of the workers in the unorganized sector, the prohibition Act or Rules should be made without any ambiguity in the provision

⁴⁰ Meity.gov.in. 2021. *Support for Awareness Programme on Environmental Hazards of Electronics Waste through Digital India Initiative (PHASE – II)*.

[online] Available at: <<https://www.meity.gov.in/writereaddata/files/RFP-modified.pdf>> [Accessed 29 October 2021].

before a large portion of the unorganized sector faces detrimental consequences. Moreover, the most important measure is the development and availability of modern technologies and methods to the informal sector along with awareness among the people lower strata of the society regarding E-waste handling.
