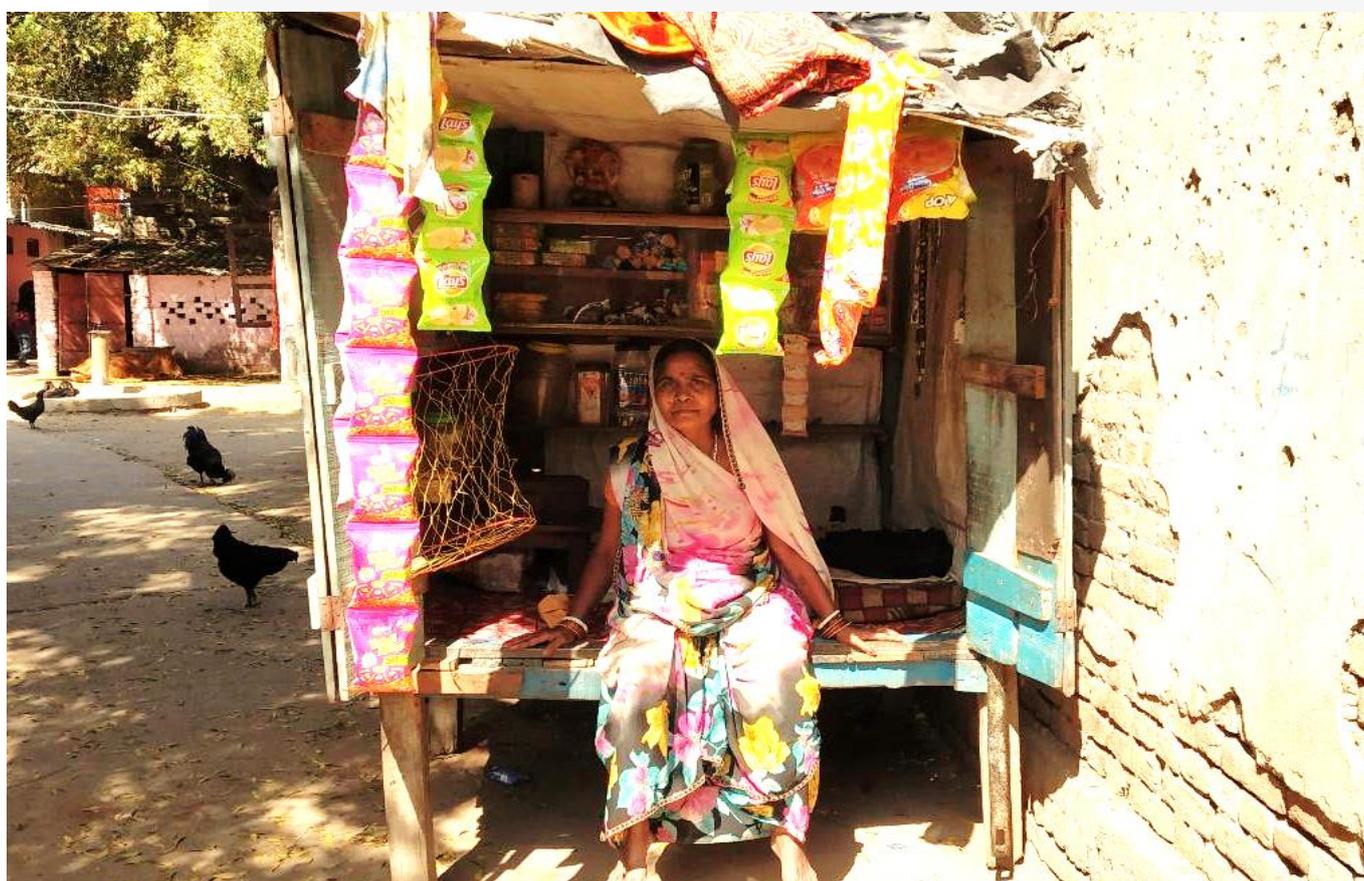


## Policy Brief 2

### STRENGTHENING THE IMPLEMENTATION OF THE PEMSR ACT, 2013

Enabling and supporting women  
engaged in manual scavenging to  
successfully move to alternative  
livelihoods



**SAFAI KARMACHARI ANDOLAN**  
A movement for elimination of manual scavenging



## 1. Constitutional Foundations

### *Provisions for gender justice and equality*

Article 14 of the Constitution of India states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

In fact, in recognition of the historical marginalisation of women, Article 15 (3) states that “nothing in this article shall prevent the State from making any special provision for women and children”. Under Article 46, the State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.

Article 21 guarantees the right to life right to life with dignity. The Supreme Court in this context has observed that, “the meaning and content of fundamental right guaranteed in the constitution of India are of sufficient amplitude to encompass all facets of gender equality including prevention of sexual harassment or abuse.”

### *Right to livelihoods and dignity of work*

Article 21 of the Constitution of India, 1950 provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” ‘Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc.

Justice J Bhagwati in *Bandhua Mukti Morcha v Union of India and Ors*<sup>1</sup> (1997) case has extended the import of “right to life” to “right to livelihood.” He opined that every worker has the right to be free of exploitation and abuse, and observed that male and female workers should have equal access to opportunities, fair wages, maternity relief, and education facilities.

Article 39 of the Directive Principles of State Policy specifically requires the state to direct its policy towards securing *equal right of men and women to adequate means of livelihood, equal pay for equal work for both men and women, to protect health of workers* and children are given opportunities and facilities to develop in a healthy manner and are protected against exploitation and moral and material abandonment.

## 2. Problem Statement

To address this question effectively, a deeper interrogation on two points is required. Firstly, understanding the gendered nature of manual scavenging and secondly, how this impacts the ability of women to seek alternate livelihoods. This paper will look at the aforementioned two points through a review of secondary sources as well as evidence from the field.

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<sup>1</sup> *Bandhua Mukti Morcha v Union of India and Ors* (1997): SCC, SC, 10, pp 549.

### *Gendered nature of manual scavenging*

In India, gender and caste plays a dominant role in the kinds of jobs that women in the workforce are employed in. It is well established that caste and patriarchy are the main compulsive factors that force people, especially women of the specific scheduled caste communities, into manual scavenging. They are into different forms of manual scavenging, mainly cleaning the insanitary dry latrines and carrying and disposing the human faeces thereof and assisting male folks in carrying and disposing the waste from septic tanks and other sources. Safai karamchari women are discriminated against, due to the fact that they are poor, Dalits and women. They are not only discriminated against by society and administrative systems at large, but also within their own communities where patriarchy persists.

A number of studies have shown that more women are engaged in manual scavenging than men.

The International Dalit Solidarity Network (IDSN)<sup>2</sup> reported that around 1.3 million people in India, mostly women, are involved in manual scavenging. Reports suggest that 99% of those involved in manual scavenging are Dalits and among them, 95% are women.

Kumar and Preet (2020) in their study of the intersectionality of gender and manual scavenging find that of the 1.2 million Indians shackled by this practice, 95% to 98% are women<sup>3</sup>.

A baseline report by Safai Karamchari Andolan (SKA), Centre for Equity Studies (CES) and WaterAid (WA) on the Status of Women Engaged in Manual Scavenging (henceforth baseline survey) found that of 1686 respondents surveyed in four states in India, 1172 were women and 514 were men. In one of the districts of Madhya Pradesh, out of the 129 identified manual scavengers 76 (58%) were women; in a district of Bihar state, out of 58 manual scavengers, 30 (51%) were women; in a district of Jharkhand, out of 44 manual scavengers, 18 (40%) were women; and in a district of Uttar Pradesh, out of 44 manual scavengers, all were women.

### *Differences in work*

Women usually clean dry toilets, excrement from open defecation sites, gutters, and drains, and men are called upon to do the more physically demanding work of cleaning sewers and septic tanks<sup>4</sup>. Clogged dry latrines built inside the houses are generally made to be cleaned by women as families often prefer allowing women inside their homes instead of men.

Most women crawl into open defecation pits to empty human waste into a basket which they then carry on their heads to dispose of. Not only does the waste spill onto their bodies as they carry these baskets, entrenched notions of purity and pollution lead to their facing active discrimination from people from upper castes. This takes multiple forms such as lack of access to public services, threats of sexual violence, segregation of their children in schools and so on.

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<sup>2</sup> <https://idsn.org/key-issues/manual-scavenging/>

<sup>3</sup> <https://www.epw.in/engage/article/manual-scavenging-women-face-double-discrimination-caste-gender#:~:text=Additionally%2C%20the%20Protection%20of%20Civil,enacted%20to%20eradicate%20manual%20scavenging.&ext=These%20women%20are%20also%20robbed,Article%2021%20of%20the%20Constitution.>

<sup>4</sup> Human Rights Watch, "Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India", available at [https://www.hrw.org/sites/default/files/reports/india0814\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/india0814_ForUpload_0.pdf)

### *Unequal payment*

“Within Dalit families, women are the ones who clean the human excreta from the dry pit latrines because this task offers the lowest wages...men are more likely to clean the human waste on the railway lines, septic tanks and sewers where the wages are higher<sup>5</sup>” says Bezwada Wilson, national convener of the Safai Karamchari Andolan.

A 2014 report by Human Rights Watch found that after spending the morning manually removing excrement from the toilets, the women return to the houses they cleaned to collect leftover food as payment. They were given limited quantities of grains during the harvest and old clothes at festival times, but rarely any cash wages. In the off-chance they do receive wages, the report suggests that on an average, women got paid as little range as INR 10 to INR 50 (0.15USD to 0.6 USD) per day per household. It is much lesser than men who earn up to Rs 300 a day for cleaning sewer lines.

In Dehri, in a focussed group discussion, a person who works as cleaning staff in a medical college said “They make us do all sorts of cleaning work. We have gone 5-10 feet inside tanks to clean them”, adding that he was paid a salary of Rs. 6500 per month. In contrary, the women who are put into this disgusting work get a much lower income ranging from Rs.300 per month.

### *Sexual and other forms of harassment*

Kadlak et al (2009)<sup>6</sup> in their study about *safai karmchari* women in Maharashtra noted that women in sanitation work are often subjected to mental and sexual harassment, abusive words and taunt from her male supervisors and male colleagues. A report by IDSNI and Rashtriya Garima Abhiyan has also found rampant sexual harassment of female sanitation workers<sup>7</sup>.

During our field research, women shared with the researchers that their municipality would often hire women who are young and “beautiful” from particular castes for the contractual cleaning work - which hints at the possibilities of sexual exploitation of women in sanitation work.

### *Alternate livelihoods*

The baseline survey found that out of 1686 respondents, 541 women believed that they have a right to dignified livelihood. Further 641 women said that they would like to stop working as manual scavengers. However, due to the persistence and endemic nature of caste and gender, people who were formerly engaged in manual scavenging find many barriers to leaving the practice:

### *Threats from upper-caste members of the community*

Human Rights Watch stated in their report that women faced threats of violence from dominant caste members when they refused to practice manual scavenging.

“In November 2012, when Gangashri along with 12 other women in Parigama village in Uttar Pradesh’s Mainpuri district voluntarily stopped cleaning dry toilets, men from the dominant Thakur caste came to their homes and threatened to deny them grazing rights and expel them

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<sup>5</sup> <https://www.thequint.com/voices/opinion/manual-scavenging-women-sanitation-caste-discrimination-swachh-bharat>

<sup>6</sup> Kadlak, H., Salve, P.S. and Karwade, P., 2019. Intersectionality of Caste, Gender and Occupation: A Study of Safai Karamchari Women in Maharashtra. Contemporary Voice of Dalit, 11(2), pp.130-138.

<sup>7</sup> <https://idsn.org/wp-content/uploads/2017/10/Submission-Caste-and-Gender-Based-Sanitation-Practice-of-Manual-Scavenging-in-India.pdf>

from the village. Despite these threats, the women refused to return to manual scavenging. Soon after, some 20 to 30 upper caste men from Parigama confronted the community. Gangashri recalls: They called our men and said “If you don’t start sending your women to clean our toilets, we will beat them up. We will beat you up too. We will not let you live in peace.” She further said that they were afraid.<sup>8</sup>

Furthermore, women reported that local authorities failed to intervene when they faced threats from the households they served. As retribution for leaving, they were denied access to community land and resources or threatened with eviction, frequently with the backing of village councils and other officials.

### ***Inability to find other work***

News 18 interviewed a number of women engaged in manual scavenging in 2019 and revealed that, "rehabilitated" or "liberated" manual scavengers, did try to get jobs other than sanitation work, but a majority of them were unsuccessful. Kavita applied for job positions at shops and receptions, she tried to work at factories, she tried to work as a domestic helper, she even tried to be daily wage labour. But everywhere she went, she was asked her caste. "We are Maithers. We only get to clean waste of other people. That's what society wants us to do and will force us to do", Kavita says<sup>9</sup>.

During focus group discussions by field researchers in one of the locations in Madhya Pradesh, when asked why women who have left manual scavenging aren’t pursuing the possibility of doing other types of domestic work, they said “*jab vo log apni ghar ke babar khade tak nahi hone dete toh hamare haath ka khana kaise khayenge*” (when they don’t even allow us to stand in front of their doors how will they will eat from our hands).

As part of a research conducted by National Institute of Rural Development and Panchayati Raj, which compared the job outcomes of two sets of women, those left manual scavenging and who are in manual scavenging, it was found that who shifted from manual scavenging to other jobs made only around half of the income they had previously earned for manual scavenging work and were much more financially worse off than the women who were still working as manual scavengers. The research notes that liberated women often did not find jobs other than ones involving hard manual labour or cleaning. Moreover, the work was uncertain. As opposed to toilets that always need cleaning, daily wage labour is much more precarious.<sup>10</sup>

### ***From manual scavengers to safai karamcharis***

Although there are no insanitary latrines in the four field sites within the scope of this study as per government data and reports, women are now employed as *safai karamcharis* by the local municipality either on permanent or contract basis. However, women of the Valmiki community hired for this work are most often made to clean open defecation pits, small-scale open gutters and market and

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<sup>8</sup> Human Rights Watch, “Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India”, available at [https://www.hrw.org/sites/default/files/reports/india0814\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/india0814_ForUpload_0.pdf)

<sup>9</sup> <https://www.news18.com/news/buzz/for-women-safai-karamcharis-liberation-is-manual-scavenging-with-a-makeover-2400809.html>

<sup>10</sup> <https://www.news18.com/news/buzz/for-women-safai-karamcharis-liberation-is-manual-scavenging-with-a-makeover-2400809.html>

other community areas where they continue to clean human excreta with bare hands. Such practice reinforces manual scavenging in newer ways.

The legitimisation of manual scavenging into safai karamcharis working for municipal corporations also has gendered dimensions through the preferential treatment or *Warsa Hakka* (usage in Marathi language, means hereditary in English) system, under which a *safai karamchari* will nominate his wife, son/brother, unmarried or widowed daughter/sister, or any other dependent to fill his/her position upon retirement, death or permanent disability. Therefore, once forced to become the only breadwinner in the family, and being nominated by their husbands, most women have no choice but to continue to work as safai karamcharis.

### Key issues identified

- Women constitute the large proportion of persons engaged in manual scavenging, however, paid a very meagre income compared to men. They are also subject to several forms of harassment.
- Rehabilitating them to any other work is challenging, due to the fact that the people from dominant caste pressurise them to continue in the same work and they get very limited support from the local government authorities
- Lack of viable alternative employment options and absence of incentives to switch, including lack of support for identifying and availing the existing ones.
- High demotivation to switch from the manual scavenging, due to failures of those already switched to new livelihoods and their reduced income
- Inadequate capacity and skill building for moving into new livelihoods

### 3. Review of the PEMSR Act, 2013

On September 6, 2013, the Indian Parliament passed The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (MSA 2013), committing itself yet again to ending manual scavenging, after an unsuccessful implementation of a previously existing law enacted in 1993. Seven months later, on March 27, 2014, the Indian Supreme Court held that India's constitution requires state intervention to end manual scavenging and "rehabilitate" all people engaged in the practice. This meant not only ending the practice but also ending the abuses faced by communities engaged in manual scavenging.

Among the many provision in the MSA 2013 Act for rehabilitation of manual scavengers, the Act provides:

- a) **One-time cash assistance:** The identified manual scavengers, one from each family, shall be eligible for receiving cash assistance of Rs. 40,000/- immediately after identification. The beneficiary will be able to withdraw maximum of Rs. 7,000/- per month, from this amount.
- b) **Loans upto Rs. 15.00 lacs at concessional rate of interest:** Loan upto a maximum cost of Rs. 10 lacs will be admissible under the scheme and Rs. 15 lacs in case of sanitation related

projects like Vacuum Loader, Suction Machine with Vehicle, Garbage Disposal Vehicle, Pay & Use Toilets etc.

- c) **Skill Development Training upto two years with stipend of Rs. 3000/- per month.** Training is provided to the beneficiaries for acquiring new skills and entrepreneurship capabilities. Training can be provided by Govt. agencies/Institutes as well as by reputed specialized training agencies. Training is provided in selected industries/business activities which facilitates gainful employment of the trainees.

Our observation in the statement of problem clearly demonstrates that there remains a gulf of gap between the avowed ideas as prescribed in the Act and the reality as it exists seven years since its promulgation. In this section we will evaluate the performance of the Act from three different yet overlapping perspectives so as to critically and systematically analyse as to what created this gap.

### **A. Were there design flaws in the Act that account for this exclusion?**

- 1. The skilling program cannot be a mindless act, neither is it worth if in the name of skilling one only alters nomenclature.** We met women on field who said that the only occupation that they could engage in after quitting cleaning of dry latrines is sanitation or cleaning work. They said this is the only skill they seemed to have. Without a thorough approach towards skill building on various viable options, it would be impossible to move towards a successful rehabilitation in its true sense.
- 2. Under the 2013 Act, rehabilitation provisions are left to be implemented under existing central and state government schemes**—the same set of programs that, to date, have not succeeded in ending manual scavenging. The Human Rights Watch report and Centre for Equity Studies field observations attest that women who left manual scavenging, even those who had the support of community-based civil society initiatives, reported significant barriers to accessing housing, employment, and support from existing government programs aimed at their rehabilitation<sup>11</sup>.
- 3. The Act does not account at all for the intersectionality of caste and gender in the practice of manual scavenging.** This is a foundational flaw in the formation of the Act given that almost all the data available shows that majority of manual scavengers are women. Furthermore, as shown in the statement of the problem, women have differential work, unequal pay, and are more likely to face sexual and other forms of harassment when engaging in this practice, which the Act does not recognise in any way, showing the Act is far removed from the ground realities of manual scavengers.

### **B. Were there flaws in implementation of the Act?**

1. The information provided by NSKFDC in response to the RTI filed regarding beneficiaries-wise details of Manual Scavengers under Swachhta Udyami Yojana, SUY (Procurement of Sanitation Related Vehicle) in the states of Uttar Pradesh, Bihar, Madhya Pradesh and Jharkhand states that from 2014-15 to 2017-18, the financial and Physical achievement has

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<sup>11</sup> Human Rights Watch, “Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India”, available at [https://www.hrw.org/sites/default/files/reports/india0814\\_ForUpload\\_0.pdf](https://www.hrw.org/sites/default/files/reports/india0814_ForUpload_0.pdf)

been zero. Two other schemes under SRMS, namely, Sanitary Mart and Green Business was implemented from the F.Y 2014-15. Under, the Sanitary Mart scheme, in Uttar Pradesh, Bihar, Madhya Pradesh and Jharkhand, the Financial and Physical development under financial year 2014-15 have also been nil, till the financial year 2017-18. These clearly indicates how these schemes are being implemented.

2. As per an RTI response, NSKFDC informed us that 25,808 persons were skilled from 2013-2019 in the four states of UP, Jharkhand, MP and Bihar. However, none of the community members engaged in manual scavenging whom we met in the four field sites reported that any of them received any skill development training under the Self-Rehabilitation of Manual Scavengers (SRMS) scheme. Moreover, few were about such provisions. These are indicators of the quality of implementation as well.

### **C. Was there active bias from government functionaries?**

1. **Local authorities actively involved in creating barriers for women to leave manual scavenging:** Human Rights Watch revealed that local authorities failed to intervene when the women who stopped working as manual scavengers faced threats from the households they served. As retribution for leaving, they were denied access to community land and resources or threatened with eviction, frequently with the backing of village councils and other officials. One would definitely expect the local authorities and law and order officials will definitely intervene in such situations, in favour of the most marginalised sections of the society, but this was not the case. The appointment of these workers as Safai Karamcharis are also a way of reinforcing the practice in different ways.
2. **Lack of awareness at beneficiary levels and no attempt to spread awareness by officials:** people engaged in manual scavenging, and particularly the women who forms the largest proportion in this work, are mostly uneducated. This itself serves as a barrier for them to be aware of the provisions in the Act and benefits under various schemes. So, without proactive role of the administration to take the affirmative provisions to these households, it is impossible to actualise the provisions of the Act. During our field visits, what we found was that most local authorities were not finding such awareness building as an important work that they should undertake. Instead, some of them were even thinking that it will be important for this communities to continue in this work.
3. **Inability to approach authorities:** When field researchers asked women about their experience with local authorities, many shared experiences of unresponsiveness, apathetic and rude behaviours by local authorities. One woman responded “We are being mentally harassed to the extent that we feel grossly underconfident to even ask simple questions about our own rights from the officials. The effect of this spills over on our children too.” Centre for Equity Studies researchers found that most officers responsible and accountable for the welfare and empowerment of these communities were in effect acting against the mandates of the legislation, wherein the communities, especially women engaged in manual scavenging, were further pushed into margins.

## 4. Recommendations

The recognition that manual scavengers are victims of historical injustice is clearly missing across different levels of administration and society, despite clear articulations in the PEMSR Act, 2013. The fact that women are the most vulnerable section engaged in this work is also to be realised, and that they belong to the most oppressed Dalit communities who are also worst hit because of the informal nature of the work and the poor emoluments that they get for the hard labour. Recognizing this would make the efforts at upliftment and rehabilitation of these women into alternate livelihoods are sustained, gendered and even an intergenerational one. Simply “freeing” them from manual scavenging would not mean much, unless they are shifted to a reliable and dignified livelihood option.

As an activist said to our study team, “our job does not end at liberating these women. To assure them of ‘sustainable freedom’, they need to be provided with an alternative livelihood option, which is difficult in many parts of the country as people belonging to this community are still looked down upon and refused jobs.”. This notion of ‘sustainable freedom’ is critical to the rehabilitation of manual scavengers. Based on this understanding, we hereby suggest the following important measures:

- A) Introduce specific awareness initiatives focussing women engaged in manual scavenging and their employers, about the need and importance of these women leaving this work, provisions for demolishing insanitary dry latrines and constructing sanitary latrines; and the scope of shifting these women to a dignified profession as per the PEMSR Act, 2013, and about multiple provisions under the schemes such as SRMS, NULM and other initiatives towards realising the same.
- B) Develop consistent and comprehensive sensitivity and empathy amongst local authorities, especially those involved in working with manual scavenging communities, and officials of banks and other institutions, about the caste and gender related discriminations that the manual scavenging communities are facing and the need and mandate of trusting and supporting all such people and building their confidence, without any prejudice. Also to make them clearly knowing the provisions under the law and their duties around the same. For these officials, it is also important to understand the gendered dimensions of manual scavenging and the need to address the double discrimination faced by Dalit women.
- C) Engage dedicated mentoring agencies or individual, with understanding and experience of women empowerment and empowerment of most marginalised sections, to train and handhold all identified women towards establishing them into alternative livelihoods. This should go much beyond sheer skill-development workshops or one-time events, to shape a comprehensive support initiative, that are commensurate of the skills, experience, and surroundings of specific women, including improved provisions for availing loans.
- D) Introduce tangible monitoring indicators such as: % of women amongst overall persons in manual scavenging identified and enumerated; % women provided with one-time cash assistance, % of women provided assistance under rehabilitation schemes and % of women

successfully engaged in alternate livelihoods. Introduce independent monitoring as well as grievance redressal arrangements to understand and address the problems faced by women engaged in manual scavenging, at different stages of their rehabilitation. A

- E) Introduce visible incentives for officials who actively support the rehabilitation of these communities, especially women engaged in manual scavenging, into viable alternative livelihoods; similarly, introduce clear disincentives and punitive measures to those officials who are trying to discriminate these women and not supporting their rehabilitation and journey to alternative livelihoods.



## *Strengthening the Implementation of PEMSAR Act, 2013: Policy Brief 2*

# **Enabling and supporting women engaged in manual scavenging to successfully move to alternative livelihoods**

September 2020

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