

MANUAL SCAVENGING IN INDIA

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INTRODUCTION

‘Manual scavenging in India’ is a diabolic instance of the firmly established social exclusion rampant in our society from times immemorial. This paper deals with the analysis of statutory framework, administrative schemes, and judicial pronouncements, rehabilitative measures (issues and concerns). A lot has been spoken and written on this subject but many are still unaware of the bitter reality of this profession and the daily struggles of these workers. I have anticipated the existing paradox of caste apartheid in modern India. By means of this article I wish to shed some light on the lesser known evil of manual scavenging, which most of us working in swanky offices and high rises would not care enough to know much or, in some cases, know nothing about. Manual Scavenging is a caste based practice; most of them come from Valmiki community in Hindus or Haila community in Muslims. Hailas are categorized as ‘other backward classes’ and Valmikis belong to the ‘Scheduled caste or Dalit. Estimated that 95% of the manual scavengers are woman, depicts the state of social backward classes women in Indian Society.

The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal, is not only diabolic but perhaps the highest degree of human rights violation. The unconvincing situation being made since decades for manual scavengers is no less than a menace to them and their upcoming generations as well.

It is one of the social stigma that is still left unsolved and unattended by the society, ignorance has left the manual scavenging in darkness. Manual scavenging anywhere in the world is a dehumanizing practice and the most degrading surviving practice of untouchability .In India it is looked as an issue of sanitation rather than human dignity which the constitution guarantees to its all citizens. Besides social atrocities that scavengers face, they exposed to several health problems by virtue of their occupation.

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As a social malady it chose the Dalit community as its dwelling place, especially Dalit women. They are providing a crucial service to our society but they have been neglected in greater sense and many times we see them as untouchable which is prohibited under Article 17 of the Constitution of India. They have also right to live with dignity as guaranteed under our constitution. As per Article 46 of the Indian Constitution, it is the duty of the state to protect the weaker section of the society but it has failed to do so for these manual scavengers and their rehabilitation. Central Government enacted a law on Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and The National Commission for Safai Karamcharis Act, 1993 but those were not properly implemented rather not at all.

CHAPTER I – MANUAL SCAVENGING AND ITS HISTORICAL BACKGROUND

In India, the history of manual scavenging dates back to ancient times. This inhuman 'profession' rests on the foundation of the caste system and is forced upon the lowest among the Dalits by the upper castes. It is the worst expression of the entrenched beliefs perpetuated by the caste system - untouchability, purity-pollution, dharma and karma. We have references of manual scavenging in Narada Samhita and Vajasaneyi Samhita. One of the 15 duties enumerated in Narada Samhita was the disposal of human excreta. Chandalas in Vajasaneyi Samhita are referred to as slaves engaged in the disposal of human excreta.

Like other Dalits in traditional denigrated occupations, almost universally and eternally landless through the centuries of Manu's varna vyavastha, Dalits engaged in manual scavenging are considered untouchable by the mainstream, hierarchical society. They are thus physically and socially isolated from the social fabric. They are denied all avenues of development, social and economic opportunities and basic human rights. Ironically, the slightly more powerful within the Dalit communities consider safai karmcharis, sanitation workers and manual scavengers as untouchables and treat them as brutally as the upper castes generally treat Dalits.

The Harappan civilisation in 2,500 BC had water-borne toilets as is evident from excavations at Lothal in Gujarat. These toilets were linked by drains covered with burnt clay bricks. To facilitate operations and maintenance, this drainage system had manholes and chambers. However, with the decline of the Harappan civilisation, the science of sanitary engineering suffered a setback.

Nothing changed for manual scavengers in medieval times. Some argue that manual scavenging began in India with the Mughals (NR Malkani, Report of the Committee on Customary Rights to Scavenging, New Delhi: Ministry of Home Affairs, 1965, quoted in Shyamlal, The Bhangi: A Sweeper Caste). It is argued that prisoners of war were forced into manual scavenging and their descendants were called bhangis (also used as derogatory term against Dalits by the upper castes - like chura and chamaar).

Such a theory fits well into the Brahminical Hindutva paradigm that all social evils emanate from Muslim rule. Narratives like this are cooked to downplay the pervasive and perverse role of the caste system on which rests the foundation of many entrenched evils like manual scavenging.

Research on the medieval sewage system reveals that the bathing rooms of the Mughal forts had small outlets used as toilets. The waste was carried by gravity to the ramparts with water. This mechanism can be found in the Red Fort in Delhi, in the palaces of Rajasthan, in Hampi, Karnataka and in Thiruvananthapuram, Kerala.

The act of manual scavenging proceeded even under the Britishers who came to the 'Orient' on the appearance of a 'civilizing mission'. The British legitimized and systematized this corrupting work while setting up armed force cantonments and districts. Official posts of manual foragers were made. Each British establishment - the armed force, railroads, courts, businesses and real towns were outfitted with dry toilets rather than waterborne toilets/sewerage. Changes in the political economy after the entry of the Britishers likewise constrained a significant number of the poorest and landless lower standings into this every day work. The changes caused by the commercialization of land and devastation of craftsman exchanges drove individuals in the lower rungs out of agribusiness and profession related exercises to sweeping and scavenging.

After the Partition, and despite Mahatma Gandhi's campaign against untouchability and experiments with clean and new designs of toilets, neither the Indian nor Pakistani political leadership nor elite made any attempt to stop this dehumanizing work or create alternative employment. Pakistan refused to allow the untouchables involved in safai work to move to India. While the Indian government tried to secure safe passage to India for the Hindus in Pakistan, there was no concern about the 'Dalit Hindus' left behind in Pakistan - not that a better life awaited them in independent India. Dr BR Ambedkar raised this issue in a letter to Jawaharlal Nehru in December 1947. (B R Ambedkar, Dr. Balasaheb Ambedkar: Writings and Speeches, vol. 17). However, nothing tangible in terms of a social or economic shift in their lives occurred during the Nehruvian era.

Has anything changed for thousands of manual scavengers in the larger, contemporary context of 'economically booming' India? Nothing. The large mass of these Dalits in small towns, villages and

cities, except that in certain places they are officially given a piece of tin, a broom and a bucket to carry the faeces. Indeed, those recruited by the upper caste-dominated gram panchayats and condemned by tradition to work as manual scavengers, have to manage even these 'tools' on their own. The changes in large towns and big cities where dry toilets have been replaced by pour-flush toilets are illusory - the filth in drains, nullahs, and sewage pits is still cleaned by the scavengers who have been 'reincarnated' as safai karamchari and cleaners by various governments.

The municipal authorities have not yet 'discovered' any worthwhile technology which can stop this degrading work in subhuman conditions. These 'government employees' are not even given basic equipment, protective uniforms, gas masks or gloves as they often enter bare-bodied into the stinking gutters and drains full of dangerous gases, filth, waste and excreta. Many of them are reported to have died after inhaling these poisonous gases. Some get infectious diseases; some consume cheap alcohol before they enter the sewage pits, because it is impossible to work otherwise.

Others routinely say that they can't eat food or sleep for days after they enter the gutters. Others are afraid to go near their children, touch them, or play with them - because nothing is normal anymore.

Since the human civilization Manual Scavenging which has been in existence as a profession. The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal, is not only diabolic but perhaps the highest degree of human rights violation. A series and number of legislations were enacted for ensuring an equitable and casteless society, but the conditions of the scavenging communities have remained unbearable.

It is an irony that after decades of independence; it was in the year 1993 and latest in 2013, that the Government of India passed a dedicated legislation to ban the inhuman and degrading practice of manual scavenging. The term social exclusion is of relatively recent origin; however, it encompasses a wide range of social and economic aspects. Different scholars decipher this notion in various contexts. Broadly, it indicates the relative deprivation of any person or group of persons on various pre-determined criterion. Caste based occupational groups in India, like that of manual scavengers, constitute one such socially, economically, psychologically and politically marginalized section of the society. Although manual scavenging was banned twice (in 1952 and 1993), this practice still continues in various pockets of the country under different names. The concept of social exclusion, generally in development literature has been defined as an inability to choose or lack of capability to fully participate in the development of a society. In India, social exclusion revolves around some sections of the population, particularly, Dalits, adivasis, women and minorities. They are the victims

of social exclusion by caste, sex, and ethnicity and by religion. In the society, they are isolated, discriminated and deprived of equal access to social and economic opportunities. Therefore, in the Indian context, the core feature of social exclusion is the denial of equal opportunities by certain groups of the society which impose themselves upon others that leads the inability of an individual to participate in the basic political, economic and social functioning of society. Manual scavengers in India, who are caste-based occupational groups, constitute one such socially excluded class

Scavenging has been an occupation forced upon specific nationals of the nation by the general public, which later on proceeded as a customary occupation where an area of individuals among Scheduled Castes was appointed to clean the night soil and convey it physically on their heads. This class of nationals of India is known as Manual Scavengers. Manual scavenging exists essentially as a result of nonattendance of water borne restrooms. Utilizing a sweeper, a tin plate and a drum, they clear and convey human excreta from toilets, all the more regularly on their heads, to dumping grounds and transfer to disposal areas.

They are affluent to the most harmful types of viral and bacterial diseases that influence their skin, eyes, and limbs, respiratory and gastrointestinal systems. Their kids are additionally gotten up to speed in this entanglement. Under these conditions, it is practically outlandish for their kids to end up plainly taught. Generally, the ladies of the groups of the foragers are occupied with searching. Despite the fact that, in present day times these individuals want to leave the calling, their social, financial, instructive and social viewpoints have made it troublesome for them to locate another profession. The social disgrace of untouchability keeps on staying, in one frame or the other generally in light of the unclean idea of their occupation. Historically, wet toilets were found in Harappa and Mohenjo-Daro civilizations, with well-planned underground drainage system of sewage disposal, it continued during Buddha and Maurya period, it was the Mughal emperor Jahangir constructed the first public toilet at Alwar for hundred families in 1556 AD. Later, on arrival of Britishers in India with their motto of building infrastructure, transport, housing and sanitation gave rise to engage dalit communities in manual scavenging. Municipal records from 1870 show that the British organized municipalities in India, which built roads, parks, public toilets etc.¹The British administrators organized systems for removing the night soil and employed dalits. It is evident that the dalit communities are oppressed and suppressed throughout the Indian history by getting them engaged in such diabolic social practice

India is a place where caste and customs run parallel. Manual Scavenging is a profession practiced since human civilization. Specific caste based profession are in existence and are a bitter reality of the society. Manually removing human excreta from dry toilets with bare hands, brooms or metal scrappers; carrying it and dumping the excrement is not only fiendish but perhaps a human right

violation. Plethora of legislations has been implemented to improve the condition but there are no visible results. Deemed to be a polluting and filthy occupation, the job is exclusively done by dalits and that too a sub-caste of dalits, denoted as 'untouchables'.

Manual Scavenging is a social evil rampant and existence since times immemorial. Internationally and widely accepted as a fact that it's a straight violation of human rights, countries have implemented strict laws to do away with the practice. According to the census of 2011; 1, 82,205 manual scavengers were practicing profession in rural areas of India.”

CHAPTER II - MANUAL SCAVENGING IN INDIA

All of us see the people doing manual scavenging very often. This situation prevails across the country. Many are doing it for years as their profession.

Three aspects are essential to understand and address the plight of manual scavengers. These include, their identification, liberation and rehabilitation. Most of them are from scheduled caste, scheduled tribe and backward classes. They also inherit this to their family members. They are providing a crucial service to our society but they have been neglected in greater sense and many times we see them as untouchable which is prohibited under Article 17 of the Constitution of India. They have also right to live with dignity as guaranteed under our constitution. As per Article 46 of the Indian Constitution, it is the duty of the state to protect the weaker section of the society but it has failed to do so for these manual scavengers and their rehabilitation. Central Government enacted a law on Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and The National Commission for Safai Karamcharis Act, 1993 but those were not properly implemented rather not at all. Taking a gander at this dehumanizing routine with regard to manual Scavenging and disappointment of existing law, Central Government sanctioned another law called The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 on September 18, 2013. Numerous activities have been taken by civil society organisation and additionally the Govt. be that as it may, the issue of manual rummaging has not been handled successfully. On the off chance that the past endeavors have neglected to get the most extreme outcomes at that point there is a need new techniques to quicken the procedure of progress. The percent of ladies occupied with Manual Scavenging is more than men; around 95% occupied with Manual Scavenging are said to be ladies. They confront social, financial and political separation. There is no appropriate enumeration on number of manual foragers in India (Social Inclusion of Manual Scavengers, Report of National Round Table

Discussion, New Delhi, December 21, 2012) Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable or deemed too menial by higher caste groups. Manual Scavengers are threatened if they don't carry out the work in several ways (Report on Cleaning Human Waste, Manual Scavenging, Caste and Discrimination in India, Human Rights Watch, 2014)

“A Government of India report (1992) identifies that the practice of manual scavenging was introduced by the Mughals. The need for female seclusion and privacy was emphasized in Muslim culture and this gave rise to the need to ensure somewhere private for women to defecate, and hence the need to dispose of this away from the home; but this view seems to neglect the history and culture of the Hindu caste system. Gadgil (1952) and several others assert that the practice of manual scavenging was aggravated in India as a result of the large-scale urbanization, primarily during the period of Mughal and British colonization.”

“In order to operate and maintain the increased underground sewer systems a neo-breed of manual scavengers of Municipal Waste Water Workers or Sewer Workers are begin to arousing in Indian Municipalities” and other local bodies’. These sewer workers are being utilized in removal of clogged gutters, storm water drains, sewer manholes and septic tanks etc., Owing to the urbanization in India, numerous manifolds of sewer workers are getting arising lively and their occupation is in doldrums.”

“Manual scavengers are the most excluded and exploited communities among Dalits. They are the lowest in Hindu caste hierarchy and therefore suffer manifold social exclusion at the hand of caste Hindu and state's functionaries like the municipal officials, police, railways and defense. They are found in almost all cities of India--cleaning, sweeping the streets and manually engage in carrying out night's oil. Women are the worst victims as they constitute more than eighty per cent of work force of manual scavengers. Apart from social stigma, work of scavenging is lowly paid, it causes health problems and many manual scavengers have died during cleaning up the sewage. There are different caste name for manual scavengers like Balimiki, Bhangis, Mehatar, Lalbegi, Chuhara, Mira (UP, MP, Bihar, Punjab, Maharashtra) Hadi (West Bengal), Paki(Andhra Pradesh), Thotti (Tamil Nadu) etc.”

Their number is not counted separately under census because they fall under the legal category of Scheduled Castes; however, their total population would not less than 13 lakhs. As per the annual report of the Ministry Social Justice and Empowerment (Government of India 2009), there are 7, 70,338 manual scavengers and their dependents in India. The highest number of manual scavengers

was in Uttar Pradesh(2,13,975) followed by Madhya Pradesh(81,307), Maharashtra(64,785), Gujarat(64195), Andhra Pradesh(45,822) and Assam(40,413). “The same report of 2009 mentioned that a total of 4, 27,870 manual scavengers have already been assisted under the National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS) and therefore ineligible for availing any assistance. The remaining number of manual scavengers are yet to be rehabilitated is 3, 42,468. While the official report asserts there are no manual scavengers are found in the states of Andhra Pradesh, Punjab and Chhattisgarh, since all of them have been rehabilitation under the policies and schemes meant for them; studies of Gita Ramaswamy and experiences of rights activists and community organization like the Safai Karamchari Andolan reveals that state machinery hide the inhuman practice in those states as the manual scavengers are very much found in above mentioned states. The national commission for safai karamcharis, a statutory body, pointed in its reports to the use of dry latrines and continued employment of manual scavengers by various departments of the Union of India, particularly the railways, the department of defense and the ministry of industry. While states like Haryana deny employing manual scavengers, other states like Andhra Pradesh employ them through municipalities. The practice is on in almost all states, including Bihar, Maharashtra, Jammu & Kashmir and even Delhi. The Indian railway is one of the largest employers of manual scavengers”

ILO INTERVENTION

ILO- International Labour Organisation- is the only international organization which operates on a ‘tripartite’ basis. Since its inception, worker and employers organization have worked side by side with government in a three- way or tripartite basis. To put its aims and objective into practice, the ILO formulated and adopts different standards (International agreements such as conventions), resulting from a process of consensus among its members on a specific issue. Discrimination (Employment and Occupation) Convention no.111 (1958) which deals with issue of work-related discrimination and promotes the equality in employment and occupation and also this convention states that Government needs to adopt the laws for combating discrimination through creation of educational programs for equal opportunity, adoption of national policy on equal opportunity, full cooperation with employers and workers organization. This convention also states government to establish a national agency on equal opportunity along with repeal of inconsistent laws and practices. Social origin is one of the grounds of prohibited discrimination and ratified by India (1960). Regarding forced labour, ILO has adopted Forced Labour Convention (1930) to suppress the use of forced or compulsory labour in all its forms. As Dalits are mostly, even today are engaged in Caste based occupations like Manual Scavenging, this convention states the government is requires to take action through

carrying out regular inspections of labour conditions, by ensuring punishments and making the forced or compulsory labour as a penal offence. The most important thing is that the Abolition of Forced Labour Convention (1957) deals with the elimination of forced labour which states that effective measures should be taken on the part government for immediate and complete abolition of forced or compulsory labour. Planning Commission of India was developed the National Plan to eradicate the practice of the Manual Scavenging by 2007, but it could not be possible to it, so now it has developed the National Plan to eradicate Manual Scavenging by 2009. As mostly Child Laborers in India are Dalit Children. Since beginning, Child labour has been a major issue for the ILO and it has adopted the different conventions for protecting children. Thus, the principal aim of the ILO is to eliminate child labour completely for which it has adopted two conventions the Minimum Age Convention (1973) and Worst Forms of Child Labour (1999), both aims to abolish child labour and prohibit and eliminate the worst forms of child labour like sale and trafficking of children, child prostitution and work which harms the health, safety or morals of the children. This convention states government to specify a minimum age limit for children to enter the workforce, to designate of competent authority to implement the convention, to enforce of penal sanctions. ”

CHAPTER III - CONSTITUTIONAL PROVISIONS & GOVERNMENT INITIATIVES

Since manual foragers have a place with the regressive segment of society, they are qualified for some uncommon rights separated from rights under the Indian constitution. A portion of the critical and important constitutional provisions are as per the following:

Constitution Provisions

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 labour 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.

Article 338: Constitution of a National Commission for Schedule Caste.

Legislative framework

Aside from plenty of protected arrangements the governing body has sanctioned a few authorizations for the upliftment of the schedule class including manual scavengers. A portion of the real institutions are as per the following:

The Protection of Civil Rights Act, 1955

Initially the Untouchability (Offences) Act, 1955³, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the scheduled castes. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act, the practice of untouchability was made both cognizable and non-compoundable offence and stricter punishment was provided for the offenders.

The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989⁴, came into force on January 31, 1990. The Act, inter alia, specifies some types of offences as atrocities, provides for imposition of stricter penalties for the guilty and setting up of special courts for speedy trial of such cases. The main objective of the Act is to prevent the commission of offences of atrocities against the members of the scheduled castes and the scheduled tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. The Act was further strengthened, in relation to manual scavengers, by the recent amendments.⁵ The Act which was notified by the Central Govern-

³ Act no. 22 of 1955 and the Protection of Civil Rights (PCR) Rules, 1977

⁴ Act no. 33 of 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

⁵The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act no. 1 of 2016)

ment on January 1, 2016 makes it a punishable offence to employ, permit or make any person belonging to SC/ST community, to do manual scavenging.⁶ The contravention of the said provision attracts an imprisonment for a term not less than six months and may exceed to five years and fine.

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (hereinafter EMSCDL Act, 1993)⁷, provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water sealed latrines and matters connected therewith. It was replaced by the PEMSR Act, 2013.

National Commission for Safai Karamcharis Act, 1993

The Act established the National Commission for Safai Karamcharis⁸ to study, evaluate and monitor the implementation of various schemes for safai karamcharis as an autonomous organization and also to redress their grievances. The Act is a welfare legislation enacted for the welfare of persons engaged in cleaning and plumbing jobs in various state departments. Section 31 of the PEMSR Act bestows statutory responsibility on the National Commission for Safai Karamchari to monitor the implementation, enquire into the contraventions and non-implementation of the PEMSR Act, 2014.

National commission for schedule caste (NCSC)⁹

The commission is constituted with a mandate to safeguard the interest of schedule castes in India. Article 338 (5) of the constitution of India lays down certain duties of the NCSC¹⁰

- (i) To investigate and monitor all matters relating to the safeguards provided for the scheduled castes and evaluate the working of such safeguards;
- (ii) To inquire into specific complaints with respect to the deprivation of rights and safeguards of the scheduled castes;

⁶ Id. s. 4(j) and s.3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

⁷ Act No. 46 of 1993.

⁸ Act no. 64 of 1993

⁹Constitution (Eighty-Ninth Amendment) Act, 2003. 21Constitution of India, art. 338 (5) a-h

¹⁰Constitution of India, art. 338 (5) a-h

- (iii) To participate and advise on the planning process of socio-economic development of the scheduled castes and to evaluate the progress of their development;
- (iv) To make recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes
- (v) To discharge such other functions in relation to the protection, welfare and development and advancement of the scheduled castes;
- (vi) To make in such reports recommendations as to the measures that should be taken by the Union or any state for the implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes.

Government appointed committees and commissions

Since manual scavenging involves undignified and degrading occupation carried out by the most backward class of the Indian society it has received considerable attention since independence. Government of India from time to time has appointed several committees and commissions suggesting practical recommendation for scavenging communities' rehabilitation and social inclusion.

Barve Committee¹¹

The erstwhile Government of Bombay, appointed a committee known as the Scavengers' Living Conditions Enquiry Committee in 1949 with V.N. Barve as chairman to study and enquire into the living conditions of the scavengers in the State of Bombay and to suggest ways and means to improve their conditions of work and to fix their minimum wages. The Committee submitted its report to the Government of Bombay in 1952.

Kaka Kalekar Commission

Appointed in 1953 as the first backward class commission under the chairmanship of Kaka Kalekar. The committee submitted its report in 1955. Committee in its report described the condition of manual scavengers as sub-humans and highlighted the outdated techniques of night soil removal and sanitation which included manual removal of human waste by scavenging communities. The committee also pulled up the municipal corporations for being the biggest sinners.¹²

¹¹State of Bombay, Report of the Scavengers Living Condition Enquiry Committee (Government of Maharashtra, 1949)

¹²Supra note 7 at 37-38.

Central harijan Welfare Board (CHWB)

It was established by the Ministry of Home Affairs in 1956 under the chairmanship of Pandit Govind Ballabh Pant. The board reviewed the working and standard of living of sweepers and scavengers in India and recommended the enactment of centrally sponsored schemes for manual scavengers.

Malkani Committee¹³

CHWB in its October 12, 1957 meeting resolved to constitute a high level committee to make an in-depth study of scavenging menace in the country. Subsequently, the scavenging conditions enquiry committee was set up under the chairmanship of Professor N.R. Malkani. The committee submitted its report in 1960. The committee in its report blamed the existence of dry latrines as a major impediment to the abolition of manual scavenging in India.

***Committee on customary rights*¹⁴**

The Central Department of Social Welfare appointed a committee in 1965 under the chairmanship of Prof. N. R. Malkani, to examine the question of the abolition of customary rights of the scavengers. The committee which submitted its report in 1966 found that where scavenging is not municipalized the latrines were cleaned privately and one particular scavenger acquired hereditary right to clean such latrine as against another scavenger by an understanding and agreement. A customary relationship also develops with the householder and the scavenger receives payments in some form or the other.

Pandya Committee¹⁵

Was appointed as a sub-committee by National Labour Commission under the chairmanship of Bhanu Prasad Pandya in 1968-69 to examine the working conditions of sweepers and scavengers. But it failed to receive much attention from the central or the state governments. However, it recommended the enactment of a central legislation to regulate the working condition, living condition of the sweeper and scavenging communities and also recommended creation of adequate and efficient enforcement mechanism.

¹³Government of India, Report of Scavenging Conditions Enquiry Committee (Ministry of Home Affairs, 1980).

¹⁴Government of India, Report of the Committee on Customary Right to Scavenging (Ministry of Home Affairs, 1966).

¹⁵Government of India, Report of the Committee on conditions of sweepers and scavengers (National Commission on Labour, 1969).

Government/administrative schemes

Indian Government has designated assets to modernize sanitation. National sanitation plans went for modernizing human waste administration. Sulabh Shauchalaya Scheme (1974), Integrated Low Cost Sanitation Scheme (1981), Nirmal Bharat Abhiyan (2009) and as of late the Swacch Bharat Abhiyaan (2014) are a portion of the illustrations. A few plans for the welfare of scavenging groups are:

Self-employment scheme for rehabilitation of manual scavenging (SRMS)

In April 2007, the government initiated this scheme to liberate the manual scavengers and to rehabilitate them. Central Government has revised the SRMS for rehabilitation of all the manual scavengers identified under the provisions of the Manual Scavengers Act, 2013. The main features of the Scheme include one-time cash assistance, training with stipend and concessional loans with subsidy for taking up alternative occupation.¹⁶

National scheme of liberation and rehabilitation of scavengers and their dependents (NSLRSD)

Initiated in 1989, the main objective of the NSLRSD is to liberate manual scavengers from their existing hereditary inhuman occupation of manually removing night soil and filth and to provide for and engage them in alternative and dignified occupations. In 2003, a CAG report concluded that scheme failed to achieve its objective involving investment of Rupees 600 crores. CAG report also pointed that there was “lack of correspondence between ‘liberation’ and ‘rehabilitation’ and there was no evidence to suggest if those liberated were in fact rehabilitated.”¹⁷

Integrated low cost sanitation scheme

The Government of India, Ministry of Urban Employment and Poverty Alleviation along with HUDCO have joined hands in taking up a very major Programme for Integrated Low Cost Sanitation for conversion of dry latrine system into water borne low cost sanitation system and at the same time liberating the manual scavengers. In addition, HUDCO has also been extending assistance to basic sanitation schemes.¹⁸

¹⁶Act no. 35 of 2014

¹⁷ *Safai Karamchari Andolan v. Union of India* (2014)11SCC 224.

¹⁸ Under ‘Pay and Use Toilet Scheme’, Central assistance through Housing and Urban Development Corporation (HUDCO) was available to Urban Local Bodies (ULBs) for construction of toilets for footpath and slum dwellers who were unable to construct their own toilets.

Nirmal Bharat Abhiyaan (NBA) (2009-14) and Swach Bharat Abhiyaan (SBA) (2014- 19):

Since the root cause of manual scavenging is the insanitary waste disposal practices (dry latrines, open defecation etc.). Total Sanitation Campaign (TSC) was conceived in 1999 which was renamed as Nirmal Bharat Abhiyan in 2012 to ensure 100% sanitation in rural and urban areas by 2017. The NBA was replaced by SBA in 2014. SBA has been conceived with following objectives:¹⁹

- i. Elimination of open defecation.
- ii. Eradication of Manual Scavenging.
- iii. Modern and Scientific Municipal Solid Waste Management.
- iv. To effect behavioural change regarding healthy sanitation practices.

RECENT DEVELOPMENT

Prohibition on employment of Manual Scavengers (PEMSR) Act of 2013 – It was passed by both the Houses of Parliament on September 7, 2013. The PEMSAR Act, 2013 received assent of the President on September 18, 2013 and subsequently published in the Gazette of India on September 19, 2013.

- The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.⁵¹

Its main objectives are: -

- i. Prohibition of employment as manual scavengers;
 - ii. Rehabilitation of manual scavengers.
- The Act recognizes the link between manual scavengers and weaker sections of the society. It therefore, views manual scavenging as being violative of their right to dignity.
 - The district magistrate and the local authority shall be the implementing authorities.
 - Under the Act, each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.

¹⁹“Swachh Bharat Abhiyan Urban”, available at: https://swachhbharaturban.gov.in/writereaddata/Mission_objective.pdf (last visited on July 10, 2015)

- Each occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost. If he fails to do so, the local authority shall convert the latrine and recover the cost from him.
- Offences under the Bill shall be cognizable and non-bailable, and may be tried summarily
- It provides for detailed vigilance mechanism and monitoring committee at district, state and central level.
- The Act specifically provides for carrying out surveys for identifying persons employed as manual scavengers.”

CHAPTER IV -JUDICIAL INTERVENTION IN MANUAL SCAVENGING

Judiciary on the other hand has always played an active role in strengthening the cause of socio-economic welfare by translating several directive principles into enforceable rights for the upliftment of poor and weaker section of the society. A liberal interpretation of article 21 of the constitution has created numerous rights and has given a new direction to social welfare jurisprudence in India. With regard to judicial response towards the manual scavengers, recently courts have adopted a stern attitude towards the manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

*Safai Karamchari Andolan v. Union of India*²⁰: In the present case the Supreme Court acknowledged the menace of manual scavenging in India as an inhuman, degrading and undignified profession. The Supreme Court observed that PEMSAR Act, 2013 and the EMSCDL Act, 1993 neither dilutes constitutional mandate of article 17 of the constitution nor does it condone inaction on part of union and state governments under EMSCDL Act, 1993. The Supreme Court held that the PEMSAR Act, 2013 expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excretion on railway tracks.

P. Sathasivam CJ, said that “the official statistics of the Ministry of Social Justice and Empowerment for the year 2002-2003 put the figure of identified manual scavengers at 6, 76,009. Of these, over 95 percent are dalits, compelled to undertake this denigrating task. ”The Supreme Court also referred to several international covenants and instruments, to which India is a signatory, that seeks to guarantee a dignified human life in respect of his profession and other walks of life e.g., Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) and the

²⁰ 2014 (4) SCALE 165

Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). Supreme Court laid down following propositions with regards to rehabilitation of manual scavengers:

If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:

(a) Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.

(b) Railways – should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

i. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.

ii. Rehabilitation must be based on the principles of justice and transformation.

Supreme Court stressed on the rehabilitation of manual scavengers in accordance with part IV of the PEMSAR Act, 2013. The Supreme Court directed the state governments and union territories to fully implement various provisions of PEMSAR Act, 2013 and take appropriate action for non-implementation as well as violation of provisions contained in PEMSAR Act, 2013.

Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers²¹: In the present case, the Supreme Court passed a landmark judgement identifying and highlighting the apathy and plight of the disadvantaged sections of the society, particularly the scavengers and sewage workers, who risk their lives by going down the drainage without any safety equipment and security and have been deprived of fundamental rights to equality, life and liberty for last more than six decades. The Supreme Court referred to a report,²² and stated that

²¹ 2011 (8) SCC 568.

²² Centre for Education and Communication in collaboration with Occupational Health & Safety Management Consultancy Services on “Health & Safety Status of Sewage Workers in Delhi”

The workers are suffering from high mortality and morbidity due to exposure at workplace. 33 workers had died in last 2 years due to accidents while working on the blocked sewer lines...59% of the workers enter underground sewer manholes more than 10 times a month and half of them have to work more than 8 hours a day... 41 workers have reported syncope, and other 24 reported temporary loss of consciousness. A little over 1/3 of the workers had been immunized against tetanus while none of them had been vaccinated against hepatitis B. Approximately 46 % of workers across all age group were found to be underweight according to Body Mass Index (BMI) calculation....All daily wagers were getting a wage of approximately 2950 rupees per month without any other benefit irrespective of service period. On the issue of judicial activism and overreach by the court, as contended by Delhi Jal Board the Supreme Court observed:

Whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.

The Supreme Court also criticised the government and the state apparatus on being insensitive to the safety and wellbeing of those who are, on account of sheer poverty, compelled to work under most unfavorable conditions and regularly face the threat of being deprived of their life. Supreme Court also snubbed the elitist mindset of the wealthy class with regard to public interest litigation. Pro Bono litigation. The Supreme Court not only directed to pay higher compensation to the families of the deceased, but also directed the civic bodies to ensure immediate compliance of the directions and orders passed by the Delhi High Court for ensuring safety and security of the sewage workers.

CHAPTER V - CONCLUSION & SUGGESTION

“I may not be born again but if it happens, I will like to be born into a family of scavengers, so that I may relieve them of the inhuman, unhealthy, and hateful practice of carrying night soil.”

- Mahatma Gandhi

CONCLUSION

Looking at above discussion we can conclude that even after the existing laws and newly enacted law on manual scavenging, it is still prevalent in the country. Central Govt. & State Govt. have completely failed to eradicate the manual scavenging and implement the laws. SC and various HCs have directed and are directing state governments to implement the laws on manual scavenging in true letter and spirit.

The Problems being looked in Elimination of Manual Scavenging. The States/UT's are moderate in distinguishing proof of insanitary toilets and manual foragers as there is no time-headed arrangement for ID of insanitary lavatories and manual scroungers. Further, for a situation recorded in the Supreme Court of India, many States/UTs gave testimony that there are no insanitary restrooms in their jurisdiction. Due to dread of hatred of the Court, they dither in announcing presence of insanitary toilets in their States/UTs.

At display crafted by transformation of insanitary lavatories into sterile restrooms is being gone to as a piece of expansive program of development of toilets. There is a need a period bound approach according to the order of the MS Act, 2013, for change of insanitary lavatory. Restoration of manual foragers is additionally moderate and as a rule not sufficient because of different issues being confronted, which incorporate:-

(I) Manual scroungers are generally uneducated and have no presentation to any work, other than sanitation related work. Many of them are old. They need certainty for running independent work ventures. A significant number of them are not willing even to benefit any aptitude improvement preparing.

(ii) Banks are reluctant about giving advance to manual scroungers. Indeed, even many State Channelizing Agencies, because of low rate of recuperation of credit from safai karamcharis, are not willing to stretch out advance to manual scroungers.

Because of low certainty levels the recognized manual scroungers request that they might be given occupations of safai karamchari in neighborhood experts.

RECOMMENDATION

As we seen that government still failing to eradicate manual scavenging in the country. There are many reasons for that. For eradicating manual scavenging, we need high tech equipment so that there would be least manual intervention to clean up the excreta, garbage etc. But biggest challenge will be availability of resources for respective local authorities. There are two aspects in present situation one is to prohibit manual scavenging and other is rehabilitation of manual scavengers. For rehabilitation of these manual scavengers, authorities must have enough funds. Supreme Court clearly stated in *Safai Karamcharis Andolan & Ors. Case (supra)* that it is duty of state to implement the act, if not then one can approach High Court of respective state. State Govt. should come up with concrete strategy to implement the law on manual scavengers.

The life of scavengers can be improved, especially of women and children by providing them good quality education through well-trained, open-minded teachers. Such schools should not only implement mid-day meal scheme, but should also provide the evening food to the children of the socially downgraded people, so that their parents will not face any additional burden of nurturing their children. For the adult members of the scavenger community, education is essential to train them for alternative ways of living, for example, women can have training in sewing, packing or to work as anganwadi workers. Furthermore, other parts of society have to become more sensitive to the needs of the neglected and oppressed dalit community. This can happen through awareness campaigns or training courses in schools.

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