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Manual Scavenging in India: A Critical Study

MOHIT¹ AND SANJEEV²

ABSTRACT

One of the social stigmas associated with Indian society is manual scavenging. In India, Manual scavenging is practiced in various places of India even in the present times. Around 1.3 million Dalits in India, largely women, are engaged in the inhumane practice of manual scavenging, according to estimates from The International Dalit Solidarity. Even in this day of science and technology, it is regrettable that manual scavenging still persists. Despite the fact that various regulations in India attempt to eliminate manual scavenging, there has yet to be a single case documented (since 1993). The National Crime Records Bureau (NCRB) fails to provide statistics on the number of cases filed under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, in their 'Crime in India' reports for 2020. In answer to a query regarding manual scavengers, the Social Justice and Empowerment Ministry informed the Lok Sabha in February 2021 that 340 individuals had died while cleaning septic tanks and sewers in the previous five years. In addition, the National Commission for Safai Karamcharis (NCSK) said that 631 individuals perished in the nation while cleaning septic tanks and sewers in the previous 10 years, from 2010 to 2020. The goal of this research is to look at the dirty practice of manual scavenging in India, as well as the many measures that have been implemented to help manual scavengers. Manual scavenging still exists in India despite being illegal, demonstrating a dismal failure of the legal system and a violation of an individual's fundamental rights. Manual scavenging being a caste-based employment, is subject to social prejudice and boycott. This study aims to critically examine the laws and schemes that affect the manual scavenging community and provide ideas for how to overcome them, as well as examine the implications of recent regulations on manual scavengers. This paper will also look at India's bizarre manual scavenging practice. In addition, it will examine the role of society and government in India's manual scavenging.

Keywords: Manual scavenging, scavenger.

I. INTRODUCTION

The divisive, systemic pattern of the Indian society, which segregates people on the basis of

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their religions, caste and creed is a standing reality, historically conditioned and deeply entrenched into the Indian society. The majority population of the country, constituting of Hindus, is further divided into various castes. The historical importance of these castes and the division of people on the basis of these castes was derived from the division of labor these entailed. People belonging to different castes, were expected and supposed to carry out the human waste. The Brahmins, being considered as the religious leaders, the Kshatriyas as the Kings, the Vaishyas as the traders and the Shudras, the lowest caste were the servants. The division of work on the basis of this hierarchy of caste was a representation of domination of one caste over the other. The created hegemony of castes was sustained by these differentiations.³

In the Vedic society, Shudras developed a lower caste of the 'untouchables' to facilitate the hegemony of the upper castes in the society. The untouchables were considered permanently dirty individuals. Their status was considered to arise from the kind of work that they do, such as leather tanning, skinning animal carcasses, shoes making and mending, butchery, working in cremation grounds, washing clothes and among them was manual scavenging.⁴

The women indulged in Manual Scavenging suffers and were pressed by the upper castes if they by any reason misses to clean dry toilets. There are threats of being thrown out of the village. Also, when they refuse to do the customary work they are denied access to their land by the upper caste.⁵ Majority of them have been traditionally involved which is further followed by the social discrimination and practices of untouchability as result of being at the lowest level of cast hierarchy and return back to their customary occupation. This is established as the *varsa hakka* or inherited right system, which is available to class IV employees. In the event of retirement or injury, an employee might select his or her child or close family to take their position.⁶ Lack of other job opportunities leads them to engage in this as their hereditary job. Even though by taking advantage of other policies like reservations in education and government jobs, only few have successfully changed their status but the question remains that inspite of this, why around 12 lakh people are still employed for doing this menial job just because of their accident of birth and denying individual choices. Denying them of right to live

³ Oliver Mendelsohn and Marika Vicziany, *The Untouchables: Subordination, Poverty and the State in Modern India* (Cambridge University Press 1998).

⁴ *ibid.*

⁵ 'Cleaning human waste "Manual scavenging", Caste and Discrimination in India' (*Human Rights Watch*, 25 August 2014) <"Manual Scavenging," Caste, and Discrimination in India | HRW> accessed 01 December 2021.

⁶ Anagha Ingole, 'Scavenging for the state' (2016) 51(23) *Economic and Political Weekly* <Scavenging for the State : Manual Scavenging in Civic Municipalities | *Economic and Political Weekly* (epw.in)> accessed 01 December 2021.

a life of Dignity. As Dr. Ambedkar argued in his book *Annihilation of Caste* that there is need for readjustment of occupation as division of labour that caste system offers, suffers a serious defect with no consideration of individual preferences.⁷ Thus caste creates a vicious circle for manual scavengers, unable to break it. Manual scavenging can be argued as a forced labour also.

(A) Statement of Problem

The Project focuses on the issue that what is the reason for prevalence of manual scavenging even after 70+ years of Independence. It examines the intricacies of Manual Scavenging, Legal Response to Manual Scavenging after analyzing important case laws. It then focuses on drawbacks in the current legislations and the way forward to eradicate Manual Scavenging.

(B) Research Questions

1. What is Manual Scavenging and its intricacies?
2. Why is the practice of Manual Scavenging still prevailing in India?
3. What is the Legal Response to Manual Scavenging?
4. What is the way forward to combat and eradicate the practice of Manual Scavenging?

II. MANUAL SCAVENGING AND IT'S INTRICACIES

In India, manual scavenging is a purely caste motivated activity. Manual scavengers comes from the lowest position of the traditional caste hierarchy, which are forced to do the work of manual scavenging because they are left with limited livelihood choices and are suppressed by upper castes.⁸ **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013** (*hereinafter* “the 2013 Act”) provides that manual scavenger is someone employed by a local authority, by an individual, by a contractor, or by an agency for disposing of or carrying, human waste in any manner in sewers, septic tanks, manhole, any open drainage system or even on a railway track.⁹ Dr. B.R. Ambedkar also said, “an individual is not a scavenger because of his job as a scavenger. Regardless of whether he is engaged into scavenging or not, he is a scavenger due to his birth.” Scavengers in India are very diversified, with levels of subcaste dominance within schedule castes, and are recognized by many identities and names in various locations and regions. ‘The degrading character of this employment is a

⁷ Vasant Moon, *Dr. Babasaheb Ambedkar: Writings and Speeches Volume No. 1* (Dr. Ambedkar Foundation 2014) 23.

⁸ *Human Rights Watch* (n 2).

⁹ Abhishek Gupta, ‘Manual Scavenging: A Case of Denied Rights’ (2016) *ILI Law Review* <Microsoft Word - paper 3 (ili.ac.in)> accessed 01 December 2021.

dangerous instance and is bound with the inequities of an intense and bizarre caste system embedded in the society which leads to lack in other employments for lower caste people,' the UN Special Rapporteur recently noted in relation to the scavenger community. They are all exploited socially, and they endure prejudice in the political and economic arenas.¹⁰

They also have a variety of health problems as a result of their work. Around 1.2 million scavengers work in the sanitation industry in the nation. The health risks incorporates exposure to toxic gases such as hydrogen sulphide and methane, cardiovascular degeneration, musculoskeletal disorders, infections such as hepatitis, leptospirosis, and helicobacter, skin issues, respiratory system difficulties, and altered pulmonary function parameters.¹¹ Not only is rural India caught in clutch of caste and thus manual scavenging by particular caste, but in urban municipalities also the sweepers employed are from the scavenging caste. Women make up the bulk of individuals who do the scavenging vocation in the scavenger's community. In cities, they are also used as household sweepers. In urban areas private household are engaged in employment of particular caste for sanitation work.

Even after 70+ years of independence, these people are involved in this undignified work. The major reason why some individuals are forced to engage in manual scavenging is due to social discrimination. Furthermore, the vast majority of them are uninformed of their legal rights. Despite a slew of welfare reform initiatives and legislative requirements, nothing meaningful has transpired. Although various political and civil rights movements have helped in breaking down of some caste barriers, caste discrimination still prevails resulting in inhumane and cruel treatment with millions of Indians who are considered as lower caste, this majorly happens in rural areas where caste is deeply embedded amongst the society assigning roles to the individuals on the so called hierarchy of caste.¹²

III. THE PRACTICE OF MANUAL SCAVENGING

The inhuman exercise of manual scavenging, which is a tradition passed down from generation to generation, is a symbolic occupation of the Dalits or the Untouchables. More than 95% of the workers engaged in manual scavenging in India are Dalits, who had been forcefully handed this occupation by societal forces. Most Dalits engaged in the work of manual scavenging are part of a traditional order that has been created by the society, where in this job is continued by

¹⁰ Vimal Kumar, 'Scavenger Community at the Crossroads: Reflections on State Intervention, Welfare and Abuse Welfarism' (2014) 2(1) Daltri Journals 1-11.

¹¹ Rajnarayan Tiwari, 'Occupational Health Hazards in Sewage and Sanitary Workers' (2008) 12(3) IJOEM 112-115.

¹² *Human Rights Watch* (n 2).

being transferred from one generation to the next. More than 50% of Dalits employed in this field are married women, who are handed these jobs by their mother-in-laws as a tradition. These Dalits are ignorant of their rights, usually illiterate, indifferent of the local authorities and also seldom ignorant of the hazards of the job they are undertaking.¹³

The traditional order, which dictates the undertaking of this inhumane task by this particular part of the society has been so deeply entrenched in the system, that this caste has become a social pariah. Thereby, making the task of reintegrating them into the society, very difficult to achieve. The constitution of independent India, in order to eradicate the system of untouchability, enforces Article 17 of the Part III of the Fundamental Rights, which mentions the abolishment of the untouchability and makes it's practice a punishable offence. But practices like manual scavenging continue to reinforce a sense of segregation of these communities from the mainstream society. Also, inadequate political representation of these communities in the political arena serves as a hindrance the aim of reinforcement of these communities in the society.¹⁴

IV. LEGAL RESPONSE TO MANUAL SCAVENGING

Constitution of India and The Protection of Civil Rights Act, 1955, prevents anybody from being forced to engage in manual scavenging. **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993** (*hereinafter* "the 1993 Act") made it illegal to employ manual scavengers and dry toilets construction because dry toilets are later on cleaned by lower castes people being oppressed by the upper castes people. Later on, the 2013 Act, which replaces the 1993 Act, prohibits under **Section 7** to clean any manual feces in sanitary drains, latrines, or open/closed pits. It also establishes a constitutional need to compensate manual scavenging populations for past injustice and indignity by offering alternative jobs and other aid.

Women who abandoned manual scavenging and even had backing of community-based society efforts, had substantial challenges in finding accommodation, finding work, and receiving assistance from prevailing government programs geared for the purpose of their rehabilitation. Rehabilitation requirements, for example, are allowed to be executed by current federal and state government schemes under the 2013 Act, this is the same act which have failed to halt

¹³ 'India-Socio Economic Status of Women Manual Scavengers-Study' (*Women's UN Report Network*, 21 July 2014) <India – Socio Economic Status of Women Manual Scavengers – Study (wunrn.com)> accessed 02 December 2021.

¹⁴ Sathianathan Clarke, Deenabandhu Manchala and Philip Peacock, *Dalit Theology in the Twenty-First Century: Discordant Voices, Discerning Pathways* (Oxford University Press 2014) 10.

manual scavenging so far.

The Supreme Court of India has ruled that manual scavenging is illegal under International Human Rights Law, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Universal Declaration of Human Rights (UDHR). India is also signatory to some other International Conventions relating to abolishment of manual scavenging.

In 1989, the Planning Commission established a Task force's sub-committee, which assessed that the nation had 72.05 lakh dry latrines. Instead of being phased out by the state administration, the number of dry latrines has climbed to 96 lakhs, with scavengers from the Dalit community still cleaning them manually. In March 1992, a scheme called "National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents" was brought with the goal of identifying, liberating, and holistically rehabilitating manual scavengers and the persons who are dependent on the earnings of manual scavengers by providing them alternative job employment after giving them the necessary training needed for that work.¹⁵

The 1993 Act, was approved by India's parliament based on the Task Force's findings. The use of manual scavengers was outlawed, as was the installation of dry latrines. For almost three and a half years, the 1993 Act was ineffective. In the year 1997, it was ultimately implemented. The Act initially applied to Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, and West Bengal, as well as the Union Territories. The other States were expected to enact relevant resolutions under Article 252 of the Constitution in order to adopt the Act. However, the National Commission for Safai Karamcharis is a statutory body established under the National Commission for Safai Karamcharis Act 1993 noted that the 1993 Act is not effective enough in its implementation and there are around 96 lakhs dry latrines and around 5,77,228 manual scavengers.¹⁶

Human Rights Law Network attorneys filed a Public Interest Litigation in the Delhi High Court in 2007 on behalf of the millions of scavengers employed by municipal agencies such as the Delhi Jal Board, Municipal Corporation of Delhi, New Delhi Municipal Council, and Delhi State Industrial Development Board. There were instances of manual scavengers dying from inhaling harmful and deadly fumes when the complaints were made.¹⁷ The appellants' study

¹⁵ *Safai Karamchari Andolan and Ors v Union of India and Ors* (2011) 15 SCC 611.

¹⁶ *ibid.*

¹⁷ *Delhi Jal Board v National Campaign for Dignity and Rights of Sewerage and Allied Workers & Ors* Civil Appeal No 5322 of 2011.

revealed that the majority of the employees had respiratory problems, with more than half of them having restricted lung function. Many scavengers also developed skin allergies as well as numerous eye infections and ailments as a result of the cruel and unsanitary working conditions to which they were exposed without any protective gear.¹⁸

V. THE 2013 ACT

The incompetence of the act prompted the promulgation of a fresh Act for Manual Scavenging in 2013. In the newly formed Act, the Chapter II intensively talks about the duties of the employer while employing workers for the job of manual scavenging, specifying the various safety measures that have to be necessarily taken by the employer. Under the Act, every local authority was directed to conduct a survey regarding the number and conditions of the dry latrines present in their jurisdiction, which was to be notified and published within two months. Under chapter II of the Act, the local authorities were granted the permission to serve a notification to the owner of any insanitary toilet in the area within 15 days of the publishing of the list and to give a time period of six months wherein, the owner by their own expense had to convert the dry latrine into a sanitary toilet or the government had the right to intervene.

This Act recognized that the government alone was incapable of eradicating a major issue like that of Manual Scavenging and therefore contained provisions for collaboration with the local NGO's and Non-Profit Organizations for effective implementing the Act. This Act extensively deliberates the issue of rehabilitation of the workers employed and such activities and is more focused on the rehabilitative and reformative aspect than the previous Act. The 2013 Act mandates thorough rehabilitation of manual scavengers within a certain time frame. Photo identity cards for manual scavengers, initial cash assistance for supporting families, scholarships for manual scavengers' children, residential plot allotments for building new houses under various schemes in collaboration with HUDCO, training in livelihood skills, and concessional loans for taking up new occupations are among the measures to be taken.¹⁹

(A) Drawbacks of the 2013 Act

The Bill talks about giving land as part of rehabilitation package. But the location of the land that is to be allotted under the Act is unspecified and the measures to ensure rehabilitation with dignity are unspecified. Also, the means of implementation of the guidelines are not specified. The Bill has only broadly defined manual scavengers and has not mentioned underground

¹⁸ *ibid.*

¹⁹ 'Breaking Free: Rehabilitating Manual Scavengers' (*United Nations India*) <Breaking Free: Rehabilitating Manual Scavengers (un.org)> accessed 02 December 2021.

drainage cleaners who works mostly without proper safety gears. The Bill gives the Centre the authority to issue a notice authorizing manual scavenging on railway lines with suitable safety equipment. Railways and defense sectors, according to the 2011 Census data, still employ a high number of manual scavengers. The bill does not specify any provisions to remedy this.

Manual scavengers are at great disadvantage. They are lower caste people who experience great prejudice in society, due to which they are forced by upper castes people to clean human excreta. The challenge of rehabilitation and their upliftment is necessary for a liberal and progressive society where the evil of untouchability is removed and the adoption of equality is attained.²⁰

The Karnataka High Court in case of *Chinnamma & Others v State of Karnataka (2016)* ruled in favor of the family of Chenchiah, who drowned while cleaning a sewer and died of suffocation. Despite the fact that the victim's family received Rs 2 lakhs in compensation, they demanded rehabilitation. Using precedents from the *Delhi Jal Board Case* and the *Safai Karamchari Andolan Case*, Justice Ashok B. Hinchigeri said that manual scavengers risk their life for the comfort of others. He went on to say that the courts has a prior role, responsibility and a constitutional obligation to learn about the hardship of those who choose to live such a perilous and risky life. When courts can devote days/months hearing from the rich class and their lawyers in regards to tax evasion cases, cases on heinous crimes such as rape, murder, kidnapping, etc., or individuals who alleges that their fundamental rights are infringed. The court can certainly bring out some time to hear the cases of these silent manual scavenger sufferers as their fundamental rights are in a way getting infringed in all this.²¹

The problem is no longer whether sewage employees are equipped with safety equipment or if sewer workers are selected based on their eligibility. It's not even about why and how they died. The true question is why the state did not prohibit the employer from hiring sewer workers for this purpose in the first place, regardless of whether they came out alive or dead, given the conduct is unlawful. The high court of Delhi clarified this question.

The Hon'ble Delhi Court in *Rajesh & Anr v Delhi Jal Board & Ors (2018)* while citing Section 7 of the 2013 Act said that the employment or engagement for hazardous sewage or septic tank cleaning is completely prohibited under the clause. As a result, irrespective of the violator's negligence, strict liability would arise. The Court said that in light of the Section 7, the Delhi State Industrial and Infrastructure Development Corporation (DSIIDC) should have taken the required procedures to guarantee that the sewers are not opened for cleaning reasons by

²⁰ *ibid.*

²¹ *Chinnamma & Others v State of Karnataka* Writ Petition No 16365 of 2014.

anybody. Any incident would very certainly indicate DSIIDC's negligence. Compensation would be granted even without determination of who was responsible for forcing the individual into the sewers which caused death of the individual.²²

Recently, Supreme Court on 18th September 2019 stated heavily on government on issue of manual scavenging. "No one is put to die in gas chambers in any nation. Every month, 4 to 5 people die as a result of manual scavenging", the Hon'ble Court said. When the issue of fatalities due to manual scavenging was addressed, the court made these observations while hearing the Centre's review petition contesting its ruling from last year on the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.²³

In September 2020, Modi Government announced that a bill will soon be passed making the manual scavenging law more stringent. The draft of the amended law i.e., The Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020 was presented in Parliament and it still awaits for cabinet approval. Meanwhile, in March 2021, Ramdas Athwale (Minister of State for Social Justice and Empowerment) in Lok Sabha said that there is no such proposal to amend the existing Act. He stated that **Section 33 of the 2013 Act** already imposes a duty on local authority to use appropriate technology appliances. The whole purpose is again brought to vain.²⁴

VI. CRITICAL ANALYSIS

Women can be trained for livelihood by offering skill development, linking them with government employment programmes, and safeguarding their land rights, a complete rehabilitation package should provide secure, discrimination-free, and alternative livelihoods. Support for emancipated manual scavengers in developing other livelihoods, as well as professional training connected to work for young people, might go a long way toward assuring sustainable, stable livelihoods in the future. Scavengers may be effectively linked to the government by creating a conducive atmosphere via community awareness and local administration sensitization. Build community capacity to promote rehabilitation and self-sufficiency, as well as community leadership, with a specific emphasis on Dalit women.

The caste system prevalent in the Indian society has forced the dalits and untouchables of the

²² *Rajesh & Anr v Delhi Jal Board & Ors* Civil Writ Petition No 7030/2012.

²³ Shagun Kapil, 'Sewers are gas chambers where manual scavengers are sent to die: SC' (*DownToEarth*, 18 September 2019) <Sewers are gas chambers where manual scavengers are sent to die: SC (downtoearth.org.in)> accessed 02 December 2021.

²⁴ Sravasti Dasgupta, 'No plan to amend manual scavenging law, govt says 6 months after announcing new bill' (*ThePrint*, 23 March 2021) <No plan to amend manual scavenging law, govt says 6 months after announcing new bill (theprint.in)> accessed 03 December 2021.

country perform the inhumane job as a manual scavenger. The traditional order, which dictates the undertaking of this inhumane task by this particular part of the society has been so deeply entrenched in the system, that this caste has become a social pariah. Thereby, making the task of reintegrating them into the society, very difficult to achieve. To address this, the government passed the 1993 Act, which intended to eliminate dry latrines and prohibit 'manual scavenging' throughout the nation, thereby criminalizing the practice. This legislation was overseen by the Ministry of Housing and Poverty Alleviation, and it failed to clarify the State Government's responsibilities, which was the fundamental cause for its failure. Only a few states enacted the legislation, and even fewer put it into effect, but none did it correctly.

The 1993 act's ineffectiveness spurred the passage of a new Manual Scavenging Act in 2013. Every local government was required by the Act to perform a survey of the number and conditions of dry latrines in their jurisdiction, which was to be reported and published within two months. Instead of focusing just on the mechanical eradicating manual scavenging, this legislation prioritized the rehabilitative part of the solution. The Act aims to fully integrate manual scavengers into society in order to provide them with an alternative source of income.

The disadvantages of both frameworks proposed to address the issue of manual scavenging are that they do not give any implementation plans for effective enforcement of the act, but simply provide a normative perspective. Because of the discriminatory societal environment, putting the acts into effect becomes extremely difficult.

The necessity for societal transformation to properly integrate manual scavengers into the mainstream society is critical. Still, manual scavenging is pervasive in society, despite being stated in the Constitution of India under Articles 14, 17, and 21, and only a comprehensive measure can combat it.

VII. CONCLUSION

In India, manual scavenging demonstrates the interplay of caste, ineffective laws and poor infrastructure. Due to social discrimination and social boycott faced they end up returning back to this menial job. Its persistence despite various laws and policies shows the lack of seriousness of this issue. There is need for state and local governments to act in coordination with central government for effectively implementing the laws. Also since manual scavenging is a social issue it will take time for its eradication but policy makers rather than sidelining the issue needs to put it on forefront. Even after seventy years of independence it's quite disgraceful that a section of population is still engaged in such inhumane occupations violating the basic right to live life with dignity. The government should emphasize on importance of proper enumeration

of manual scavengers for effective implementation of laws and policies. Swachh Bharat mission needs to take into account the plight of manual scavengers, just building toilets would not solve the sanitation problem, there is need for proper infrastructure of sewage system and a mechanized way to clean it rather than involving human beings. India need to learn from Asian countries like Japan, Malaysia and Singapore to tackle the problem of sewage management through mechanical and automated systems and make provisions for employment and rehabilitation of manual scavengers.
