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Manual Scavenging

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ABSTRACT

Supreme Court has time and again reiterated that the right to life under Article 21 of the Constitution encompasses life with human dignity and liberty but the entire idea of society vitiates when a certain class of people based solely on caste are forced to accept menial degrading work to ensure their mere survival. Manual scavengers, the most neglected and harassed class, are the ones who are engaged in manually removing, carrying and handling night soil from dry latrines, sewers, septic tanks and pits. Manual scavenging from its emergence to its continuance has an obnoxious link with the existing caste system in India. Scavengers are treated as untouchables, have extremely limited livelihood options, live in acute poverty in segregated communities with a low level of literacy. Despite several legislations, policies and schemes in place, manual scavenging is still prevalent on a large scale. This paper deals with the issue of manual scavenging in India and analyses the legal framework and various judgments of the High Court and Supreme Court and attempts to understand why existing laws and policies fail to protect the scavengers. The paper further examines the challenges faced by scavenger communities and finally concludes by suggesting measures to eliminate the shameful practice.

Keywords: Manual Scavenging, Scavengers, Vulnerable, Forced.

I. INTRODUCTION

Today when the world has made significant progress in human development, India is still struggling with occupational and class division based solely on caste. The disgraceful practice of making people belonging to underprivileged and poorest sections in India undertake the hazardous task of manual scavenging continues unabated even after seven decades of independence. This caste-based job is placed at the lowest level in the hierarchy and its members are bound not only by traditional and customary rules and obligations but mythological sanctions also require them to carry night soil physically for disposal. Deemed to be a polluting and filthy occupation, this job is performed exclusively by dalits, passed on from generation to generation, and is perhaps the highest degree of human rights violation. Not only do they live a life of degradation but their work environment is pathetic as they are made to work without any protective gears and are even exploited in the monetary aspect which further

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discards their dignity. Various attempts by the executive and judiciary to eradicate this evil practice from society have failed due to a reliable number of manual scavengers, poor enforcement of laws, corruption, and strict caste hierarchy prevalent in India.

II. WHAT IS MANUAL SCAVENGING?

Manual scavenging is the practice of manually cleaning, carrying, disposing or handling in any manner, human excreta from insanitary dry latrines, open pits and sewers. It involves using basic tools such as brooms, baskets, tin plates and buckets with no protective shields thus scavengers come in direct contact with untreated human excreta. Generally, manual scavenging is of two types: first, cleaning dry latrines, where scavengers gather human excrement in a bucket or some vessel and throw it at some fixed place. The scavengers are at times forced to carry the baskets loaded with excreta on their heads to locations several kilometres from insanitary latrines. Most manual scavengers who clean dry toilets are women. Second, clean septic tanks which are a means of waste disposal for toilets in homes and municipalities. Scavengers or safai-karamcharis are employed to clean insanitary latrines, sewers, septic tanks, railway tracks etc. It is a **forced work** that is grossly underpaid, deeply gendered, and ranks amongst the most dangerous and horrendous occupations.

III. LEGAL FRAMEWORK

A plethora of laws were enacted to create a casteless and equitable society but the conditions of scavenging communities have remained appalling.

“There can be no dispute that our Constitutional philosophy does not permit any form of manual scavenging. The right of a citizen to live with dignity is an integral part of fundamental rights guaranteed to the citizens under **Article 21 of the Constitution of India**. The Preamble of the Constitution shows that Constitution seeks to protect the dignity of an individual. There can be no dispute that manual scavenging is inhuman and infringes the fundamental rights guaranteed under Article 21. If any citizen is forced to do manual scavenging, it will be a gross violation of his fundamental right conferred under Article 21 of the Constitution. Under **Article 47 of the Constitution**, the State is under an obligation to endeavour to improve the standard of living of its people. Under **Article 42 of the Constitution**, the State must endeavour for securing just and humane conditions of work.”² **Article 14 of the Constitution** ensures equality before law and **Article 17 of the Constitution** abolishes untouchability. Initially, **Untouchability (Offences) Act, 1955** was enacted to abolish the practice of untouchability

² All India Council of Trade Unions v. Union of India 2020.

and social disabilities arising out of it against members of scheduled castes. The Act was amended in 1977 and is now called the **Protection of Civil Rights Act, 1955** making the practice of untouchability both cognizable and non-compoundable offence with strict punishment. **Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989** aims to prevent the commission of offences of atrocities against the members of such communities, provide special courts for trials of offences and provide relief and rehabilitation to victims of such offences. The Act was amended in 2015 in order to further strengthen it in relation to manual scavengers. The **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993** was an attempt by the government to show scavengers the path of liberation. The Act provided for the prohibition of the employment of manual scavengers as well as construction or continuance of dry latrines and also provides for the regulation of construction and maintenance of water-sealed latrines. However, the States took no steps to implement the Act and later was repealed by the **Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**. PEMSAR Act was issued by the Ministry of Social Justice and Empowerment as a huge step towards banning manual scavenging and laying greater emphasis on rehabilitation. The primary objective of the Act is to exclude unsanitary latrines, prohibit employment of manual scavengers and hazardous manual cleaning of sewer and septic tanks and also to maintain a survey of scavengers and their rehabilitation. The Act is comprehensive and brings both sewers and railways under the ambit of its definitions and prohibitions. The Act has stringent penalty clauses such as Rs. 50,000 or imprisonment up to one year and subsequent penalty is Rs. 1,00,000 and two years in prison and for violation of hazardous cleaning which is a cognizable and non-bailable offence penalty is Rs. 2,00,000 and two years in prison and subsequently penalty of Rs. 5,00,000 and five years in prison.

In 1994, **National Commission for Safai Karmacharis**, a statutory body was made by the same Act of Parliament 1993 and was valid up to 1997 but was later extended indefinitely. NCSK submitted its first report in 2000 asserting that there was a huge gap in implementing the 1993 Act on the ground. Since then, several organisations such as Safai Karmachari Andolan and National Campaign on Dalit Human Rights have been working to eliminate manual scavenging. However, the practice continues because of the loopholes in implementing these laws.

IV. WHY EXISTING LAWS ARE WEAK?

The loopholes in the laws are in itself an antithesis to the theory of the welfare state and the

principal objective of the Swachh Bharat Mission. PEMSAR Act prima facie appears to bar employment of scavengers but ironically regulates the same. In the Act, the definition of the term ‘manual scavenger’ under Section 2(g) excludes those who have been provided requisite protective gear and equipment for cleaning human excreta. Also if septic tanks or sewers are cleaned by an employee with the employer providing safety equipment then such activity doesn’t fall under the definition of hazardous cleaning under Section 2(d) of the Act. Thus, simply providing the required equipment for the act of cleaning sewers or human excreta protects this demeaning task from falling within the ambit of the Act and no action can be taken against it. In reality, the equipments are either not provided at all or if provided are of such poor quality that it can’t be used as protective gear. The definition of manual scavengers further fails to cover within its scope wastes such as hazardous medical waste, corpses, menstrual waste etc. The 2013 Act prescribes the process for setting up Vigilance Committees at the Central and State levels so as to monitor the implementation of the Act but the effectiveness of such committees has been negligible. **Rashtriya Garima Abhiyan Report on Rehabilitation of Manual Scavengers and their Children in India, 2012** states that *“95-98% of the entire population of manual scavengers in the country are women.”*³ However, the present Act has completely failed to recognise the special social, legal and bodily elements of women scavengers such as biological hygiene, safety concerns, sexual harassment, lower wages compared to male counterparts, separate urinals etc. In addition to the inadequacies in the existing laws there is nothing on record to indicate that provisions such as Sections 4 and 5 have been implemented which calls for a complete prohibition on constructing insanitary latrines or employing manual scavengers, demolishing insanitary latrines or converting it into a sanitary latrine and construct adequate sanitary community latrines to prevent the practice of open defecation. Present laws fail to enhance or re-orient the skill levels of scavengers necessary for a change of occupation. At the same time, there is a break between the integration of sanitation campaigns and schemes that focus on infrastructure and rehabilitation which in turn ultimately disregards the rights of manual scavengers. Swachh Bharat glorified the broom and shifted the focus from those cleaning the toilets to constructing toilets without answering the basic questions such as who will clean those toilets, are sewer lines laid to deal with excreta and where will the waste go? A separate cess levied for Swachh Bharat is utilised for constructing toilets instead of identifying scavengers and rehabilitating them. However, the most critical problem with most policies, laws, schemes aimed at eliminating this evil is the

³Available at https://idsn.org/wpcontent/uploads/user_folder/pdf/New_files/Key_Issues/Manual_scavenging/NationalPublicHearing_ManScavenging_2012.pdf.

failure to acknowledge how the practice has its roots in the caste system that makes the indignity suffered by scavengers invisible to masses. Though, manual scavenging is now treated as a political issue but rest of the country shies away from shouldering the moral responsibility of this violation of human right.

V. JUDICIAL STAND

Court has always made it clear that manual scavenging has no place under the Constitution as it violates the trinity of liberty, equality and fraternity. Delhi High Court in *Metro Waste Handling v. Delhi Jal Board* observed that ***“Unseen and forgotten for generations, our society has marginalised manual scavengers to its darkest corners. They are trapped in an eternal caste embrace, with no voice in the society or in any meaningful participation; their children are doomed to the same stereotypical roles assigned to them. The promise of equality, dignity and egalitarianism has eluded them altogether in the march and progress witnessed by the rest of our citizens.”***

In the past, the National Human Rights Commission on several occasions expressed grave concern over the widespread continued practice of manual scavenging through letters, national seminars and regional workshops in order to urge concerned stakeholders to take necessary steps towards eliminating such hazardous practices. Chairperson of NHRC, Justice AK Mishra stated that “Toilets constructed as part of Swachh Bharat Mission were expected to help in eradicating manual scavenging but rather it suffers from several shortcomings. As per the National Annual Rural Sanitation Survey 2019-20, only 27.3% of toilets surveyed have a double leach pit i.e. 1.1% goes into a sewer while all others empty into some form of a septic tank or single pits which requires manual cleaning.” Member of NHRC, Justice PC Pant stated that **“The toxicity of society in the form of denials of basic human rights of manual scavengers needs to be nullified.”**

Noting that one of the objectives of the PEMSAR Act is to rehabilitate the family members, the court called for **“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.”**⁴

After the tragic deaths of sanitation workers in Bhubaneswar and Cuttack engaged in manual cleaning due to asphyxiation, Orissa High Court took suo motu action⁵ and directed 10 lakh

⁴ Safai Karamchari Andolan v. Union of India (2014) 11 SCC 224.

⁵ Death of Sanitation Workers v. State of Odhisha 2021.

compensation to be paid to the grieving families. The court observed that in both incidents there were violations of mandatory provisions contained in Section 7 r/w Section 2(1)(d) and Section 9 of PEMSAR and their Rehabilitation Act and that Article 17 of the Constitution abolishes untouchability and its practice in any form and declares that enforcement of any disability due to untouchability shall be an offence punishable in accordance with the law, with the hope that practice of untouchability in general and manual scavenging, in particular, would not last in an independent India. The court relied on the case of *Safai Karamchhari Andolan v. Union of India*⁶ where it was held that the “PEMSAR Act expressly acknowledges Article 17 and Article 21 and rights of the persons engaged in sewage cleaning and cleaning tanks as well as persons cleaning human excreta on railway tracks.” The court also took note of the judgment of *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*⁷ where it was observed that *“No one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter manhole without safety gears and proper equipment. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.”*

VI. CONCERNS

Manual scavengers form a unique vulnerable group as the very existence of this group is unconstitutional and must be challenged. Regrettably, nothing substantial has changed over the years despite all the judicial directives and laws. No amount of efforts by the government to make scavenging safer and healthier can ensure a dignified and decent life for people engaged in such dehumanizing work. The occupation deeply rooted in a hierarchical system renders the dalit community which are also categorised as untouchables further powerless and invisible as the impurity imposed on the caste is socially and culturally ingrained. Untouchability destroys

⁶ Supra Note 4.

⁷ Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers (2011) 8 SCC 568.

their basic human right to even dream a life with justice, equality and dignity moreover, legislature, political parties and the general public including us have failed miserably in this direction. Former or liberated scavengers that attempt to secure an alternate dignified livelihood are rejected by society because of their caste, stigma and discrimination associated with it thus raising the fear that such people once again return to scavenging in the absence of other opportunities in order to support their families. Scavengers community are trapped in a vicious cycle as speaking up against caste oppression involves a risk of losing their livelihood or even life and scavenging is the only security that the community has due to lack of competition. The communities of scavengers are made to live in locations that are isolated from the rest of the villages and are discriminated against when it comes to access to places of worship, water sources and other cultural events. Women scavengers face the worst kind of mental trauma and exploitation as the discrimination they face is furthered by gender. Children of scavengers are unable to escape the wrath of this system and drop out of school at an early age as they are treated with contempt by their high caste teachers and fellow classmates and at times are made to clean school premises instead of attending classes. Since scavengers come in direct contact with excreta it exposes them to various health concerns such as skin infections, respiratory diseases, tuberculosis, rotting of fingers and limbs, nausea, etc. In an attempt to diminish the repulsive nature of their work, addiction and intoxication are part of everyday for scavengers that come with their own set of consequences. There is a **lack of proper data and surveys** that accurately identifies the number of people engaged in manual scavenging. Manual scavenging is a heavily unorganised and unregulated sector and the fact that interpretation of existing laws by the Government and judiciary clearly overlooks the ground realities of poor enforcement mechanisms along with the indifferent attitude of law enforcing authorities further increases the gravity of non-regulation manifold.

VII. CONCLUSION AND SUGGESTIONS

On paper, the practice of manual scavenging has been banned by legislation at the Central level but in reality, the practice is still rampant in India. Dr. B.R. Ambedkar once stated, **“For ours is a battle not for wealth or for power. It is a battle for freedom. It is the battle of reclamation of human personality”**. Moreover, the time is ripe to acknowledge and work towards liberating this community.

The foremost step is to adopt rigorous enforcement and scrutiny measure to ensure proper implementation of existing laws, schemes, and policies and efficient utilisation of budgetary

allocation. Indian railway, the largest institution to use dry latrines in the country must speed up the construction of bio-toilets in railway stations and trains. Investments must be made in high-tech equipment to minimise manual intervention for cleaning human excreta. To address the practice of open defecation all authorities must sensitise citizens about the ill effects of it and initiate a massive awareness campaign for that purpose. There must be a framework to make the Monitoring Agency under the 2013 Act more transparent and accountable to the community for not addressing their demands. A road map must be drawn that identifies manual scavengers and develop an action plan that frees and rehabilitates them and is further duly supported by effective monitoring, review and evaluation. It is essential to adopt a comprehensive approach that focuses on various aspects vital to secure the future of the next generation of liberated manual scavengers and at the same time holistically rehabilitate them by ensuring alternate secure livelihood, skill development, social empowerment, health services and access to education for children.

Manual scavenging is a blot on human rights that needs to end. Upholding the ideals of Article 38 of the Constitution which aims to promote social, economic, and political justice for the welfare and development of all is the need of the hour to ensure that this modern form of slavery is eliminated.
