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Understanding the Laws to Protect Manual Scavengers in India: An Analytical Study

DHIRENDRA NEWAR¹

ABSTRACT

Manual Scavenging is a growing social problem especially in the urban areas of India. With its growth, the discriminations against the scavenging people also grow. There have been many instances of different kinds of harassments and tortures that they have to face from the society. Many deaths also happen due to the difficult strata of the work that these people do. The government of India has formulated various legislations to deal with all such issues related to the manual scavengers. Nevertheless, the plight and sorrows of these people have not come down. Under the backdrop of the present scenario, this paper tries to give a holistic understanding of the laws dealing with manual scavenging and also suggests different recommendations in this regard.

Keywords-manual scavengers, laws, rights, suggestions

I. INTRODUCTION

Every human life is precious and beautiful. One must pay respect to one's human dignity. Therefore, it is universally recognised and the foundation of moral vision for the society. After Second World War International community concentrated on Human dignity as a core element for protection of human beings. The conceptual dimensions of human dignity were established in 1948 as the foundational concept of the UDHR. The preamble of UDHR says, 'where as recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Human dignity mentioned at the outset of the Article 1 of the Universal Declaration of Human Rights 1948, which is the most important document in the world. The Universal Declaration of Human Rights provides the preliminary work out for protecting and development of right to life with human dignity in the various constitutional laws of various countries in the world. Every person has inalienable right to live with dignified life without discrimination. They are entitled to claim equal respect from the state as well as from other persons. It is one of primary duties of each state to protect fundamental rights to the human

¹Author is a LLM student at Gauhati University, Guwahati, Assam, India.

dignity and implement welfare schemes in order to improve the dignified life of the citizens.

II. CONCEPT OF MANUAL SCAVENGING

Manual Scavenging is an unfortunate development in our society. It is a stark reality of Untouchability. "Manual scavenging", refers to the removal of human waste/excreta from unsanitary latrine, dry toilets i.e. toilets without the modern flush system using brooms and tin plates. The excreta are piled into baskets which scavengers carry on their heads to locations sometimes several kilometers from the latrines. Manual Scavenging is said to have started in 1214 in Europe when the first public toilets appeared. The water closet was invented by John Harrington in 1596. In 1870, S.S.Helior invented the flush type toilet, and it became popular in the western world.

Manual scavenging in India is a caste based and hereditary profession. It is a practice of manually cleaning, carrying, disposing or handling in any manner from dry latrines², railroad tracks and sewers. The scavengers crawl into the dry latrines and collect the human excreta with their bare hands, carry it as head-load in a container to dispose it off. The practice of manual scavenging is linked to India's caste system where so-called lower castes were expected to perform this job. Manual scavengers are amongst the poorest and most disadvantaged communities in India.³ Manual Scavenging is one of the lowest, polluted and most degrading occupations.⁴ Dalit scavengers are rarely able to take up another occupation due to discrimination related to their caste and occupational status, and are thus forced to remain scavengers.⁵

Though Manual Scavenging is a dehumanizing practice, they play a vital role in keeping the society clean and healthy. They sacrifice their own health and work for the betterment of the society at large. If the manual scavengers stop performing their job our society will be full of dirt and harmful pollutants. They work for the betterment of the society keeping their own lives at danger. The society and the government should give them all the necessary medical facilities. The sad reality, however, is that they are hardly getting the modern benefits of medical science. The ongoing practice of manual scavenging is a disgrace to human dignity. It is a violation of the basic human rights guaranteed under Articles- 14, 17, 21 and the

²Under Section 2(c) of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, 'dry latrine' means a latrine other than a water-seal latrine.

³"Breaking Free: Rehabilitating Manual Scavengers", United Nations in India, <http://in.one.un.org/page/breaking-free-rehabilitating-manual-scavengers> Retrieved on 14 May 2020 at 12:58 A.M.

⁴Safai karmacharis Andolan, <http://www.safaikarmachariandolan.org/whatismanual.html> Retrieved on 14 May 2020 at 12:59 A.M.

⁵"Manual Scavenging", International Dalit Solidarity Network, <http://idsn.org/key-key-issues/manual-scavenging/> Retrieved on 15 May 2020 at 01:00 A.M.

Directive Principles of State Policy under Article-47 of the Constitution of India.⁶ Until and unless a total ban on this practice is put it is not possible to guarantee a dignified life, which is very important for the overall development of human personality. Hence the problem of manual scavenging draws the attention of the researcher.

III. OBJECTIVES OF THE RESEARCH

The main objects of this research work are:

- To analyse the violation of human rights with special reference to the problems of manual scavengers in India.
- To analyse the issues attached to the problem of manual scavengers and the challenges as to violation of human rights before the concerned authorities to tackle this issue.
- To make a study of the statutes, to analyse the objective, utility and limitations of such statutes in contemporary social condition with regard to initiatives taken to eradicate manual scavenging in India.
- To study certain relevant facts involved with the practice of manual scavenging and make a few workable recommendations to curb the problem from our society.

IV. RESEARCH METHODOLOGY

The methodology adopted by the researcher in this research work is descriptive, analytical and diagnostic in nature. The researcher has adopted the doctrinal method on the basis of the data available regarding the present study. The researcher has referred to a great number of books, newspapers, journals, articles and e-books in preparing this work. This research is also analytical in nature because it analyses the role of government, limitations of the prevailing policies, programmes and statutes for which this practice is continuing till date. This work is a diagnostic work wherein the researcher has diagnosed the various problems of manual scavengers in India.

V. DISCUSSION/ ANALYSIS:

Manual Scavenging is one of the greatest evils attached to human civilization. The dehumanizing practice of manual scavenging is a disgrace to human dignity. Apart from the social atrocities and the social exclusion that these workers face, they are exposed to a wide variety of health issues as well, which is the most neglected matter in India. The health

⁶M. P. Jain, *Indian Constitutional Law*, 7th ed. 2015, Lexis Nexis Publication, Haryana – India. Article 14- Equality before law; Article 17- Abolition of Untouchability; Article 21- Protection of life and personal liberty; Article 47- Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

hazards of manual scavengers include exposure to harmful gases such as methane and hydrogen sulphide, cardiovascular degeneration, musculoskeletal disorders like ‘Osteoarthritic’⁷ changes and Intervertebral Disc Herniation⁸, infections like hepatitis, leptospirosis and helicobacter, skin problems, respiratory system problems and altered pulmonary function parameters.⁹ They may also be prone to psychological disorders. They are also highly affected by hand-to-mouth contact. The manual scavengers are also highly affected by gastric cancer. Pre-placement treatment and periodic treatment for manual scavengers along with an insurance protection are some plausible solutions to the problem at hand.¹⁰ In most of the cases, the manual scavengers are not given proper safety equipments¹¹ and as a result they use their hands with the certainty that they will have direct skin contact with human waste.

(A) VARIOUS LEGISLATIONS TO PROTECT THE RIGHTS OF MANUAL SCAVENGERS IN INDIA:

Sanitation is a State subject as per Entry 6 of the Constitution of India. Hence, apart from plethora of Constitutional provisions, the legislature has enacted several enactments for the upliftment of the scheduled class including manual scavengers. Some of the major enactments are as follows:

1. The Protection of Civil Rights Acts, 1955¹²

Initially the Untouchability (Offences) Act 1955 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 enforcement of any disability arising out of untouchability is an offence punishable in accordance with the law. Under this Act, whoever takes any part in the ex-communication of, or imposition of any social disability on any person who refuse to practice untouchability or does any act in furtherance of the objects of this new law will also be guilty of an offence.

⁷‘Osteoarthritis’ is a type of joint disease that results from breakdown of joint cartilage and underlying bone.

⁸Intervertebral Disc Herniation is a frequent source of low back pain.

⁹Rashtriya Garima Abhiyan, Manual Scavengers and Their Health, <http://www.mfcindia.org/main/bgpapers/bgpapers2013/am/bgpap2013h.pdf> Retrieved on 21 May 2020 at 01:06 A.M.

¹⁰Manual scavenging, caste and policy, <http://www.pragoti.in/node/4899> Retrieved on 25 May 2020 at 01:07 A.M.

¹¹Safety equipments like- Gloves, Masks, Boots and Brooms.

¹²Abhishek Gupta, *Manual Scavenging: A Case Of Denied Rights*, Summer Issue 2016, ILI Law Review, Pp. 36-58

Again in addition to the normal penalty for an offence, the court may also cancel or suspend any license in respect of profession, trade, calling or employment when an offence is committed under this law during the course of any such profession, trade, calling or employment.¹³

2. The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁴

The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1986, came into force on 31 January 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. In spite of various measures adopted to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they have remained vulnerable. They are subjected to various offences, indignities, humiliations and harassments. 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.¹⁵

3. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993¹⁶

The Act does not prohibit dry latrines and manual scavenging in a direct fashion. It operates after State Government issues a notification fixing a date for enforcing the provisions prohibiting employment of manual scavengers and dry latrines in the specified area. The notification itself can only be issued after giving a notice of ninety days, and only where 'adequate facilities for the use of water-seal latrines in that area exist'. All States have not adopted the Act, and those who have adopted the law have not enforced its provisions to achieve the intended results.

The Act should be adopted by all States where manual scavenging exists. States may by inform that failure to adopt the Act may result in reduction or withholding of Central assistance towards their Annual Plans. The implementation of the Act in respect of conversion of dry latrines should be made more forthright. Thus, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibitions) Act, 1993 (hereinafter EMSCDL Act, 1993), provides for the prohibition of employment of manual scavengers as well as

¹³ The Protection of Civil Rights Act, 1955, Universal Law Publishing Co. Pvt. New Delhi, Pp. 1.

¹⁴ Supra note 11

¹⁵ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, Universal Law Publishing Co. Pvt. Ltd., New Delhi, Pp. 1.

¹⁶ Supra note 11

construction or continuance of dry latrines and for the regulation of construction and maintenance of water sealed latrines and matters connected therewith. It is replaced by 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

4. *The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013*

In order to eradicate the problem of manual scavenging from our society, economic rehabilitation together with the physical, psychological and social rehabilitation is important. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 gives the response of the importance. The Act received assent of the President on 18th September 2013 and published in the Gazette of India on 19th September 2013. The Act replaced the existing 'Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. A fresh look at the condition of the manual scavengers after the 1993 Act had to be taken by the Government of India as there were reports on existence of about 23 lakhs pit latrines according to 2011 census report. Accordingly it is presumed that there must be stricter provisions in the present Act to abolish manual scavenging completely from the society. As such, the present Act has been framed in such a way that there is wider scope and higher penalties than the 1993 Act. The salient features of the Act and its analysis–

- The preambular paragraph of the Act stipulates the dignity of the individual as one of the goals which is in tune with the Constitution of India. It is important to note that work is worship. It is necessary to remove the stigma attached to the profession. They are to be treated with full dignity.
- The Act also highlights the Fundamental Rights conferred on the people irrespective of caste, creed and religion.
- The Act has also made reference to Article 46 of the Constitution which, inter alia, provides that the State shall protect the weaker sections, and, particularly, the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation.
- The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment and also the construction of insanitary latrines.
- Section 2 (1) (d) of the Act defines the term 'hazardous cleaning'. It refers to the use of protective gear and other cleaning devices and ensuring observance of safety precautions. However, the type of protective gear and other cleaning devices is not at all defined under the Act.

- Section 2 (1) (e) define the term ‘insanitary latrine’. It is well known that the Indian Railway is the major promoter of manual scavengers. As such it will continue the practice of manual scavenging in spite of the stringent provisions laid down in the Act. There may be provisions laid down in the Act. There may be certain difficulties for the railway to avoid manual scavenging in case of small latrines constructed inside the railway compartments. Rather the Railway Authority should devise a method to clean the latrines by way of constructing portable/removable small septic tanks which may be cleared in the stations from time to time. This will do away with the practice of cleaning the railway tracks in and around the stations.
- The Act seeks to rehabilitate manual scavengers and provide for the alternative employment. In view of the existing hereditary obnoxious and inhuman condition of manual scavengers the Government has formulated various schemes/programmes for their social and economic upliftment. However, corruption was done on large scale in the rehabilitation scheme, which is Rs. 735.6.crores rehabilitation scheme implemented by the Government of India. About 76% people got benefits; those are not in eligible criteria. This fact came out in the public hearing of Rashtriya Garima Abhiyan (National Campaign for Dignity and Eradication of Manual Scavenging at New Delhi on 28 March 2012.
- Under the Act, each local authority viz., Municipality, Municipal Corporation, Gaon Panchayats, village councils have respective jurisdictions. They shall also construct sanitary community latrines.
- The owner or user of insanitary latrines shall be responsible for converting or dismantling of insanitary latrines at his or her own cost. In case of failure to do so the local authority will demolish the same and construct a sanitary latrine in its place and local authority is authorized to realize the cost of demolition and construction from the person concerned. It is observed that financial assistance for demolition and construction of sanitary latrines will be necessary in case of Below Poverty Line (BPL) families and this class will constitute the majority. Such people should be exempted from penal provisions. Rather the local authority should be entrusted to construct sanitary or community latrines in such cases.
- The District Magistrate and the local authority shall be the implementing authority.
- Offences under the Act shall be cognizable and non-bailable and may be tried summarily while the maximum punishment laid down in the 1993 Act was 2 years; it has been raised to 5 years in the 2013 Act.

- The Act permits the State Governments to empower the Executive Magistrate to conduct trials for offence under the Act. This may lead to conflict of interest between the executive and the judiciary.
- So far as the constitution of the vigilance committees stipulated under the Chapter VII of the Act is concerned, there must be inclusion of a least one member who has adequate knowledge in the field of Human Rights.
- Further, the Central Monitoring Committee should meet at least once in quarterly instead of once in every six months as stipulated under the Act.

In a nutshell, it can be concluded that the rehabilitation of the manual scavengers is a laudable feature of the Act, but it will have to adopt strict and focused strategy of prohibition and rehabilitation both. Because, despite the presence of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, there has not been even a single conviction and till date the inhuman practice of manual is prevailing in the society.

VI. RECOMMENDATIONS TO GOVERNMENTS¹⁷:

- Linking MNREGA and other social security schemes with the Scavenging Act of 2013 – Since, The Prohibition of Employment as Manual Scavengers and their Rehabilitation (PEMSR) Act, 2013, doesn't have any express provision of linking rehabilitation programmes for scavengers with the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) 2005. Thus, an amendment must be brought to the Scavengers Act 2013 and the rehabilitation programmes must be linked with MNREGA and other social security laws like Unorganized Sector's Workers Social Security Act, 2008. In this way scavenging activities can be eliminated in rural areas where it is still practiced.

- Effective coordination among public and private authorities – The Ministry of Social Justice and Empowerment, the Ministry of Drinking Water and Sanitation, the Ministry of Rural Development, the Ministry of Housing and Poverty Alleviation, the Ministry of Urban Development, the Ministry of Railways have key roles to play in the eradication of the practice of manual scavenging and the rehabilitation of freed families. Moreover, the Ministry of Women and Child Development and the Ministry of Labour also have an important role because a substantial number of women are engaged in manual scavenging. Thus, a coordination committee should be formed with representation from all these Ministries so as to work together.

¹⁷Abhishek Gupta, *Manual Scavenging: A Case Of Denied Rights*, Summer Issue 2016, ILI Law Review, Pp. 36-58

- The municipal and panchayats bye laws of the States should have provisions not to allow the construction of any new house with dry latrine or without water sealed latrine or sanitary latrines. Measures should be taken so that dry latrines made in the past can be demolished and new water sealed latrines with appropriate technology be constructed. There should be time bound limit for conversion of dry latrines into wet latrines and construction of new latrines. It should be one of the criteria for deciding grants to municipal bodies and there should be some measures to take penal action against municipalities not fulfilling their obligations in this regard. In every gram panchayats, there are generally three-four sub committees. On a mandatory basis, there must be a discussion on the status of manual scavenging and it must be the duty of the president/secretary to record the same under the gram panchayats proceedings.

- Moreover, for the identification of manual scavengers in different States a comprehensive and detailed survey for identifying manual scavengers in India must be expeditiously conducted by constituting a high level State Committee under the chairmanship of a retired judge or a serving judge of a high court. The Committee may include representatives from State Bureaucracy, Scheduled Caste/Scheduled Tribes Commission, State Human Rights Commission, State Women Commission and the civil society representatives working for the cause of manual scavengers. The local governments have to assist a great deal to find out the actual image of their locality and jurisdiction so that proper arrangements can be taken.

- There is no guarantee that switching to flush toilets will solve this problem at once. The problem with flush toilets and modern sewage system also needs adequate attention and proper technological advancement and ultimately manual scavengers are involved for such maintenance works. Similarly closed drain system also require the same. This is mainly due to inefficient solid waste management systems, where garbage enters the drain systems and causes blockages.¹⁸ Hence promoting flush toilets are not sufficient, effective arrangements must also be made by the municipal bodies for solid waste management.

VII. CONCLUSION

On the basis of foregoing discussion it can be concluded that despite several government initiatives the plight of manual scavenging has not shown much improvement. Though policy makers have initiated several social welfare reforms directed towards manual scavengers, but have considerably failed to ensure their success on ground. Actual satisfaction of basic needs

¹⁸Manual Scavenging, Caste and Policy, Counter Currents. Org, available at <http://www.countercurrents.org/fams100213.htm>, Retrieved on June 05, 2020, at 06:11 P.M

and amelioration of the scavenging community has not only been ignored by the policy makers but even the organized schedule caste movements have failed to address the cause of manual scavengers. Manual scavenging remains a serious concern with regard to the issues related to human rights. Even though legislations, considerable budgetary allocation, and economic assistance programmes for the scavenging communities has been put in place. But the most vital pre-requisites which are required are the rigorous enforcement and scrutiny measures required to ensure proper implementation of laws and effective use of budgetary allocation. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 consists of legislative as well as programmatic interventions. The Minimum Wages Act, 1948 provisions for fixing minimum wages for different types of labour. However, in almost all cases manual scavengers are paid so less that they cannot even afford their own medical expenses.¹⁹

This is to be submitted here that the researcher has a strong belief that if the aforesaid measures and recommendations are properly taken into account and are implemented properly, the present scenario of manual scavengers will be improved drastically.

¹⁹ Sarit Bhoi (ed.), *Dignity And Rights Of The Sewerage And Allied Workers*, 1st ed. 2011, Human Rights Law Network, Pp. 6-7.