



## MANUAL SCAVENGING LAWS - RESTORING THE DIGNITY: A HUMAN RIGHTS APPROACH

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### ABSTRACT

**“In no country in the world, people are sent to gas chambers to die. This is the most inhumane way to treat human beings like this.” Justice Arun Mishra, Supreme Court, 2019 (Outlook 2019).**

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. It is a huge form of human rights violation. Equally another higher degree of violation is making this as a profession and it is forced on the people of scheduled castes. It is an irony that after decades of independence; it was in the year 1993 and in 2013, that the Government of India passed a dedicated legislation to ban the inhuman and degrading practice of manual scavenging. But it is unfortunate that these legislations enacted doesn't abhor this inhuman practice as a whole. This paper critically examines the socio-economic status of the manual scavengers, the very need for abolishing this inhumane practice which involves caste and gender discrimination. This paper further deals with the analysis of statutory

framework, UN initiatives and put forth the technology based socio - legal solutions to the issues and emphasis on the importance social inclusion, that is bringing the scavenging community into mainstream.

## MANUAL SCAVENGING - DEFINITION

Statistics have suggested that it is safer to be a soldier in Kashmir than a manual scavenger in India. Manual scavenging has claimed more lives than the terrorists in the country. This is even after the law that made it mandatory to use safety equipment before taking up cleaning of a sewage or a septic tank. Instead of working in such risky conditions, manual scavengers in India, unlike the soldiers, get no respect and are subjected to discrimination and mistreatment. Manual scavenging is defined as “the removal of human excrement from public streets and dry latrines, cleaning septic tanks, gutters and sewers”. Any person who has been employed to handle undecomposed human waste from an insanitary latrine, open-drain or pit or railway track is a manual scavenger under Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The person could have been employed by any one - for example, someone from their village or by an agency or contractor. It does not matter if she was given regular employment or engaged on a contract basis, she is covered under this law. However, any person who has been employed to clean human waste and does so with the help of the appropriate protective gear and equipment will not be considered a manual scavenger under this law.<sup>1</sup> While the

<sup>1</sup>“Manual Scavenging - A Law Without Enforcement”, [www.thecsrjournal.in](http://www.thecsrjournal.in) - last visited on 25/05/2021



1993 Act banned manual scavenging in India, the 2013 Act provided for punishment for engaging any person for hazardous cleaning of sewers and septic tanks.

### PRESENT LEGAL SCENARIO

**The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013** seeks to correct the injustice which has been meted out to the manual scavengers previously. This act looks to provide the manual scavengers with alternative ways of earning a livelihood or any other assistance which they require. This is an improvement as the Act of 1993 focused only on prohibition to employ people as manual scavengers and construct dry latrines. Under the new Act, one-time cash assistance is given to individuals who have been engaged as manual scavengers at any point of time, housing for them and their family, a scholarship to their children and other legal assistance<sup>2</sup>. The Act also has mentioned and included about their rehabilitation which the 1993 Act failed to do but no specific authority is made responsible for rehabilitation. This Act provides for cognizable, non-bailable provisions with higher penalties. The National Commission for Safai Karamcharis has been established to monitor implementation of the Act and also to enquire into complaints as regards the contraventions under the Act<sup>3</sup>. Despite of the provisions laid down in the Act, the implementation part remains questionable.

Section 2 (1) (g) of the 2013 Act says “manual scavenger” means a person engaged

or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression “manual scavenging” shall be construed accordingly.

**This definition doesn't recognise septic tank and sewer line cleaners as manual scavengers.**

Section 2 (1) (e) of the 2013 Act says: “insanitary latrine” means a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed: Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine .

Various committees were setup to combat this grave practice some of that are:

<sup>2</sup> The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013, section 11-12

<sup>3</sup> Sabiha Rahman, “MANUAL SCAVENGERS AND THEIR UNENDING CONFLICT WITH LAW”,



**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.

**Malkani committee:** 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:** 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 committee:** 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.

Some of the significant 'Constitutional Provisions' which is against this illegal practice is

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.



The numerous provisions and statutes enacted in connection with prohibition of manual scavenging, the issue lies here is the implementation of the provisions which involves the part of local authorities in a bigger level. Further this **The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013** lacks in many aspects.

**One of the major criticisms of the Act is the exemption of Indian Railways from the ambit of the definition of insanitary latrines under the Act, when Indian Railways is the largest supporter of the manual scavenging.** Thus, Indian railway will continue to practice this inhumane practice. Water flush latrine in a railway passenger coach at railway stations will make someone to clean manually human excreta and practice will continue even after the sensitivity towards human rights.

In a significant concern raised by **Safai Karmachari Andolan**<sup>4</sup>, the Supreme Court directed the government to, “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”. The judgment has been given by Supreme Court Bench headed by Chief Justice P Sathasivam. The court also said that rehabilitation must be based on the principles of justice and transformation. The court also directed the Indian Railways, which is the largest employer of manual scavengers in the country, to take time bound strategy to end manual scavenging on the tracks.

<sup>4</sup> Safai Karamchari Andolan & Others v Union of India & Others, (Supreme Court of India), Writ Petition (Civil) No. 583 Of 2003 | 29-04-2005

Another serious criticism is here are various legislations which do recognise females as a separate group and provide specific rules for them like the Equal Remuneration Act, 1976, the Minimum Wages Act, 1948, the Factories Act, 1948, this Act fails to recognise the specific provisions for women as majority of the workers here were women.

### MANUAL SCAVENGING: ADDRESSING AS AN ISSUE OF HUMAN RIGHTS

**“In India, a man is not a scavenger because of his work. He is a scavenger because of his birth irrespective of the question of whether he does scavenge or not.” - Dr B.R. Ambedkar**

The recent data released by the Ministry of Social Justice and Empowerment has brought to light the fact that manual scavenging has led to 376 deaths in the last five years. It has also mentioned that the practise led to the death of 110 persons in 2019. The data has highlighted the discrepancies in the prohibition of manual scavenging law. The government proposal for amendment of the manual scavenging law aims at mandating the use of machines for cleaning sewers and septic tanks. It has stated that the word “manhole” will be replaced with “machine-hole” in all the official government documents. In addition to this, the proposal has stated the need to install a national helpline to report violations which will help the government ineffective monitoring and ensuring compliance. But the replacement of the word ‘manhole’ with ‘machine hole’ symbolises the government’s intolerance



towards the practice. **The biggest irony in the case of manual scavengers is that the Indian Railways, a government agency, is the biggest employer of manual scavengers in the country. However, the manual scavengers are not on the government payroll**<sup>5</sup>. The manual removal of human and animal excreta using brooms, small tin plates, and baskets carried on the head and the allocation of labour on the basis of caste is one of the fundamental tenets of the Hindu caste system. Within this system dalits have been assigned tasks and occupations which are deemed ritually polluting by other caste communities - such as sweeping, disposal of dead animals and leatherwork. By reason of their birth, dalits are considered to be "polluted", and the removal of human and animal waste by members of the "sweeper" community is allocated to them and strictly enforced..."<sup>6</sup>

While the country is making leaps forward in economic development, the existence of inhuman practice takes us backwards and highlights our failure to ensure basic human rights. We urgently need a national-level consciousness, followed by strict adherence to the Prohibition of Employment of Manual Scavengers and Rehabilitation Act (2013) by both state and the Central governments alike. Just legislative conformity or changes will not ensure an end to the inhuman practice. The consciousness to eradicate manual scavenging has to combine with technological solutions and rehabilitation programmes to offer alternative employment options<sup>7</sup>.

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Hency Thacker, Manual Scavenging - A Law Without Enforcement, [www.thecsjournal.in](http://www.thecsjournal.in) - last visited on 25/05/2021

<sup>6</sup> United Nations Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Working Group on Contemporary

## CASTE & GENDER BASED DISCRIMINATION

*The practice is driven by caste, class and income divides. "One of modern India's great shames is the official failure to eradicate 'manual scavenging', the most degrading surviving practice of untouchability in the country." - Harsh Mander.*

Every day when a woman sets out to clean excrement, a multitude of national and international statutes are flagrantly violated. The essence of Article 14 is not only to guarantee equality before the law but also to ensure equity, thus securing resources and opportunities for every individual to succeed in life. Articles 15 and 17 supports Article 14 by outlawing discrimination and untouchability on the basis of caste. Additionally, the Protection of Civil Rights Act, 1955 and the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 have been enacted to eradicate manual scavenging. However, when women are forced by their families, villages, railways, and municipal corporations to continue manual scavenging, they are deprived of equality on two counts: on the basis of their caste and also for being a woman. Since these women are employed in the unorganised sector, they are divested of minimum wages, emoluments, benefits, allowances, pensions, gratuity, indemnity, according to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Workmen's Compensation Act, 1923<sup>8</sup>.

Forms of Slavery, 27th Session, Geneva, 27-31 May 2002

<sup>7</sup> Soumitro Chakraborty, "This Is How We End One of India's Biggest Human Rights Violations", 28th December, 2018

<sup>8</sup> SHUBHAM KUMAR, PRIYANKA PREET, Manual Scavenging: Women Face Double



The data of manual scavengers<sup>9</sup>, released by the Ministry of Rural Development, suggests that there are 1,82,505 manual scavengers, that too only in the rural areas. It has further revealed that there are more than 2.6 million functional dry toilets in India **where women constitute the majority of the workforce**. Unlike other labour forces, sanitation workers do not have a separate rule-book that lays down guidelines for their work timings, holidays, a proper place for roll call, removal from duty, etc.

**“All human beings are made of the same earth and they have the right to demand good behavior.” B R Ambedkar**

The government data reveals that 636 people died between 1993 and 2018 while working in sewers or septic tanks<sup>10</sup>. Article 21 of the Constitution emphasize ‘Right to Life’ includes ‘Right to live with dignity’ which is further deeply interpreted in the judgment<sup>11</sup> proclaimed that the term “life” does not allude to a “mere animal existence,” but it encompasses the right to live with dignity. But the caste and gender-based discrimination is heinous in this work which is a serious evil to be abated.

In an International Perspective, Articles 1 and 23 of the Universal Declaration on Human Rights mandate dignity and equality, fair remuneration, and social security measures for all human beings. The Preamble, Articles 3, 7, 10, 11 and 13 of the International Convention for Economic, Social and Cultural Rights also envision equality,

dignity, decent living standards and maternity relief for women.

“The manual carrying of human feces is not a form of employment, but an injustice akin to slavery. It is one of the most prominent forms of discrimination against Dalits, and it is central to the violation of their human rights”<sup>12</sup>. In a landmark case of **SAFAI KARAMCHARI ANDOLAN AND Ors V UNION OF INDIA** as it brings to light the oppression faced by the safai karamcharis over a long period of time and the case was filled in the year 2003 and the judgement was passed in the year 2014. 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 a practice that is still prevalent in many parts of the country. While the surveys conducted by some of the petitioner-organizations estimate that there are over 12 lakh manual scavengers undertaking the degrading human practice in the country, the official statistics issued by the Ministry of Social Justice and Empowerment for the year 2002-2003 puts the figure of identified manual scavengers at 6,76,009. Of these, over 95% are Dalits (persons belonging to the scheduled castes), who are compelled to undertake this denigrating task under the garb of “traditional occupation”. The manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic

Discrimination as Caste and Gender Inequalities Converge, ISSN (Online) - 2349-8846.

<sup>9</sup> Socio Economic and Caste Census 2011 (SECC-2011)

<sup>10</sup> National Commission for Safai Karamcharis Act, 2018

<sup>11</sup> Kharak Singh v the State of Uttar Pradesh and Others (1963)

<sup>12</sup> Ashif Shaikh, founder and convener of the Rashtriya Garima Abhiyan.



exploitation. The relief sought for them was that to ensure complete eradication of dry latrines, to declare continuance of the practice of manual scavenging and the operation of dry latrines violative of Articles 14, 17, 21 and 23 of the Constitution. The court also stated that there are various international conventions to which India is a part of as under the UDHR, CEDAW and CERD<sup>13</sup>

The scavenging castes which were known by different names in different states like Bhangi, Balmiki, Chuhra, Mehtar, Mazhabi, Lal Begi, Halalkhor etc. in northern India; Har, Hadi, Hela, Dom and Sani etc., in eastern India; Mukhiyar, Thoti, Chachati, Pakay, Relli etc., in Southern India; and Mehtar, Bhangias, Halalkhor, Ghasi, Olgana, Zadmalli, Barvashia, Metariya, Jamphoda and Mela etc., in western and central India, also made an effort to get united and have a common name. In 1911 census some of them started returning as Adi Dharmi, Adi Dravida, Adi Karnataka and Adi Andhra<sup>14</sup>. The very objective of “**The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989**” 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 offences and for the relief and rehabilitation of the victims of such offences and later on in the 2015 amendment it was further strengthened, in relation to manual scavenger. Implementing this

legislation in letter and spirit will find a solution to curb this evil based on caste.

## RECOMMENDATIONS AND CONCLUSION

The health condition of manual scavengers is ignored blatantly, which is another serious issue. Many of them had eye, ear infection and most of them had low vision and other eye related problems. The critical health problems generally faced by manual scavengers are, Bronchitis, Tuberculosis, Asthma, Nausea, and typhoid and many other diseases caused by dealing with human excreta. Numerous deaths of these underprivileged communities are poorly addressed.

As of 2019, official figures state that over 54,000 individuals are employed as manual scavengers, but it is estimated that the number is even beyond 1.2 million<sup>15</sup>. Many were left with occupational disease which makes them redundant for the rest of their life. They don't receive proper compensation for the health issues which is related with this occupation.

In the case of *Bandhua Mukti Morcha v. Union of India*<sup>16</sup> the SC called Article 21 the “heart of fundamental rights” and observed that it is fundamental right of everyone in this country to live with human dignity free from exploitation and includes protection of the health and strength of workers, men and women, just and humane conditions of work and maternity relief. The practice of manual

<sup>13</sup> Sabiha Rahman, “MANUAL SCAVENGERS AND THEIR UNENDING CONFLICT WITH LAW”, INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES VOLUME 4 ISSUE 5 SEPTEMBER 2018

<sup>14</sup> Abhishek Gupta, “MANUAL SCAVENGING: A CASE OF DENIED RIGHTS”, ILI Law Review, Summer Issue 2016

<sup>15</sup> Jaiswal, Kartikeya; Modi, Pranay: From Legal Fiction to Reality: Securing the Dignity of India's Manual Scavengers, VerfBlog, 2020/6/11

<sup>16</sup> (1997) 10 SCC 549



scavenging is *prima facie* in violation of this aspect of Article 21 as it jeopardizes the scavengers' health due to lack of humane work.

The growing status of patents and technological inventions on one side, growth of the nation in other technological field, but the very objective of 'Ending Manual Scavenging and Rehabilitation of Workers' is not achieved still.

The Courts have held human dignity to be the most important, fundamental, inalienable and transcendental of rights 'Dignity' has been interpreted to include equal treatment and respect, and equal protection of law. In the case of Maneka Gandhi v. Union of India, the Supreme Court (SC) widened the ambit of the provision and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.

But the failure on the part of some of the State Governments to eradicate manual scavenging negates the ideal of "dignity" which finds pride of place in the Preamble to the Constitution. The absence of a statutory obligation to provide sanitation services on the part of state agencies creates a hopeless situation. "The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival."<sup>17</sup>

This paper recommends: Acknowledging this practice is associated with caste-based discrimination, their lack in access to

criminal administration and difficulty in having alternate employment is a first step to curb this practice. The next step will be providing comprehensive rehabilitation, ensure discrimination-free, secure and alternate livelihoods and social inclusion of them in the main stream. Constituting a 'Social Justice Bench' to eradicate this practice will be a proper measure.

Another promising and welcomeable step is, there are also a few state governments that have been proactive in eradicating the practice of manual scavenging. **The Kerala Start-up Mission and Kerala Water Authority have provided the engineers of a robot manual scavenger "Bandicoot"**<sup>18</sup> with infrastructural facilities in a 5,000 square feet area to enable the development of India's first manhole cleaning robot. This is a ray of light in the dark history of manual scavenger community in our nation. But the permanent solution is needed and that should be implemented effectively and immediately across the country. As the outcome of these national and international legislations should be **"Eradicating this inhuman practice and restoring dignity to scavenging community"**.

#### BIBLIOGRAPHY

1. INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES, VOLUME 4 ISSUE 5 SEPTEMBER 2018.
2. "The Inhuman Caste and Gender Based Sanitation Practice of Manual Scavenging in

company founded by nine young engineers in Thiruvananthapuram, "Our ultimate aim is to end manual scavenging in India," said Vimal Govind, the company's 25-year-old chief executive officer. "It is time to change manholes to roboholes."

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Abhinav Narayan Jha, Jinendra Parakh and Abhinav Shukla, "Taking 'life' out of people: On the degrading practice of manual scavenging", The Daily Guardian

<sup>18</sup> Bandicoot, the robot, which takes 15 minutes to clean small sewers and around 45 minutes to unclog bigger ones, was developed by Genrobotics, a



India”, [www.idsn.org](http://www.idsn.org), last visited on 26/05/2021

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3. UN Human Rights Watch, “Cleaning Human Waste: “Manual Scavenging,” Caste, and Discrimination in India”, ISBN: 978-1-62313-1838, August 2014
4. “Breaking Free: Rehabilitating Former Manual Scavengers”, Ministry of Social Justice and Empowerment, Government of India
5. Sabiha Rahman, “MANUAL SCAVENGERS AND THEIR UNENDING CONFLICT WITH LAW”, INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES VOLUME 4 ISSUE 5 SEPTEMBER 2018
6. B.N.Srivastava, “Manual Scavenging in India: A Disgrace to the Country”, Concept Publishing House, Delhi, 1997.
7. Economic and Political Weekly, ISSN (Online) - 2349-8846.
8. Shukla, Ravi Shankar, Manual Scavenging: The Story of Untouchables Among Untouchables (November 6, 2009).

#### WEBLIOGRAPHY

1. [www.socialjustice.nic.in](http://www.socialjustice.nic.in), last visited on 26/05/2021
2. [www.in.one.un.org](http://www.in.one.un.org), last visited on 26/05/2021
3. [www.nhrc.nic.in](http://www.nhrc.nic.in), last visited on 27/05/2021
4. [www.hrw.org](http://www.hrw.org), last visited on 28/05/2021

#### MAGAZINES

1. Raees Muhammad, “The manacles of caste in sanitation work”, The Hindu, October 22, 2020.
2. [www.firstpost.com](http://www.firstpost.com), last visited on 28/05/2021
3. The Indian Express
4. The Daily Guardian