

MANUAL SCAVENGING AND THE LAW IN INDIA: A GROUND REALITY

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ABSTRACT

Manual Scavenging is a disgrace on the face of developing India because it's not only related with human society but also with individual's human dignity. Lot of families feeling himself humiliated and wretched because their family members working as swabber or cleaner in our society because this manual scavenging exist in different form in different places of the world like in India its mailadhona. Committees which had been established by government after independence from 1948 to 1968 suggested to eliminate the manual scavenging. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibited the Construction of the dry latrines and was aimed to stop the manual scavenging. The definition of manual scavenging was changed in 2013 by Prohibition of Employment as Manual Scavengers and their Rehabilitation Act but the situation of manual scavengers has not improved until today.

Keywords: *Manual Scavenging, Human Rights, Constitution of India.*

INTRODUCTION

According to definition given by United Nations Manual scavenging is the practice of manually cleaning, carrying, disposing or handling in any manner, human excreta from dry latrines and sewers. It often includes using the most basic of tools such as buckets, brooms and baskets. Though the law says employment of manual scavenging is banned the work is still widely practiced.

According to Sec 2 (g) The Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013 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 in an insanitary latrine is disposed of, or an a railway track or in such other spaces or premises , as the central government or a stat government may notify , before the excreta fully decomposes in such way as may be prescribed and the expression “ manual scavenging” shall be construed accordingly.

The practice to immaculate manually the excrement from private and public dry toilets and open drains persists in several parts of South Asia. In many parts of India, consistent with centuries-old feudal and caste-based practice, women from communities that traditionally worked as “manual scavengers,” still collect human waste on a daily basis and carry it away on their heads for dumping at the outskirts of the settlement.

Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable or deemed too menial by higher caste groups. Their caste-designated work reinforces the social stigma that they are unclean or “untouchable” and perpetuates widespread discrimination. Generally, women are engaged to clean dry toilets, men and women clean excrement from open defecation sites, gutters, and drains, and men are called upon to do the more physically demanding work of cleaning sewers and septic tanks¹.

Not only do manual scavengers have to work in dirty and abhorrent conditions, they are also socially ostracised by most of society.

Common issues that they have to face include people abstaining from touching them (or items they have touched), being verbally abused and being left out from social functions².

Apart from the social harassments that these workers face, they are also exposed to certain health problems by virtue of their occupation. These threats to health comprise exposure to harmful gases, cardiovascular degeneration, musculoskeletal disorders, infections, skin problems and respiratory system problems³.

According to the Census of India (2011) there are still an estimated 182,505 manual scavengers in rural India though the practice is illegal in India. Bihar, Madhya Pradesh and Uttar Pradesh are the states where the highest number of manual scavengers live ⁴ the vast majority of whom are dalit women.

The government identified 12,742 manual scavengers in 13 states, with 82% of them in Uttar Pradesh. However, the above figure has since been criticised as a gross under-representation of the actual figures.

In June 2018, Indian Express reported a recent inter-ministerial survey conducted in 121 out of the 600 districts in India that has put the number of manual scavengers in these districts at 53,236, a fourfold increase from the previous data. Uttar Pradesh upholds its distinction of having the highest numbers of manual scavengers at 28,796.

The statistics on this is even more under-reported. As per the official union government figures, there have been 323 deaths of manual scavengers in the country. However, *Safai Karamchari Andolan*, a non-profit organisation, puts the figure of deaths at over 1,500. SKA reported 1,340 such deaths in the last ten years.

The organisation, led by Ramon Magsaysay Award Winner Bezwada Wilson, has recorded 356 manual scavenging deaths between 2010-17 in Delhi.

According to *Safai Karamchari Andolan* statistics, at least a hundred deaths took place this year itself. Most of the deaths occur due to lack of proper gear or exposure to toxic gases⁵.

The death of five men employed to immaculate a septic tank in an exclusive residential community in New Delhi is a shocking reminder that India's high-profile sanitation movement has done little to alter some basic ground realities. Around the same time as the Delhi episode, five workers died in a septic tank in Odisha.

More incidents of deaths of workers are being reported in septic tanks. Due to lack of political will and social pressure, more lives could be lost because more tanks are being built in rural and urban areas as part of the drive to construct toilets.

LAW AGAINST THIS ILL PRACTICE

The Preamble of the Indian Constitution presumes dignity of an individual as his most valuable asset. Thereby, manual scavenging and employment of manual scavengers and sweepers is banned in India by law. It is the duty of the state to guard the rights of people, improve their standard of living and also the improvement of public health is of prime concern for the government.

The Government of India has enacted various laws by invoking Article 252 of the constitution which empowers Parliament to legislate for two or more States by consent and adoption of such legislation by any other State.

The Employment of Manual Scavengers and the Construction of Dry Latrines (Prohibition) Act, 1993 was enacted by the Central Government, after six states passed resolutions requesting the Central Government to make a law. This Act punishes the construction of dry (non-flush) latrines or employment of scavengers with imprisonment for up to one year and/or a fine of Rs 2,000. No convictions obtained under the law during the 20 years it was in force.

Though, a clear clash of interest was created on account of certain provisions in the act, which stated that prosecution for any offence under it shall not be instituted except with the previous sanction of the executive authority, and that no court shall take cognizance of any offence under this act save for a complaint made by a person authorized by the executive authority. The judiciary was barely allowed to intervene and the executive, by virtue of the two provisions, ensured that very few prosecutions were filed in the court of law to punish offenders.

Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 which came into effect from 6th December, 2013 replaced Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. It was only in 2013 that the law recognized the other hazardous aspects of the work. However, the executive reserved the power of prosecution, diluting the legislation.

THIS ACT INTENDS TO ATTAIN ITS OBJECTIVES TO: -

1. Eliminate the insanitary latrines.

According to Sec 2 (e) of the Act "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 equipment, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine⁶.

2. Prohibit: -

- Employment as Manual Scavengers.
- Risky and hazardous manual cleaning of sewer and septic tanks.

3. Survey of Manual Scavengers and their rehabilitation, within a time bound manner⁷.

4. It is unlawful and an offence under this Act for any person, municipality, panchayat or agency to:-

- Build an insanitary latrine, or
- Employ a manual scavenger.

Further, all the people who are already employed as manual scavengers are to be discharged immediately. A person who had an insanitary latrine at the time the Act came into force had to demolish it or convert it within 6 months. He could be given an extension of 3 months if they were good reasons for not being able to complete it within 6 months.

CONCLUSION AND SUGGESTIONS

India's sanitation problem is complex one, and the absence of adequate toilets is only one lacuna. The Swachh Bharat Abhiyan should make expansion of the sewer network a top priority and come up with a scheme for scientific maintenance that will end manual cleaning of septic tanks. Sucking and jetting machines should be used at large. Protective gears for cleaning the septic tanks and drainage to be provided without any breach.

The law should be enforced strictly and strongly to eliminate manual scavenging in its entirety. If the law on manual scavenging is to be effective in real sense, the penalties must be uniformly and visibly enforced. Likewise, it is important for State governments to address the lack of adequate machinery to clean septic tanks.

Apart from the responsibilities of the legislature and executive, every individual should also comprehend their responsibility. In order to eradicate manual scavenging from the society we must understand that these people belong to us and they also have their own right to live with dignity and other fundamental rights. We should not treat them as untouchable. It is our collective duty to eliminate this stigma from our society for once and forever.

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Biographical Note

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