

# MANUAL SCAVENGING- A CONTINUOUSLY FAILED LEGISLATION IN INDIA

## ABSTRACT

Manual scavenging is the removal of human excrement from public streets and dry latrines, cleaning septic tanks, gutters and sewers. It is an old topic as it is a draconian practice which still prevails in India and clearly shows caste discrimination, untouchability and violation of Human Rights. The Authors in this essay discuss how caste is used as a means of oppression for centuries, all the legislations and judiciary decisions that have led to the current standing of manual scavengers, prospects of change in those, and some solutions that will lead to a better life for the workers.

## I. INTRODUCTION

"One of modern India's great shames is the official failure to eradicate 'manual scavenging', the most degrading surviving practise of untouchability in the country." - Harsh Mander.

Manual scavenging is the act of lifting and removal of human excreta manually from dry latrines with bare hands, brooms or metal scrapers. This is then taken to dumping sites or water bodies for disposal. Many scavengers are employed to collect, carry and dispose excreta from septic tanks, sewers, drains and railway tracks. Indian Railways are the most reliant on the services of the manual scavengers. The worker can essentially be employed by anyone, for example, the village panchayat or by an agency. **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013** prohibits all manual scavenging work without protective gear on the grounds of human dignity and also gives methods for their rehabilitation.

## II. STATISTICS AND CURRENT SCENARIO

According to the National Commission for Safai Karamchari (NCSK), one manual worker dies every five days on an average while on their job<sup>1</sup>. In 2019, 110 workers were killed on the job. This makes it a more dangerous work field than being a soldier protecting the borders

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<sup>1</sup>Shalini Nair "One manual scavenging death every five days: Official data", *Indian Express*, September 18, 2018, available at <https://indianexpress.com/article/india/official-data-shows-one-manual-scavenging-death-every-five-days-5361531/> (last visited on November 1, 2020)

of Kashmir. Albeit, manual scavengers are the one who is discriminated the most in our society. Manual scavenging is the form of the modern-day untouchability.

70% of India's sewage remains untreated till today. Out of the 816 sewage treatment plants in India, only 522 are functional, the remainder are either under construction or non functioning.

Manual scavenging is a caste-based practice as majority of the workers come from the Valmiki Dalit caste, one of the lowest of the former caste deemed untouchable. The consensus of the population believes that manual scavenging is just an occupation and fails to see the socio-cultural element attached to it. Poverty or lack of education drives manual scavengers, but cultural notions of purity and impurity drives the upper class mentality.

Indian psyche and caste based prejudice ensures the confinement of the Dalit's to jobs such as sweeping, cleaning and sanitation work, which they themselves perceive as disgraceful or too degrading. 95% of the scavengers are women, who are forced to clean the dry latrines of the people from the upper caste. They are not given bare minimum for their work, which is their well- deserved wages. They are paid by day old vegetables and stale rotis. If they refuse these conditions, their family is threatened by the people in the villages. In 2012<sup>2</sup> Gangashri along with 12 other women in Parigama village of Uttar Pradesh refused to clean the latrines of the upper caste men and in response those women were threatened with violence. A group of upper caste men confronted the manual scavenging community and threatened Gangashri and her family with violence. Such threats are one of the main features that keep manual scavenging alive in the country. This, coupled with the fact that police authorities refuse to register the complaints of people owing to their own inherent caste based biases.

The stigma is very strongly attached to the cultural notion in the societal discourse. It is believed that all the sufferings of this life are a result of the karma or actions done in the previous life, and the endeavor of the present will manifest in the next life. Thus, the menial tasks allotted to them becomes an obligation towards them, a way of institutionalized penance. It is an archaic practice which is degrading, unhygienic and really portrays the development our country has made in the last seventy years. Not only do manual scavengers have to work in a filthy and abhorrent environment, they are also socially ostracised by most.

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<sup>2</sup>“Suffocation and Stigma. The Ugly Truth of Manual Scavenging in India” *Dalit Camera*, July 11,2020, available at <https://www.dalitcamera.com/suffocation-and-stigma-the-ugly-truth-of-manual-scavenging-in-india/> (last visited on November 1, 2020)

Less waterborne latrines in urban and rural India is one of the main causes of manual scavenging as reported by the Housing-Listing and Housing Census 2011<sup>3</sup>. As of today, no efforts have been made to eradicate the 26 million insanitary latrines. Secondly, India is unable to fully rehabilitate the sanitation workers. In addition to that, the government has no redressal initiative for the plight of the families of the manual scavengers. Manual scavengers work in unsanitary conditions and are exposed to gases such as ammonia, carbon oxide methane, and hydrogen disulphide, long exposure to which can lead to death by asphyxia.

One of the major causes is the denial of the existence and the perils of manual workers by the government. There is no account of the death kept by the Government<sup>4</sup>. On 8<sup>th</sup> February, 2020, the Supreme Court issued a notice in petition on the issue of the increasing deaths of manual scavengers filed by the Criminal Justice Society of India, and ordered the Central Government, Central ministries, the Railways and all States and UTs to respond within four weeks. As of 28<sup>th</sup> October, only two affidavits have been submitted by the Centre and five from States and UTs. 30 States and UTs have failed to respond alongside the Railways, the Ministry of Law & Justice, the Ministry of Drinking Water & Sanitation and the National Commission for Scheduled Caste. The Central Government eventually submitted a reply seven weeks later through the Ministry of Social Justice and Empowerment. The information reported however is unreliable and already exists on the public domain. On 20<sup>th</sup> June 2018 The Indian Express reported that the inter-ministerial taskforce survey confirmed the existence of 53,000 manual scavengers in the country, but the State only reported a total of 6,600. The reports also lack clear data on the deaths of manual scavengers. Next hearing will be before Justices Bobde and Gavai on the 2<sup>nd</sup> December.

Due to the Covid-19 outbreak, the risk factor for the manual scavengers has increased since now the human bio-waste from the hospitals and quarantine centers. A sudden increase of waste like face masks, wipes, gloves and other means of sanitation is the need of the hour, but the improper disposal of the above is harmful to the scavengers as the items may be contaminated with the virus. It is to be noted that the workers were given a mask and two

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<sup>3</sup>Hency Thacker, "Manual Scavenging- A Law Without Enforcement.", *CSR Journal*, February 20, 2020, available at <https://thecsrjournal.in/manual-scavenging-a-law-without-enforcement/> (last visited on November 1, 2020)

<sup>4</sup>Vakasha Sachdev, "8 Months After SC Order, Yet No Manual Scavenger Data From State Governments" *The Quint*, October 29, 2019, available at <https://www.thequint.com/news/india/manual-scavenging-case-supreme-court-governments-not-responding-deaths-numbers> (last visited on November 1, 2020)

gloves when the pandemic started. But they were of cheap quality and were rendered useless in two day's work, and they have not been given any replacements.

### III. LEGISLATIONS

**The Indian Constitution** has special provisions for the underprivileged classes to protect their interests. A wide range of minority rights was enshrined in the articles 14, 15, 16, 25, 26, 29, 341 and 342 of the Constitution. Articles 15(2), (4), (5), 16(3), (4), (4A), (4B), 17, 23 and 25(2) (b) seek to remove social and economic disabilities of the deprived classes of people. It is to be noted that Article 17 of the Constitution of India forbids discrimination on the account of caste. Besides the fundamental rights, certain directive principles of the state policy make it obligatory on the part of the State governments to ensure the welfare of the disadvantaged classes. Article 38 of the Constitution requires the state to promote the interest of the people by securing a social order based on justice. Other than the Constitution, there were various Commissions like the **Barve Commission**, suggested to look for measures that can improve the lives of manual scavengers in India. **Kaka Kalelkar Commission**, emphasised to eradicate the 'sub-human' level of practice by rapid mechanisation. At a subsequent time, many Committees like the **Pandya Committee** sought recommendations to regulate the service conditions of the manual scavengers and one of the important characteristics of the Committee was the "inspection of the enforcement machinery with regards to existing regulations."<sup>5</sup>

Then in **1995, the Protection of Civil Rights Act** came, and the Act called for the annihilation of scavenging or sweeping on the grounds of untouchability, which was the first Act to do so. It was revised in 1977 for a severe execution. **The Prevention of Atrocities Act, 1989** became an integrated guard for sanitation workers, and at that time more than 90 percent of people employed as manual scavengers belonged to the Scheduled Caste. This became an important initiative to free manual scavengers from their designated occupation.<sup>6</sup>

**The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (EMSCDL Act)**, prohibited the employment of manual scavengers for manual

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<sup>5</sup>"The Prohibition of Employment of Manual Scavengers and their Rehabilitation (Amendment) Bill-Part II" *Dalit Camera*, September 17, 2020 available at <https://www.dalitcamera.com/charter-of-demands-and-recommendations-for-the-prohibition-of-manual-scavenging/> (last visited on November 1, 2020)

<sup>6</sup>Pragya Akhilesh, "Banning Manual Scavenging in India- A Long Complex Passage" *Down To Earth*, September 18, 2020, available at <https://www.downtoearth.org.in/blog/rural-water-and-sanitation/banning-manual-scavenging-in-india-a-long-complex-passage-73441> (last visited on November 1, 2020)

cleaning dry latrines and also the construction of dry toilets, i.e. toilets that do not operate with a flush. The Act also provided for imprisonment of up to a year and, or a fine of Rs 2,000.

In 2000, NCSK submitted its report on manual scavenging stating that there is a huge gap in the implementation of the 1993 Act. Since then various organisations like the Safai Karmachari Andolan (SKA), National Campaign on Dalit Human Rights (NCDHR) have been working for the eradication of manual scavenging, but the practice continues mainly because of loopholes in the implementation of these laws. Through many surveys and grassroots mobilisation movements these organisations have established the ground realities many times.<sup>7</sup> According to the Report (2002) by the Ministry of Social Justice and Empowerment, over 79 million people were engaged in the practice of manual and also for the scavenging there was no conviction of the abominable practice in its 20-year history of widespread prevalence<sup>8</sup>, the Comptroller and Auditor General of India's Report of 2003 on the evaluation of the 'National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents' stated that the 1993 Act "has failed to achieve its objectives even after ten years of implementation involving an investment of more than Rs. 600 Crores" and this was taken up by SKA and other organisations, they filed a Writ Petition asking for strict enforcement of the implementation of 1993 Act. Other than the Writ Petition cases were also filed in the Gujarat High Court <sup>9</sup> (2004), in Madras High Court<sup>10</sup> (2008) etc., in which various petitioners drew the courts' attention to manual scavenging and sewer deaths.<sup>11</sup> The Act was also criticized for the absence of a clause on rehabilitation for them and the narrow definition of a manual scavenger as it failed to include other forms of scavenging activities made it a dead-letter law for years. All the reports and cases showed a clear failure of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

**The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**, replaced the existing "Employment of Manual Scavengers and Construction of Dry

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<sup>7</sup>The Prohibition of Employment of Manual Scavengers and their Rehabilitation (Amendment) Bill-Part I" *Dalit Camera*, September 16, 2020 available at <https://www.dalitcamera.com/the-prohibition-of-employment-of-manual-scavengers-and-their-rehabilitation-amendment-bill-part-i/> (last visited on November 1, 2020)

<sup>8</sup>"Get Serious", *The Hindu*, June 02, 2016, available at <https://www.thehindu.com/opinion/editorial/get-serious/article5120916.ece> (last visited on November 1, 2020)

<sup>9</sup> Praveen Rashtrapal, I.R.S. vs Chief Officer, Kadi Municipality, 2006

<sup>10</sup> A.Narayanan vs The Chief Secretary on 20 November, 2008

<sup>11</sup> Arkaja Singh and Aditya Unnikrishnan, "Why Manual Scavengers In India Haven't Got Their Rights Despite Laws, Judiciary Intervention" *The Print*, February 26, 2020, available at <https://theprint.in/opinion/why-manual-scavengers-in-india-havent-got-their-rights-despite-laws-judiciary-intervention/371140/> (last visited on November 1, 2020)

Latrines (Prohibition) Act, 1993 as it appeared to be ineffectual. The fundamental purpose of the 2013 Act was to freshly investigate the condition of the manual scavengers, as there were reports on the existence of approximately 2.3 million pits (insanitary) toilets according to 2011-census report. This 2013 Act bears stricter provisions to abolish manual scavenging entirely from society. As such, the Act was framed in such a way that there is a broader scope and higher penalties than the 1993 Act and prohibited the employment of manual scavengers for cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines and seeks to rehabilitate manual scavengers & provide for their alternative employment and also calls for a survey of manual scavengers in urban and rural areas within a time-bound framework. Each local authority, railway authority and cantonment board is responsible for surveying of insanitary latrines within their jurisdiction and they shall also construct several sanitary community latrines, with that it provided that manual scavengers are given one-time cash assistance of Rs.40, 000, and access to training to get them suitable employment and they are also eligible for a low-interest loan of up to Rs.15 lakhs each to start a new venture. The Act also made it an offence to engage a manual scavenger and doing so carried punishment up to a year in jail and/or a fine of Rs 50,000.

However, in the nine years since its enactment there have been no convictions under this law. This is despite the Union Minister of State for Social Justice and Empowerment identifying 53,398 manual scavengers across the country and the Act broadly defined manual scavengers and does not mention underground drainage cleaners who mostly work without proper safety gear or goggles and has also failed to define protective gears/equipment and to set a standard for the same. Mostly, they are given ill-sized boots or torn gloves and masks in the name of gears/equipment<sup>12</sup> as the responsibility to provide for such safety gear rests upon the employer and most of the municipal cleaning is outsourced. Thus, the responsibility to provide the gears falls on the private employers who fail to comply with the provisions, which shows that it's an inadequate provision. Even the "contractual employment system" that perpetuates unregulated contractual hiring failed the existing Act because the number of cases of sewer deaths will keep on increasing unless there is a clear cut reassessment of this system, and is the reason why there is a sharp increase in sewer deaths.<sup>13</sup>Wilson Bezwada,

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<sup>12</sup>Mili Budhiraja, "Voices From the Hushed Corners: Manual Scavengers in Covid 19" *South Asia Journal*, August 21, 2020, available at <http://southasiajournal.net/voices-from-the-hushed-corners-manual-scavengers-in-covid-19/> (last visited on November 1, 2020)

<sup>13</sup>Pragya Akhilesh, "Failing the Sanitation Workers Again", *The Indian Express*, September 21, 2020, <https://indianexpress.com/article/opinion/failing-the-sanitation-worker-again-manual-scavengers-bill-6605096/> (last visited on November 1, 2020)

convener of Safai Karamchari Andolan, a people's front working for the betterment of manual scavengers and sweepers and cleaners, termed the Act as another dressing up effort. The Act does not address the problems that became apparent after the experience with EMSCDL Act; rather, the Act is another exercise to cover up inaction.<sup>14</sup>

In the case of **Safai Karamchari Andolan v. Union of India**<sup>15</sup> (Writ Petition of 2003), the court has been categorical that, “If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:-

(a) Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.

(b) Railways– should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.”<sup>16</sup>

The Honorable Court also highlighted the importance of rehabilitation so that present, as well as future generations, could be prevented from working as a manual scavenger. The Court had begun the process by issuing orders that directed the Central and State governments to determine where manual scavengers work and find other jobs for them and demonstrated the continuing unwillingness of the state to implement the law.

**In the 2019 Supreme Court Judgment,**(Writ Petition filed by NGO Criminal Justice Society of India) the court said, “In no country, people are sent to gas chambers to die. Every month four to five persons are losing their lives in manual scavenging”. The court also rapped the government for not providing equal facilities to the scavengers and pointed out that how

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<sup>14</sup>Jitendra, “Manual Scavenging Prohibition Bill: How Effective?” *Down to Earth*, July 04, 2020, available at <https://www.downtoearth.org.in/news/manual-scavenging-prohibition-bill-how-effective-42151> (last visited on November 1, 2020)

<sup>15</sup>Safai Karamchari Andolan v. Union of India, 2014

<sup>16</sup>IDSN, “A landmark judgement in the fight to eradicate manual scavenging”, *International Dalit Solidarity Network*, March 31, 2014, available at <https://idsn.org/a-landmark-judgment-in-the-fight-to-eradicate-manual-scavenging/>(last visited on November 1, 2020)

untouchability still prevails in India even after the constitution abolishing untouchability in the country and after 70 years of Independence.

**The Prohibition of Employment as Manual Scavengers and Their Rehabilitation (Amendment) Bill, 2020**, this Bill comes under the Social Justice and Empowerment Ministry's National Action Plan which aims at complete elimination of hazardous cleaning of sewers and septic tanks, it is said to be more stringent, focused and serious strategy framework by increasing the imprisonment term and the fine amount and it plans to aim modernization of existing sewage system and coverage of non-sewered areas by setting up of septage management system and faecal sludge for mechanised cleaning of septic tanks, transportation and treatment of faecal sludge by equipping the municipalities, and setting up of Sanitation Response Units with help lines.<sup>17</sup> Local government bodies are to be equipped with the appropriate technology and machinery. Provision is also to be made for "training and certification" of sanitation professionals, either "in-house or through reputed institutions." Private agencies engaged in cleaning work are to be compulsorily licenced, and only those who can ensure "total mechanised cleaning" should be given licences, said the document.

Although this looks promising on paper but the promises have been repeatedly made and broken since 1947, pointed out by SKA. And as the prison sentence is higher, a judge will hesitate to convict an offender of this Act, so this is counterproductive and while technology, modernisation and mechanisation are all absolutely necessary but the Bill utterly fails to address the safety of sanitation workers. Often, slums and areas with low-income households can't get a piece of land to construct a toilet, which is added to a lack of water connection and waste management for households that have a toilet. Since there is little choice, open defecation, community latrines and public toilets are the norm.<sup>18</sup> In addition to all this the Bill is blatantly silent on the core issue: caste, untouchability etc. as sanitation remains a caste-based occupation, and children of safai karamcharis are forced to follow in their parents' footsteps, which shows that this Bill does nothing to undo the historical injustice, quality education with guaranteed alternate jobs and without this, there is a little chance that they can

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<sup>17</sup>PTI, "Govt. to introduce bill to make law banning manual scavenging more stringent", *The Hindu*, September 12, 2020, available at <https://www.thehindu.com/news/national/govt-to-introduce-bill-to-make-law-banning-manual-scavenging-more-stringent/article32587429.ece> (last visited on November 1, 2020)

<sup>18</sup> Rosamma Thomas, "New Manual Scavenging Bill Stresses on Technology, Ignores Caste", *News Click*, September 19, 2020, available at <https://www.newsclick.in/New-Manual-Scavenging-Bill-Stresses-on-Technology-Ignores-Caste> (last visited on November 1, 2020)

escape from the lifetime of degrading, bottom rung-of-society work that generations of their ancestors have been engaged in since time immemorial.<sup>19</sup>

#### IV. SOLUTIONS

Few nations have adopted either sustainable methods of sewage disposal or use machinery to treat the profluent . Mexico has taken the eco-san (ecological sanitation) model, which is a management method that treats human excreta for agricultural nutrients. America uses machinery but there are legitimate tunnels and equipment in place.

In Malaysia<sup>20</sup> the sewerage management has advanced in a staged manner from primitive systems to more mechanical and mechanised frameworks since the country's independence in 1957, a study<sup>21</sup> by the Centre for Policy Research in 2017 noted. The study said that this was mainly due to the development of technologies in the sewerage industry. The approach taken by the Malaysian government was effective, which was to highly subsidise the construction and maintenance of sewage plants. They also carried out surveys and outreach programmes to educate citizens about how often they should get their septic tanks cleaned.

India on the other hand, in spite of having the access to the technology doesn't focus on using their resources on this very integral part of the development of the nation because of caste. They know that there is a caste of people who will be ready for cheap manual labour.

Seeking data from authorities and the community will assist in coming up with an informed and educated decision on the best way to proceed with the initiative. Workshops ought to at that point, be held to understand how deep the problem is and how to address it. A workshop with the community would help the organization understand the cause of the locals resulting in the practice. The locals can give suggestions on the solutions that they feel comfortable with.

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<sup>19</sup>Mari Marcel Thekaekara, "Why The Proposed Manual Scavenging Prohibition Bill Looks Good Only On Paper" *The Wire*, October 9, 2020, available at <https://thewire.in/caste/manual-scavenging-prohibition-bill-2020-caste-rehabilitation> (last visited on November 1, 2020)

<sup>20</sup>Vijayta Lalwani, "How Do Other Countries Clean Their Sewers And Is Their Something India Can Learn From Them" *Scroll.in*, September 23, 2020, available at <https://scroll.in/article/895013/how-do-other-countries-clean-their-sewers-and-is-there-something-india-can-learn-from-them> (last visited on November 1, 2020)

<sup>21</sup>Ambarish Karunanithi, "Institutional and Technological Reforms in Urban Wastewater Management: Story of Malaysia" *Centre For Policy Research*, November 21, 2017, available at <http://cprindia.org/research/reports/institutional-and-technological-reforms-urban-wastewater-management-story-malaysia> (last visited on November 1, 2020)

The public should be aware of the punishment they will confront once they are arrested. The awareness campaigns ought to not only address the perils of scavenging but also give the community affected an alternative method of making money. On the other end, the manual scavengers should be educated about their rights and the laws that protect them from abuse by their employers.

Creation of more employment opportunities is one of the foremost imperative rehabilitation forms. The jobs created would aim to offer equal openings to the locals as well. The job opportunities were created to also act as a means to acclimatise manual scavengers into the community. Other areas that are related with social inclusion should be set up for instance the loaning schemes.

Offering them work and lending them some money gives them the needed confidence to step within the society. Loaning schemes such as Special component Plan, MGNREG Act (Mahatma Gandhi National Rural Employment Guarantee Act), scholarships, pension schemes, rural housing schemes among others can help rehabilitating the manual scavengers.

The same old model of pit latrine utilised by the community can be used to construct small pit toilets in a cost-effectively. In order to guarantee that the villagers participate in the activity, the authorities can provide them with building materials and be shown how to construct the latrines. The government should invest in pieces of machinery that can be used to clean ditches and septic tanks. They can import the pieces of machinery or tools in case they are not locally available. Also, the government can take inspiration from South Africa and provide the sanitation workers with quality protective gear, as promised in the previous legislation.

## **V. CONCLUSION**

Practice of manual scavenging and no proper implementation of the Legislation shows caste disparity and discrimination which modern India is still holding onto. This egregious practice is not only a form of oppression but also inhumane to its very core. All these different policies and legal frameworks in India, which are demanding a similar aspect of other previous frameworks and schemes have failed in reaching their target because there is hardly any materialisation on the ground. Implementation for change is the need of the hour in a

modern India where every person is entitled to respect and dignity and not forced into the sludge to earn the bare minimum.