



The manual scavengers act, 2013: A legislative move from criminalisation to rehabilitation

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Abstract

The Report of the Human Rights Watch-2014 indicated that, the occupation of manual scavenging is a caste based practice in India. Even after 70 years of Independence of the country *laks* of the *dalits* are continuing in the unclean occupation. They are the worst victims of cruel social order. They are forced to continue in the same work and are suffering the caste based social exclusion. They are also paid low for their work. Their health and life are threatened, as the occupation is associated with hazardous working condition. They are prone to physical and psychological disorders. They are suffering objective hardship, humiliation, exploitation and social expulsion. Social compulsion to indulge in such heinous and hazardous work is both the rights issue and a social crime as well. To protect the scavengers from such heinous practice, a series of legislations are adopted in the country. The protection of Civil Rights Act, 1955; The Scheduled Castes and Scheduled Tribes (Prohibition of Atrocities) Act, 1989; The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 etc., recognized the practice of involving *dalits* into the occupation as a punishable offence. As the stringent form of punishment provisions of these legislations failed to curb the menace finally 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013' was enacted. The Act recognized rehabilitation as the effective means of eradication of the practice. The Act provides rights based approach to prohibition of the practice and rehabilitation of the scavengers. The paper examines the legislative attempts, to curb the practice and transformation of legislative objective from criminalization of violators to rehabilitation of victims.

Keywords: manual scavengers, scavenging, caste based practice, *Dalits*, rehabilitation

Introduction

Even after seven decades of independence, the Indian society continuous the caste based practice of manual scavenging ^[1]. It is continuing as a caste based occupation in India. Manual scavenging is manual removal of human excreta (night soil) from 'dry toilets'. Manual scavengers remove human excreta with their hands, by using brooms and tin plates and they carry buckets of excreta on their head to far away places for disposal. They are found in almost all states of India ^[2]. According to one survey an estimated 12 lakh scavengers are present in the country ^[3]. They are cleaning 96 lakh private and community dry latrines, which are managed by individuals, municipalities, and public sector under-takings like railways and army. Ninety percent of scavengers, cleaning these large number of latrines, are *dalits*. Therefore, it may be referred to a caste based and hereditary occupation for *dalits*. The Report of the Human Rights Watch- 2014, also noted that it is a caste based practice in India. It is one of the degrading and dehumanizing occupations assigned to *dalits* under the hierarchal caste system. Historically, as it is linked to the practice of untouchability they are physically and socially isolated from the social fabric and are forced to continue in the same work ^[4]. Therefore, it is another way of practicing beagary and slavery. They are the worst victims of cruel social order. Apart from caste based social exclusion, they are paid low. The manual scavenging is also associated with hazardous working condition and health hazards ^[5]. They may also be prone to psychological disorders ^[6]. On many occasions scavengers died of carbon monoxide poisoning

while cleaning septic tanks ^[7]. They are suffering abject hardship, humiliation, and exploitation ^[8]. The worst victims of violation are women, as they constitute more than 80 percent of work force of manual scavengers ^[9]. Therefore, it is derogatory to dignity of *dalit* women. Social compulsions to indulge in such heinous and hazardous work is both the rights issue and a social crime as well. After the concerns raised by Sonia Gandhi led National Advisory Council, the NDA government asked states to treat manual scavenging as a criminal offence. The paper attempts to examine legislative efforts to curb the practice and transformation of legislative objectives from criminalization of violators to rehabilitation of victims, as the eradicated means.

The Constitution of India

As the practice is a human rights issue it is the constitutional duty of the state to abolish scavenging and to uphold dignity of *dalits*. The supreme law of the country, the Constitution of India addresses various issues of *dalits*, including manual scavengers. The Preamble to the Constitution proclaims the noble ideals-justice, liberty, equality and fraternity for all. These basic objectives of the supreme law of the country have a direct bearing on the manual scavengers ^[10]. Article 14 of the Constitution guarantees equal treatment and protection of law for all. Article 15 supplements the equality principle promised in Article 14 and declares that there should not be any discrimination *inter alia*, basing on the caste and sex. The equality promised in these articles extends even to scavengers. Article 17 abolishes the practice of untouchability in any form

including manual scavenging. Article 19(1)(g) guarantees every one the choice of occupation and profession, which shall not be curtailed by any social discrimination. Article 21, which guarantees right to life and personal liberty, extends to protection of the human dignity and humanly treatment, without any exception. Article 23 protects people from exploitation of any nature, including forced or bonded labour^[11]. All these provisions of the Indian Constitution protect the manual scavengers from discrimination, humiliation, exploitation, begary and curtailment of social life. Article 47 obligates the state to raise the standard of living and improve the health of the people. This Article extends to improve life and health even of the manual scavengers from their utter degradation.

Legislative initiatives to curb the practice

To fulfill the Constitutional obligations of eliminating caste based discrimination and atrocities, and to protect dignity, life and health of these vulnerable citizens of the country, the state enacted the following laws.

The Protection of Civil Rights Act, 1955

The Act prohibits the practice of untouchability and social disabilities arising out of the untouchability against the members of Scheduled Caste. The practice of untouchability makes the Manual Scavengers isolate from social life and hence the Act extends protection. However, the 1976 amendment to this Act incorporated section 7-A, which prohibits compulsion of any person, on the ground of untouchability, to do scavenging, shall be deemed to have enforced disability arising out of untouchability. Therefore, it is clear that the Act makes involving *dalits* in scavenging a punishable offence.

The Scheduled Castes and Scheduled Tribes (Prohibition of Atrocities) Act, 1989

The Act prohibits compulsion or enticement of a member of SC and ST to do begar or any other similar forms of forced labour. The social exclusion compels and confines scavengers to the occupation, which is an aggravated form of atrocity. According to section 3 of the Act, any act done to violate the dignity of a member of SC or ST would amount to an offence. Therefore, involvement of any member of SC or ST in manual scavenging certainly amounts to violation of their dignity and therefore, may fall with in the ambit of section 3 of the Act.

Though these laws are not directly dealing with manual scavenging, they prohibit the practice of untouchability and prevent caste based atrocities, which are incidental to the practice of scavenging. However, in 1993 directly addressing the practice of manual scavenging some laws are enacted^[12].

1993 Legislations

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 recognizes the link between manual scavenging and *dalits* and viewed it as violative of the right to dignity. The Act prohibits manual scavenging in the form of employment. It also prohibits construction of dry latrines as the existence of dry latrines is one of the main reasons for continuation of the practice. Another important feature of the Act is construction of water

sealed latrines and rescue and rehabilitation of manual scavengers. Assuring individual dignity is one of the objectives of the Act. Employing or authorizing to employ any person for manually carrying human excreta is criminalized and is punished with imprisonment up to 1 year or fine which may extend to Rs.2000/- or both. Obviously the Act makes the practice an offence. However, under this legislation, a victim can not file an FIR but a sanitary officer, or district magistrate or sub divisional magistrate can file FIR on behalf of the victim. This provision curtails victim's personal right to protest and makes him helpless, as it makes them dependable on the discretionary power of others. Perhaps, the reason for not giving of the Right to file FIR is their vulnerability and ignorance. According to section 21 of the Act, if any act or omission constitutes an offence under this Act and also under any other Act, then the offenders shall be punished under the other Act and not under this Act. This provision effects the integrity of the Act and makes it less serious. A study by the Human Rights Watch in 1999 recommended that the government should ensure appropriate implementation of the Act, including prosecution of officials responsible for the perpetuation of the practice and non rehabilitation of affected scavenger community. However, almost no offender has been punished since adoption of the Act. This shows the lack of political will and public attention towards the issue. The definition of manual scavenger^[13] in the Act does not widely govern the workmen who clean sewers, manholes, open gutters and septic tanks. Though the Act assures individual dignity, it gives primacy to health and environment^[14]. The meager punishments and defects in the Act are making the Act in effective and the victim helpless.

The National Commission for Safai Karamchari Act, 1993 aimed at constitution of the National Commission for Safai Karamchari to monitor various programmes and schemes for the welfare of Safai Karamcharis. The Commission is merely an advisory body without real authority of any kind^[15]. Perhaps, it was set up with political motives. The Act defined the term 'Safai Karamchari' on the same lines of definition of 'manual scavengers' has given in the other 1993 Act. However, this definition widens the scope to include sanitation worker.

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013

As the 1993 legislations failed to check the inhuman practice, a more comprehensive and deterrent form of legislation, The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 was enacted. The Act aimed at upholding Constitutional values of protection of dignity and life and also to protect the vulnerable sections of the society from social injustice and exploitation. The objectives of the Act are prohibition of manual scavenging in the form of employment and rehabilitation of manual scavengers to a life of dignity. Rehabilitation is recognized as the effective means of eradication of the menace and it is extended even to family members. The Act widely defines the terms 'manual scavengers' and 'scavenging'^[16]. The definition encompasses the sewage system, railway tracks, septic tanks etc., which are ignored by the 1993 Act. The Act prohibits construction or maintaining of insanitary latrines and employment or

engagement of any person as manual scavenger. Any contract for the purpose is void, but pay protection and employment are secured. Punishment for violation of the provision is imprisonment up to one year or fine of rupees 50,000 or both. For subsequent contravention punishment is imprisonment up to 2 year or fine of rupees one *lakh* or both. The Act also prohibits engagement of persons for hazardous cleaning of sewer or septic tank. However, it is allowed with safety precautions^[17]. Such protective gears do not ensure protection of dignity, but are only occupational safety measures. This exception provision justifies the act of manual scavenging and encouraging to continue the practice. Therefore, this exception makes the enactment of the Act half hearted. The punishment for contravention of this provision is imprisonment up to two year or fine up to rupees 2 lakh or both. For the subsequent contraventions punishment is imprisonment up to 5 years or fine up to 5 lakhs or both. The offences under the Act are cognizable and non-bailable and may be tried summarily. The Act has a wider scope for higher penalties than the 1993 Act. The Act imposes a time bound duty on local authority to identify and take initiation to demolish or convert the unsanitary latrines. And also it is the duty of local authority to construct and hygienic maintenance of community latrines. The District Magistrate and the local authority shall be the implementing authorities. The Act provides for constitution of vigilance committees at district level, and state and central committees for the enforcement of the Act. The Act provides for comprehensive rehabilitation of the manual scavengers in a time bound framework. They would be offered initial cash assistance, scholarship for their children, financial assistance for residential houses, training in a livelihood skills etc. The Act seeks to wipe out the social stigma and also provides economics security by arranging alternative jobs. By providing these rehabilitation facilities, the Act recognizes their right to identity, right to education, right to housing, right to livelihood, right to alternative occupation, right to access to justice etc. The Act provides a rights based approach to prohibition and rehabilitation. The Act fixes responsibility on officials to protect scavengers as they are ignorant of their legal rights. The Act provides better and comprehensive provisions and deterrent form of punishment. The Act is a ray of hope for abolition of time old practice of manual scavenging. It paves way to undo the historic injustice of caste based violence. But implementation part is more important for any law.

Conclusion

Despite enactment of stringent laws, adoption of well planned policies and programmes, and constitution of commissions and committees the deep rooted social hierarchical notions of people are making efforts of the government futile. The Indian Railways, with its 30,000 passenger coaches fitted with open discharge toilets, is another major hurdle for eradicating the practice. Even in the 21st Century no scientific method or mechanized system is adopted in the country to dispose human waste. It is a great shame to the prestige of country's space technology and nuclear science. There is no meaning to the democratic values of the country, when 12 lakh people are still suffering social exclusion and such dehumanizing practice. The real development of a nation can be ascertained,

not just by GDP growth rate but the way in which vulnerable citizen are treated. *Chandalas*, who awakened conscience of *Adisankaracharya* to respect mankind without discrimination, shall no longer suffer the caste based inhuman practice. We hope the 21st century law- the 2013 Act, will function effectively for eradication of the country's institutionalized practice of removing human waste by humans.

However, the following suggestion are offered for the effective realization of the objectives of the Act.

- The exception, 'using protective gears', given in The 2013 Act gives scope for escaping from liability and making the Act futile. Therefore, the exception should be deleted.
- A provision for insurance, to protect health and life of sanitation workers, should be incorporated in the Act.
- The Act provides for scholarships for the children of manual scavengers. But, more important is the guaranty of admission for them in schools, under the Right to Education Act. Therefore, A provision for guaranty of admission should be incorporated.
- The SC and ST (PoA) Amendment Act, 2015 provides stringent punishment to government officials for their willful negligence of their duties in implementation of the Act. A similar provision should be incorporated in the 2013 Act, for failures of the authorities, like non filing of FIR under the Act.
- All the committees prescribed in the 2013 Act should be set up.
- The National Commission for Safai Karamcharis should be given more power to enforce the Act.
- As the Act emphasizes, modern technology should be made available to the sanitation workers.
- Wherever any one is appointed in the modern name of 'sanitation worker' he should not be appointed on the basis of caste.

References

1. Eleventh Five Year Plan (2007-12), Planning Commission of India, Govt. of India. 2008; pp. 109.
2. They are called with different names in different states. In U.P., M.P., Bihar, Punjab, Maharashtra they are called Balimiki, Bhangi, Mehatar, Lalbegi, Chuhara, Mira; in W.Bengal they are known- Hadi, in A.P.- Paki; in Tamilanadu- Thotti etc.
3. According to Socio-Economic Caste Census, 2011 a total of 1,80,657 rural house holds are engaged in manual scavenging for a livelihood.
4. See Virendra B. Shahare, Clean India Campaign and Prevailing Realities of Manual Scavenges, Social Action. 2016; pp. 221.
5. It is associated with health hazards. 62 percent of the manual scavengers suffer from respiratory diseases, 32 percent from skin disease; 42 percent from jaundice and 23 percent from trachoma. See Human Rights Watch, Hidden apartheid. 2007; 19(3c):84.
6. ILO, Encyclopaedia of Occupational Health and Safety, ILO, Geneva. 1970; pp. 151-153.
7. Between March 2014 and March 2016- 1,268 deaths are recorded.
8. The Annual Report of the U.N. Committee on the

Elimination of Racial Discrimination also expressed serious concern about the deplorable condition of the manual scavengers in India.

9. See Interview with Bezwada Wilson, national convener of Safai Karmachari Andolan, Frontline. 2016; pp. 114.
10. Dr. G. Shaber Ali. Law and Policy to Deface Manual Scavenging, Legal News and Views. 2014; pp. 8.
11. See also Article 42 and 46 of the Indian Constitution.
12. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, The National Commission of Safai Karamchari Act, 1993.
13. Section 2(j) of the Act defines 'Manual Scavenger' as a person who is engaged in or employed for manually carrying human excreta, and the expression 'manual scavenging' shall be construed accordingly.
14. See, Ss. 3 (2) (iii) and 10 (1) of the Act.
15. See Section 8 of the Act.
16. Sec. 2(g) "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 unsanitary 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 space 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.
17. See Sec. 2(d) of The Act and also see explanation (b) of sec. 2(g) of the Act.