



## Manual scavenging: Intersection of caste and labour

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### Abstract

We are now living in a world which is developing with every blink of our eyelids. The world may be changing but most of the perceptions are not. This paper touches the depth of the most sensitive issue of human rights violation especially in the form of 'Manual Scavenging.' In the wake of human rights changing dimension, there is incessant discussion about laws that deals with manual scavenging which is largely based on intersection of caste and labor. This paper highlights the caste-based character of the practice of manual scavenging which is a form of forced labor in the guise of caste-designation and the reasons and ways of perpetuating it. The present research paper goes on to extensively delve into the constitutional, statutory, administrative safeguard, highlight lacunas and suggest appropriate redresses for the same.

**Keywords:** caste, human rights, manual scavenging

### 1. Introduction

The government's flagship scheme since 2014 have been the Swachh Bharat Mission under which new toilets were built at an accelerated pace to counter the menace of open defecation. While the construction of toilets was given so much importance, the waste generated by these toilets, and the people engaged to deal with it were overshadowed. Manual scavenging is the removal of human excreta with bare hands or using the very basic tools in dry latrines, sewers, and septic tanks. The practice has been going on in India for decades. It was done in other countries as well and still continues to some extent. But one peculiar thing about manual scavenging when it comes to India is the work has been attached to a particular community namely the Dalits or the lower caste.

In this research paper, the researcher looks at the law concerning manual scavenging and the gaps that need to be filled in. The researcher briefly looks at the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 to show why a new legislation was needed in 2013. The researcher then looks at the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and shows various shortcomings of the law because of which the practice continues to the date. In the second part of the paper, the researcher argues that the practice of manual scavenging constitutes forced labor because of the practice being purely caste-designated. The researcher discusses the caste-based character of the practice and the reasons and ways of perpetuating it. In the end, the researcher looks at the policies of the state that furthers this practice to show how and why it is trendy even today.

### 2. Analysing the law

Manual scavenging is still prevalent in the country on a large scale even after a prohibition on it by The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The act was inadequate to come to the rescue of the persons involved in manual scavenging which is evident from the fact that there

have been no convictions under the 1993 Act<sup>[1]</sup>. It focused mostly on the issue of dry latrines and failed to take into account the larger picture. A new law was enacted by the Parliament in 2013 known as The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act which had a broader scope compared to the earlier law. Manual scavenging is in direct conflict with some of the fundamental rights enshrined in the Constitution but still continues unabated. The 2013 Act has failed to rectify the situation and there are some lacunas in the Act which need to be amended.

#### 2.1 No Penal Provision for the authorities

The 2013 Act contains provisions which impose a duty on the authorities for a host of tasks like identification of manual scavengers in the area<sup>[2]</sup> and their rehabilitation<sup>[3]</sup> among other things. The Act does not prescribe any sort of penalty for the authorities in charge and this comes up as one of the biggest shortcomings of this law. There is no provision for inquiry in case a duty is not fulfilled under the law. This kind of shortcoming gives a kind of leverage to those who are in charge of implementing the law to avoid their duties as they do not have to worry about the consequences in case, they fail to do their work. This is even more so important as the law concerning manual scavenging is not implemented properly and the absence of any accountability makes the situation even worse<sup>[4]</sup>.

<sup>1</sup> Sangeeta Barooah Pisharoty, 'Twenty-Three Years Since Anti-Manual Scavenging Act Not Much Has Changed on Ground' (*The Wire*, 11 April 2016) <<https://thewire.in/labour/twenty-three-years-since-anti-manual-scavenging-act-but-not-much-has-changed-on-ground>> accessed 26 July 2019

<sup>2</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, s 11.

<sup>3</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, s 13.

<sup>4</sup> Shailesh Kumar Darokar, 'Manual Scavengers: A Blind Spot in Urban Development Discourse' (2018) 53 (22) *Economic and Political Weekly* <<https://www.epw.in/engage/article/manual-scavengers-blind-spot-urban-development>>

## 2.2 Limited definitions of hazardous cleaning

The definition of hazardous cleaning under the law is another shortcoming. It includes only those instances where a person cleans a sewer or a septic tank “without any protective gear and other cleaning devices <sup>[5]</sup>.” An explanation to the provision states that a person who is engaged in cleaning human waste with the help of such protective gear shall not be deemed to be a manual scavenger under the Act. The problem with this provision is that “protective gear” is not defined under the act or the rules. This leads to the employers of manual scavengers getting away by providing such equipment that is not adequate for the safety of the workers. A lot of deaths occur when manual scavengers enter into septic tanks or sewers with little or no safety equipment <sup>[6]</sup>. So this provision is also misused by those who employ manual scavengers which has drastic consequences.

But the problem does not stop with the misuse of the provision. The provision’s major flaw is that it furthers the practice of manual scavenging by using the veil of protective gear. The presence of safety equipment and protective gear will not alter the inhumane character and caste-based oppression of the work. The way forward has to be taking the use of technology to eliminate this practice. This definition is really important as it forms the core of the law and pertains to inclusion of workers as manual scavengers. Legalization of manual scavengers should be done away with as it is a blot on the law for eradication of manual scavenging.

Another problem with the definition is that it covers only sewage tanks and not sewage treatment plants. A lot of people handle human excreta with their bare hands and that is not covered under the 2013 Act. This needs to be changed as in the 21<sup>st</sup> century the work of manual scavenging is not limited to cleaning of dry latrines. The definition of manual scavenging is much more focused on dry latrine cleaning and disregards modern forms of manual scavenging much like the discourse around the issue.

## 2.3 Limitation period of three months

Under Section-10 of the Act, a court is barred from taking cognizance of any act punishable unless the complaint is filed within a period of three months of the commission of the alleged offence. People engaged in the activity of manual scavenging mostly belong to the Scheduled Caste category and they already so marginalized that it is very difficult for them to raise their voice against this kind of oppression and inhumane behavior <sup>[7]</sup>. The employers are always more powerful and it might not be possible for the workers to initiate action in such a limited time. This is detrimental to the interests of the workers and need to be done away with. The court shall also take *suo moto* action in cases where it is known that manual scavenging is taking place.

## 2.4 Power of prosecution retained by the executive

Under the 1993 Act, it was stated that a person could not be

prosecuted for any offence if the executive had not provided prior sanction and no court had the power to take cognizance of an offence unless a complaint was filed by a person given authorization by the executive authority <sup>[8]</sup>. The lethargic attitude of the executive towards the practice meant that no action was taken against the perpetrators. The courts were hardly given the authority to intervene and the result was that very few cases were filed in the courts <sup>[9]</sup>. The 2013 Act introduced a lot of positive changes but the provision relating to executive retaining the power of prosecution remained intact <sup>[10]</sup>. This kind of provision dilutes the legislation because the main problem surrounding the activity of manual scavenging has been poor implementation. Giving more powers to the executive does not solve this problem but further aggravates it.

## 3. Intersection of caste and labour

Manual scavenging is a type of forced labour. The main reason is that people are forced into this because of birth in a particular community and escaping this becomes really difficult <sup>[11]</sup>. The people who do this are barely provided any equitable remuneration. The practice is also in violation of an international human rights instruments like the UDHR and the ICCPR. To understand how this practice continues even today we need to look at the caste-based character and the ways of perpetuating it.

### 3.1 Caste based manual scavenging

Historically, social and economic life in India was regulated by caste and this continues to be the case even today. Dalits or the Scheduled Castes are placed at the bottom of the caste system. They are seen as polluted or untouchables and have long been made to do tasks that are considered deplorable. Manual scavenging is one of the many tasks that is confined to being performed by the lower castes only <sup>[12]</sup>. Dalits who do this work are deemed fit only for this labour. The people engaged in this activity are generally made to live in a separate area of the village or urban area.

Women have to perform the bulk of the work when it comes to cleaning dry toilets. And more often than not they do not get any sort of remuneration for that. This kind of forced labour reflects a long-established custom and practice. They receive leftover food, old clothes and access to common resources. The fear that they would not be able to have the bare minimum resources they get as manual scavengers ends up in vicious cycle where generations are trapped <sup>[13]</sup>.

<sup>8</sup> The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, s18.

<sup>9</sup> Samuel Sathyaseelan, ‘Neglect of Sewage Workers: Concerns about the New Act’, (2013) 48 (49) Economic and Political Weekly p 34

<sup>10</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, s 10.

<sup>11</sup> ICCPR, art. 8(3)(a) (“No one shall be required to perform forced or compulsory labour”). The ILO Forced Labor Convention (1930) in article 2 defines forced or compulsory labor as “all work or service extracted from any person under the menace of any penalty for which the said person has not offered himself voluntarily.”

<sup>12</sup> ‘Cleaning Human Waste’ (*Human Rights Watch*, 2014) <<https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>> accessed 10 August 2019

<sup>13</sup> ‘Socio Economic Status of Women Manual Scavengers: Baseline Study Report, 2014’ (*Jan Sahas Social Development Society*) <[http://www.unwomensouthasia.org/assets/Baseline\\_-Jan-Sahas.pdf](http://www.unwomensouthasia.org/assets/Baseline_-Jan-Sahas.pdf)> accessed 10 August 2019 p. 5.

discourse?0=ip\_login\_no\_cache%3D980f6a6b7182a3ea28b1f4ea39c4834c> accessed 06 August 2019

<sup>5</sup> The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, s 2 (g).

<sup>6</sup> National Commission for Safai Karamcharis, *Annual Report 2015-16*, Para 6.10.

<sup>7</sup> Ministry of Rural Development, *Socio Economic Caste Census 2011*.

### 3.2 Socio Economic Pressure

People who work as manual scavengers are pressurized by the community and even their own families. This is because they do not see a lot of alternate employment avenues for themselves<sup>[14]</sup>. The manual scavengers are from the poorest and the most marginalized families in the country and in such a situation the income sources are unreliable<sup>[15]</sup>. This makes the people employed as manual scavengers being afraid to leave their work as their basic needs are met through that. They are threatened if they do not turn up for work or do not want to work. People employed by panchayats and municipalities also say that this is their only source of livelihood and hence they cannot leave that<sup>[16]</sup>.

### 3.3 Continuous Discrimination

Manual scavengers are discriminated against when it comes to access to water sources, places of worship, and other cultural events. Even though the Protection of Civil Rights Act, 1955 prohibits all this on the basis of untouchability, they are still practiced on a large scale<sup>[17]</sup>. The children of manual scavengers are also not able to escape the wrath of this system. A lot of children who enroll in schools drop out at a very early age<sup>[18]</sup>. There can be many reasons for this like facing discrimination in the school premises also and consequently dropping out. Most of the teachers belong to high caste and their attitude towards the students can also be a reason for this. Some children are even made to clean the school premises instead of attending classes<sup>[19]</sup>. This leads to manual scavengers' children having no alternative but to do what their parents have been doing as they do not have the education for other forms of employment. Even when they do possess the qualification to be employed for a better job they are not considered fit for the same due to their background.

### 3.4 Practices that further the practice of manual scavenging

The deficiencies in the law prohibiting manual scavenging has been pointed above. But it is not the law alone which is to be blamed for the existence of this practice. One of the main reasons that this practice continues even today is the failure of the government to prevent illegal employment of manual scavengers by private households. Most of the manual scavengers are employed by people in villages for cleaning of dry toilets. Even though the government data shows that a large number of dry latrines are still prevalent, no measures are taken to stop this practice. The construction of dry latrines was prohibited in 1993. Data released over the years have shown that dry latrines are present in large numbers. Such is the apathetic attitude of the state towards this practice that there has been no conviction under the

1993 law<sup>[20]</sup>.

Another reason for the continuance of this practice is that the manual scavengers depend upon their employers for a lot of resources. Anyone who tries to leave this has to face a lot of threats from the community. This leaves them with no choice but to return to their work. Some of those who are able to find alternate employment also have to face a lot of harassment.

Most of the people engaged in manual scavenging do not own land. Hence, they have to depend on the common resources for a host of activities like grazing cattle and collecting firewood. The main threat is this denial by the upper caste land holding people of the land-based resource. This acts as a form of forced labour and prevents generations of Dalits from doing work other than manual scavenging<sup>[21]</sup>. This is prohibited by Section – 4(i) (za) (A) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Ordinance), 2014 but even this law is plagued by poor implementation.

### 3.5 Difficulty in accessing the criminal justice system

Another issue is the difficulty in accessibility of the criminal justice system by these people. Most of them are illiterate and hence find it very difficult to raise their voice against the authorities. The much-needed assistance by the state and rehabilitation authorities is rarely provided. The normal procedure is to identify and go to the police station which has jurisdiction. Even if a person is able to go to the police station to register a complaint, it is highly unlikely that the police will be cooperative as it happens in most circumstances. Those who are engaged as manual scavengers are most likely to face this discrimination by the police and other authorities. These people need assistance at every stage right from the filing of FIR to the trial proceedings. To ensure that such people are not neglected, failure to perform their duties by a public servant has been criminalized under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance, 2014.

### 3.6 Government policies that perpetuate manual scavenging

The mindset of those in power and their policies go a long way in ensuring that the rights of manual scavengers is taken care of. Recently, the Delhi government's efforts were appreciated all around for bringing in sewer-cleaning machines after the death of a few persons while cleaning septic tanks. The effort should be lauded as technology is the key to solving the problem of manual scavenging. But the problem does not end here. Manual scavenging is considered a blatant violation of human rights as it is a caste-based form of forced labor. So, the main problem that needs to be addressed is caste and technology alone would not be of much help. This can be understood by looking at

<sup>14</sup> Ibid.

<sup>15</sup> *Safai Karmachari Andolan & Ors. v. Union of India & Ors.*, Supreme Court of India, Writ Petition (Civil) No 583 of 2003, judgment, March 27, 2014, para.1

<sup>16</sup> Human Rights Watch interview with Bablu, Bharatpur city, Rajasthan, June 27, 2014 as cited in Human Rights Watch (n 11).

<sup>17</sup> The Protection of Civil Rights Act 1955, s 4 (iv).

<sup>18</sup> Socio Economic Status of Women Manual Scavengers (n 12) p. 4.

<sup>19</sup> Human Rights Watch interview with Seema Gohlotre, Aastha town, Sehore district, Madhya Pradesh, January 10, 2014 as cited in Human Rights Watch (n 11).

<sup>20</sup> Standing Committee on Social Justice and Empowerment (2012-2013), *Report on The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill 2012, Thirty Second Report*, March 2013,

<<http://www.prsindia.org/uploads/media/Manual%20Scavengers/SCR%20Manual%20Scavengers%20Bill.pdf>> accessed August 3, 2014 as cited in National Advisory Council resolution dated October 23, 2010), para 1.5.

<sup>21</sup> Government of India, Ministry of Labour, 'Bonded Labour, Chapter 8, Volume I: Report of the National Commission on Rural Labour'

the example of Delhi where machine for sewer cleaning are not owned by the government. Rather they are being sold to the kin of those who died while cleaning septic tanks and other manual scavengers<sup>[22]</sup>. This shows how cleaning of waste is considered to be the job of low castes. This attitude needs to change as the government should set an example of eradicating manual scavenging. This caste-based oppression will go only when we see it through the lens of caste and forced labor.

Another major issue with respect to manual scavenging is the lack of any proper data and surveys. The first step towards solving the problem is identifying the victims and then taking necessary action. This has not been done so far as no country-wide survey has been conducted. Most of the surveys and data has been provided by civil society organizations. In fact, some states even report that they have no manual scavengers. The government is also blamed for under reporting the number of manual scavengers. This was reiterated by the Supreme Court as well in *Safai Karamchar Andolan* case that government “has shown remarkably little progress and has identified only a miniscule proportion of the number of people engaged in manual scavenging”<sup>[23]</sup> The employment of manual scavengers by the government is an indication of its two-faced character. One one hand laws and policies are drafted to eradicate this practice and rehabilitate people. On the other the government employs people to do this task on a large scale. Railways is the largest employer of manual scavengers in the country even though it denies it on the pretext of calling them “sweepers” and that they do not clean dry latrines<sup>[24]</sup>. Local governments also engage people to clean human excreta on a large scale. This needs to change and the governments should take the help of technology for this. The policies and practices of the government should be an example for other people to follow and then only can we look at a future with no caste-based oppression in the form of manual scavenging.

#### 4. Conclusion

The move from the 1993 law to the 2013 law was felt because the earlier law focused too much on dry latrines. But the reality is that the discourse around manual scavenging is still focused on cleaning of dry latrines and does not pay much attention to rehabilitation and other modern problems like cleaning at sewage treatment plants. Thus, the definition of “manual scavenger” needs to be broadened so that people are not left out. The definition of “protective gear” needs to be inserted in the act to ensure that employers cannot get away by providing minimal equipment. The main problem under the law is that authorities at the local level who are responsible for implementing the act have been given too many powers and

there is no penal provision for failure to comply with the act. This needs to be rectified by curtailing some of the powers and making them accountable for the implementation of the act.

Manual scavenging is a form of forced labor because people enter into this work without their choice and cannot leave easily if they wish to do so. The workers employed are not given the basic wages that is provided to a laborer. Mostly, there is no monetary remuneration but only food or other resources are provided. Apart from the inhumane character of the work, the basic labor rights are also a far cry for these people. Pressure from the community makes it difficult for them to leave this work. Even government policies are such that it perpetuates this practice.

Manual scavenging is a blot when we talk about human rights in India. The government needs to firstly conduct a comprehensive survey to assess the gravity of the problem. The next step has to be providing them support to move out of this work. This can be done by educating the children and providing requisite training for alternate employment opportunities. The government has to be the front runner in this to ensure that this form of modern slavery is eradicated.

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<sup>22</sup> ‘Delhi: 200 machines to clean sewers, so manual scavengers don’t have to’ (*The Indian Express*, 1 March 2019) <<https://indianexpress.com/article/cities/delhi/delhi-200-machines-to-clean-sewers-manual-scavengers-5605780/>> accessed 11 August, 2019.

<sup>23</sup> *Safai Karamchari Andolan & Ors. v. Union of India & Ors.*, Supreme Court of India, Writ Petition (Civil) No 583 of 2003, judgment, March 27, 2014, para. 10.

<sup>24</sup> Sidhartha Roy, ‘The not-so-swachh life of the Railways’ cleaners’ (*The Hindu* 5 September 2016) <<https://www.thehindu.com/news/national/The-not-so-swachh-life-of-the-Railways-cleaners/article14623426.ece>> accessed 10 August 2019.

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