

A Critical Analysis of Manual Scavenging Laws and Practice in India

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Abstract

The development of society is measured in two units: first, technological development, and second, growth in ethical or moral standards. Laws are formed to protect society and ensure equality for the people. And there are a few laws which ensure, that equality prevails irrespective of geopolitical, sociocultural differences. They are known as human rights. There are a few categories of society that suffer losses owing to the mentioned differences. These are termed the vulnerable groups. With the vast and varied geographical and cultural differences in a country such as India, categorising vulnerable groups and defining their human rights is not an easy task. And while checking down the pages of history, one can notice that many names were not added due to the socio-political conditions then. One of such groups, which is considered but not classified as “vulnerable”, is the manual scavengers. Manual scavengers are those who are employed to handle human waste from insanitary latrines, railway lines, etc. Though sad and shocking, it is a hard truth that one needs to know that these practices are still prevailing when the nation is focused on drawing up budget lines and making scientific achievements. This research is an attempt to scrutinize the sustainability of practice in the technically developing nation and also an effort to search for legal solutions for the mentioned problem.

Keywords: Exploitation, human rights, judicial approach, legislative remedies, manual scavenging, scavengers

INTRODUCTION

India is a land known for its rich culture and heritage, which have evolved over time and adapted themselves in accordance with social requirements. This evolution is not just borne out in the cultural upfront but also in every sphere of the spectrum: economic, social, technological, legal, and the list is inexhaustible. Living and being part of the 20th century, where all activities are fast, economical, affordable, and technologically evolved, makes our lives much easier. Thus, there is an onus on all of us to let those privileged changes be part of each other's lives. Society in India was classified based on the nature of work into four categories: Brahmins, Kshatriyas, Vaishyas, and Shudras [1] where the Brahmins were considered the most privileged in society, and on the other end of the spectrum, the Shudras were the most underrated caste. However, this bifurcation has changed over time, subject to societal reforms.

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As the Shudras were not considered to be the privileged class of people in society, they were greatly employed in working for the other class of people regardless of the hygiene involved, one of their jobs being manual scavenging, i.e., the practice of removing human excreta by hand from gutters, septic tanks, or drainpipes. Manual scavenging can be defined as the act of manually removing people's excreta from insanitary toilets or gutters using buckets, shovels, broomsticks, etc. By using such equipment, they involve themselves in removing the

excreta into different containers and disposing of them accordingly. They normally involve carrying the same thing to different places, usually several kilometers away to dispose of it. These people are called manual scavengers [2]. We are in the Amritkaal of independence, yet there is manual scavenging.

HISTORY

India, though a developing country and gushing about being recognized as a global power, is still practicing age-old manual scavenging, which is pretty awful. It is collectively both the duty and responsibility of the government and society to ensure that such practices and exploitation are avoided. The stigma of the caste system still prevails and haunts, unfortunately.

Manual scavenging is not a new practice in South Asia, as it dates way back to the ancient period, even during the Buddhists and Mauryas. It is quite awful that during the Gupta period, the captives of war were deployed in such a way for society. The caste system in India gave rise to this dehumanizing act of manual scavenging. People wanted a system for their excretion when they started to settle down in one place as they moved away from rivers and lakes and started a civilization. So in order to live a “civilized” life, they allotted a specific caste group to perform manual scavenging. In order to find a way of disposing of human waste (i.e., excretion), the upper castes of society employed the lower class of people for the same. According to Naradiya Smahita (i.e., a script which mentions the duties and obligations of servants) one of the duties out of 15 was to dispose of human waste [3]. One such class was called Bhangis [4], who have traditionally served as manual scavengers; these originated from Mehtar.

The practice of manual scavenging is heinous. It is horrifying even to imagine such a practice. It can also be seen in other countries, such as Bangladesh and Pakistan. In Pakistan, Christians are subject to this inhumane crime. The British also instituted such a system in London; cesspits containing human waste were called “gongs”/ “jakes”, and men employed to clean them were “Gongfermours”/ “Gongfarmers” [5]. These people were allowed to work only at night, were given particular places to live, and were restricted to certain uses of public places only.

MEANING AND DEFINITION

When India attained its freedom from colonial rule in 1947, the country focused on its development by trying to attain equality, liberty, justice, and fraternity through our Constitution. However, the practice of manual scavenging did not abate immediately, which is the most inhuman activity in the history of mankind. The question as to what is the actual meaning of manual scavengers arises for our interpretation.

Actually, there is no proper and exhaustive definition. Various institutions view human scavenging from a unique perspective. The Asian Human Rights Commission defines this practice as:

‘Disposing or discharging of human waste by hand from insanitary latrines, with the use of broom sticks or any other hand tool. This waste is then carried upon by them on their heads or in arms for discharging them far away from the residential areas. Even those who discharge waste from gutters, train lines, and drains come under this category [6].’

A manual scavenger is defined under the 1993 [7] Act as any human being appointed to remove other people’s excreta. The Act bans the appointment of any human being for this inhuman activity, which is a punishable crime.

The 2013 Act [8] defines a “manual scavenger as a human being appointed at the time or after this Act comes into force by any other person or authority for cleaning and discharging human waste in a dry latrine or open toilet, sewers, track lines, or any other place as the appropriate government may

prescribe, and manual scavenging is engaging in such an act. An explanation is attached to this definition in the Act. It says that the person appointed to do this job with the help of any equipment as prescribed by the central government is not a manual scavenger.

Manual scavenging in India is described as, ‘the removal of human excreta by hand in insanitary toilets (which means a latrine without a flush) or closed gutters and sewage’ by the International Labour Organization [9]. It has been seven decades since untouchability was abolished in India [10], yet it never ceased to exist, as the existence of scavenging depicts its presence.

Illogically, designed toilets in trains, which drop human excreta on tracks, which in turn has to be cleaned and disposed of by hands, is also considered manual scavenging [11].

LAWS RELATING TO MANUAL SCAVENGING IN INDIA

The Protection of Civil Rights Act, 1955

The Protection of Civil Rights Act of 1955 abolished untouchability and made the act a cognizable (i.e., where a police officer can arrest without a warrant) offence. Approvals of low-cost sanitation schemes were integrated to convert insanitary latrines into sanitary ones [12].

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

The Protection of Civil Rights Act of 1955 abolished the practice of scavenging or sweeping on the basis of untouchability. To give a wider interpretation and strict execution, this was further revised in 1977. The central government in the year 1980 introduced the scheme of low cost sanitation for the liberation of scavengers (ILCS) for completely abolishing flushless toilets and building sanitary toilets at a shared cost between the centre and states. Two machineries namely National Scheduled Castes and Scheduled Tribes Finance and Development Corporation, and later the National Scheduled Castes Finance and Development Corporation were constituted by the government to finance the families of manual scavengers [13].

A wave of protests hit again in the year 1986 when a group of Dalits in southern India expressed their agitation against this Satanic act. Safai Karamchari Andolan (SKA) is a brainchild of this nationwide movement as it gained momentum through media coverage and rise of human rights activists. The movement bore a fruit as it achieved an important landmark after the Honourable Supreme Court heard their petition in 1986 and in doing so held district collectors of each districts responsible thereafter for the continuation of these prohibited acts of manual scavenging. The Supreme Court Bench comprising of the then Chief Justice K. G. Balakrishnan and Justices P. Sathasivam and Arijit Pasayat granted six weeks’ timeline to the district collectors to abate these banned acts of scavenging by arguing on the ground that the state governments had more than six years to replace dry latrines with sanitary latrines [14]. Despite lowering the barriers to standing and being directly involved in problem-solving, the court can resist manual scavenging and solve the problems in an agile and creative way [15]. Indeed, in the case of Safai Karmachari Andolan case [16], the court started the process by issuing orders directing the central and state governments to find out where manual scavengers work and find alternative jobs for them.

The provision on the constitutional validity of Indian municipalities through the 74th Amendment Act of 1992, built strong pillars for India’s sanitational structure. The central government in 1993 enacted a the Prohibition Act, through which a stricter action was taken against appointing manual scavengers [17].

The appointment of manual scavengers and the continuation of open toilets are prohibited under this Act of 1993. However, this Act did not prohibit dry latrines and manual scavenging explicitly. It required each state government to act and implement the act independently. The centre and the states lacked coordination. State governments, in order to implement the provisions of the Act have to issue a

notification, after giving a notice of ninety days fixing a date for prohibiting the employment of manual scavengers and dry latrines in the specified area. The main aims of the Act are to:

- Remove toilets without flushing
- Ban the appointment of persons to dispose of fecal matter
- Prohibit the cleaning of drainage, pits, sewage, etc., by hands and
- Make the necessary arrangements for their rehabilitation.

The Act prohibits the employment of manual scavengers or the construction of insanitary latrines, and whoever violates this law shall be punishable with not more than one year of imprisonment or a fine of not more than ₹ 2,000, or both. Though the government banned the construction of dry toilets, there were 2.6 million dry toilets as of February 2018 [18]. This Act, however, struggled with lacunae and was poorly implemented, thus bearing zero impact on the lives of manual scavengers [19].

The Act suffered from certain drawbacks:

- Firstly, public sanitation was given priority over the prohibition of appointing manual scavengers.
- Second, the definition of manual scavengers under the Act excluded those who clean railway lines, sewage workers, and maintenance hole workers. It was restricted only to those who cleaned insanitary latrines.
- Lastly, the Act lacked specifications regarding the restoration of the condition of manual scavengers.

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

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013 was enacted to have a powerful effect. The 1993 Act was replaced as it appeared to be ineffective. One of the main objectives of this Act was to investigate the situation of the manual scavengers, as several reports suggested the existence of approximately 23 lakh insanitary toilets according to the report (2011 census). This Act is way more stringent compared to the previous one in abolishing manual scavenging completely. The present act is much more efficient than the 1993 Act in regard to strict impositions of penalties [20]. This act would acknowledge the urgency of the rehabilitation of manual scavengers. Even though there has been legal security through this act, the act does not completely ban manual scavenging [21].

Salient Features of the Act

- Prohibits the construction or maintenance of insanitary toilets.
- Recruiting or appointing anyone as a manual scavenger is prohibited. A violation of this is punishable by imprisonment or a fine of ₹ 50,000 or both.
- Bars a person from being brought down for cleaning human excreta manually.
- Police can arrest a person without a warrant if they violate the laws under this Act and are not subject to bail.
- Calls for an assessment of manual scavengers within a specified time-period.
- The objectives of the Act are:
 - i. Ban on appointing any person as a manual scavenger;
 - ii. Reconsidering the conditions of manual scavengers by providing alternative jobs.

Though the Act is against manual cleaning of sewer and septic tanks without protective equipment, it does not clarify the complete elimination of manual scavenging. It has to be completely ripped off from the roots itself. The Act might accidentally endorse manual cleaning with protective equipment. In today's contemporary machine world, there is absolutely no requirement of manual cleaning of human feces. The Act seeks to restore the conditions of manual scavengers and employ them in different jobs.

Every authority, including the railway authorities, is made responsible for assessing toilets without flushing within their own dominion. As we can see, the act decentralizes responsibilities to local authorities for arresting the construction of insanitary/dry latrines, the local authorities have failed to do so. There were nearly two and half million dry toilets in 2018 [22]. The local authorities are also supposed to construct a number of sanitary community latrines. Local authorities always fail in executing their power to serve the public. No significant amount of sanitary latrines was constructed till October 2014, when Swach Bharath Mission commenced. Though 9.5 crore toilets have been built since October 2014, none of these were in respect to the Act [23]. District magistrates are the implementing authorities of this Act [24]. Offences under the Act are cognizable and non-bailable. But there exists a dilemma. The 1993 Act was enacted under the state list whereas Parliament enacted the 2013 Act under list 3 of Indian Constitution. The centre or the state is not forced to give monetary aid for transforming toilet without flush to sanitary latrines. Supreme Court in its 2014 order made the state governments liable to recognize who expired while manually cleaning sewers since 1993 and provides ₹ 1 million each to their families [25]. Offences under the bill would be subject to 5 years of imprisonment or a fine of ₹ 50, 000 or both.

Executive magistrates are given the power of judicial magistrates to try cases under this Act by the state. But as we can see, the magistrate is also the implementing authority of this Act. The Act makes the magistrate both executive and judiciary. This would clearly pierce into the heart of democracy. No single authority in a democracy can hold the dual powers of the executive and judiciary.

ROLE OF JUDICIARY IN PREVENTING MANUAL SCAVENGING

Poor and weaker sections of Indian society have been uplifted by the judicial system of India which plays a dominant role by giving fundamental rights status to directive principles of state policy. The right to life guaranteed under Article 21 of the Constitution has been broadly interpreted by the Indian judiciary to include the right to life with dignity. The role of Article 21 was broadened to include every sort of constitutional protection. State authorities have been sternly monitored by courts to act in this regard and any negligence with its duty will be met by judicial action [26].

The Supreme Court in the 2003 [27] case issued notice to the central government to make sure that the family of the deceased who did not survive while involved in scavenging is awarded monetary relief of ₹ 1 million.

It was followed by a series of cases filed in 2004 [28], 2007 [29], and 2008 [30], through which the judiciary's attention was drawn to immediately assess the current situation regarding manual scavenging and sewer deaths. The 1993 law played a limited role, but the courts interpreted it in a broader way, taking a humanistic approach. The court of Gujarat observed that even if there is no specific law, Article 21 will protect the rights of civic labourers. The Supreme Court held in the Delhi case, that 'it was the constitutional duty of courts to protect the rights of those who manually clean human excreta from pits, etc., because they are in need of money'. Undoubtedly, this was an issue of fundamental rights, and accordingly, the courts are empowered to direct local authorities to take all necessary measures to eradicate human entry into sewers [31]. News reports played a vital role in bringing out the reported deaths inside the courtroom and also influencing the courts to act immediately. As the cases were in hearing process, the international attention was drawn by the prominent Indian activists to recognize the issue of manual scavenging by humans. These activists were the invisible hands who strived not for any recognition but for these vulnerable people by bringing international awareness and also shaping the future judgments of the Indian courts.

In 2011, the Supreme Court passed an order to enforce the order of High Court regarding granting monetary relief to families of deceased scavengers [32]. Being the National Capital Territory, Delhi itself is incapable of completely eradicating this heinous act. The local civic authorities such as the DDA lack the responsibilities to inspect and prevent manual scavenging in an around the capital.

In Chinamma case of 2016, the High Court of Karnataka granted a relief to the kin of Chenchaiiah, who drowned in the drain while cleaning it [33]. The family sought for rehabilitation due to the damages they were about to suffer as the compensation of ₹ 2 lakhs awarded by the court seemed insufficient. Karnataka High Court Justice, Ashok B. Hinchigery held that when the courts have enough time to listen to the rich regarding all kinds of cases then it surely can make some time to listen to poor who suffer silently.

The Orissa High Court observed in the case of 2021 that even after the practice of manual scavenging abated in India through 2013 Act, it is so grave to witness the practice of cleaning the human excreta manually by those who are needy is indigestible [34]. In the case of ‘Deaths of Sanitation Workers’, a public interest litigation, registered through suo moto regarding the two heinous deaths in Bhubaneswar and Cuttack, the Court stated that “It shocks the judicial conscience, as it should the society’s collective conscience.” A compensation of ₹ 1 million was awarded by the court to the ailing families [35].

In Vimla Govind case of 2021, the Maharashtra Government was directed by the Bombay High Court to strictly see that act of manual scavenging shall not be practiced henceforth in any part of the state [36]. A division bench inquired what measures the state government had taken in order to identify manual scavengers in the state after the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act in 2013 and measures for reconsidering their conditions. The court also asked regarding the number of deceased since 1993, and in how many cases has the families of the dead were compensated by the government. Three women who had lost their spouses who were engaged in cleaning pits manually filed a petition in Govandi in December 2019. A sum of ₹ 1 million was to be paid to them by the collector as ordered by the court as a monetary relief.

FROM MANUAL SCAVENGING TO BONE SCAVENGING

Pandemic worsened the lives of these people. World Sanitation Workers’ Alliance, South Asian Sanitation Labour Network and Safai Karamchari Ektha March conducted an assessment which revealed that 178 manual scavengers have been employed as ‘bone scavengers’, who illegally gather and sell human bones to earn the money. Most of these were concentrated in the states of West Bengal, Odisha, and Rajasthan [37]. Prior to this, these people used to work with human waste to earn their livelihoods. Now, they are working with human remains to earn their livelihoods. They shifted from shimmering down into sewerage holes to shoving down graveyards. This reveals the failure of local civic bodies and district magistrates in implementing rehabilitation programmes. They are being severely underpaid. Definition of manual scavenging under Section 2(1) (g) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 is not limited to insanitary toilets but also applicable to track lines, sewage, etc. [38].

SUGGESTIONS AND CONCLUSION

In this contemporary world, laws need to be revised and updated in a timely manner. As we can see the evolution of 105 amendments to the Constitution of India since its inception, Acts regarding the status and dignity of workers shall also be evolved. Following suggestions can be considered while rejuvenating this Act:

- Increase of both fine and the term of imprisonment to make law more efficient.
- Creating awareness by government and NGOs among people and allowing stakeholders and NGOs to participate in policy making.
- Conducting workshops among entrepreneurs to consider manual scavenging under their CSR blanket.

The Amendment Bill of 2020 considers the circumstances in which the manual scavengers work, their rehabilitation, the future of their children [39]. This bill is yet to be enforced into an act. It is the responsibility of the government not to delay such significant acts upon which thousands of lives are dependent. The government must meet all the stakeholders of the bill and ensure its early enactment.

The legislature and executive must pedal alternately. In case of the failure of these two organs of democracy, a timely intervention of the judiciary has to be expected.

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