An Analysis of the Practice of Manual Scavenging and its Deleterious Effects on Human Rights

Tejas Hinder[1] and Shambhavi Khare[2]

Abstract

One of the worst surviving symbols of untouchablility in today's world is Manual Scavenging. Its existence can be traced back to the start of the human civilization. It is an inhuman practice which involves manual removal of night soil, which encompasses removal of human excreta with bare hands, brooms or metal scrappers from dry toilets, and the carrying of the excrements to dumping sites for disposal purposes. Manual Scavenging is thus not only fiendish, but one of the highest degrees of violation of human rights.

This practice, which generally involves people from the lower caste, though present in different parts of the world, is predominantly present in India. A report of the Supreme Court of India, in 2014, shows that there were over 9.6 million dry latrines in India which required manual emptying. Despite the enactment of a number of legislations for ensuring a just and casteless society, the situation of the scavenging communities still remains discreditable.

This paper, apart from highlighting the causes and consequences of Manual Scavenging in India and it’s prevalence in different parts of the country, aims to establish and substantiate the interrelationship between the caste and the so called profession of manual scavenging in India.

Through this paper, we also wish to draw attention towards the inadequacies of the current legal framework and the failure of present schemes of law in protecting the rights and dignity of manual scavengers, and suggest measures to get rid of the menace of manual scavenging via interplay of law, society and technology.

In a nutshell, the aim of this paper is to critically examine the right regime of manual scavengers by bringing forward, the failure of the state, to guarantee the scavenging community, their inalienable and egalitarian privileges, and also the role of instrumentalities of the state as a violator, and hence suggest measures for their upliftment.

[1] Student, NLIU Bhopal
[2] Student, NLIU Bhopal

Introduction

Manual scavenging, defined as the removal of human excreta from public streets and dry latrines, and cleaning septic tanks, sewers and gutters is a practice prevalent in India since the British rule. Manual scavenging is a highly caste based occupation and most of the people engaged in it belong to disadvantaged sections of the society and often face discrimination and untouchability. As per the Apex Court in 2014, there are over 9.6 million dry latrines that are manually emptied. The states where the practice is common are Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, and Uttar Pradesh[3]. The practice reinforces the social stigma that they are unclean or untouchable and perpetuates widespread discrimination.

It is not only a caste based but also a gender based occupation with a majority of them being women as they are preferred in households with dry latrines located inside. According to a Human Rights Watch report, on an average, women get paid as little as between Rs 10 and Rs 50 every month per household. It is much less than men who earn up to Rs 300 a day for cleaning sewer lines. The prevalence of manual scavenging is not just a federal statutory violation, but is a violation of the very right to life.

The issue at hand is that there exist many loopholes in the legislations governing Manual Scavenging, and hardly have any efforts been made to amend the same.

There are numerous lives lost among people who are continuing this practice and a vast majority of them are exposed to the most virulent forms of viral and bacterial infections that affect their skin, eyes limbs, gastrointestinal and respiratory systems.

As per the data released by National Commission for SafaiKaramchari (NCSK) in 2018, one person died every five days on average while cleaning sewer and septic tanks across the country since January 2017.

Issues with regard to Manual Scavenging

There are numerous lacunas under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, which have to be brought into light, and done away with

[3] Road to Freedom: A Sociological Study on the Abolition of Scavenging in India, BindeshwarPathak, MotilalBanarsidass Publisher, 1999. p. 37

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from the legislation for its effective implementation to curb the practice of Manual Scavengers. These lacunas include the following: -

1. **The Absence of a Penal Provision for authorities failing to fulfill their obligations under the Act: -** One of the biggest lacunas or loopholes in the Prohibition of Manual Scavenging and its Rehabilitation Act, 2013, is that it does not contain any penal provision for the authorities, if they failed to fulfill their obligations under the Act. The Act does not contain any provision with regard to inquiry or punishment of authorities in case of failure to meet or fulfill their obligations under the Act.[4] The absence of a penal provision thus gives a leverage to avoid their liabilities, as there may be no legal action taken against them.
2. **Limited Scope of the definition of 'Hazardous Cleaning': -** Only those activities which involve cleaning of septic tanks and sewer tanks manually without any protective gear and other cleaning devices are included under the ambit of the definition of Manual Scavenging, thus making it flawed, as it contradicts explanation (b) of Section 2(g) of The Prohibition of Manual Scavenging and its Rehabilitation Act, 2013, according to which those who clean excreta using protective gear and cleaning devices shall not be deemed to be manual scavengers, and also does not throw light or elucidate on 'protective gear' or 'safety devices', as used.

   Another major problem with this definition is that promotes the continuation of manual scavenging with the use of protective gear and cleaning devices, as it tends to imply that the use of protective gear or cleaning devices without any change in the process does not amount to Manual Scavenging. It fails to take into account the fact that only the use of protective gear and cleaning devices without any change in the cleaning process would not change its inhuman character and the adverse effects that it has on human rights.

   Also, this definition does not take into account the cleaning of human excreta manually from insanitary latrine. As the dictionary meaning suggests that anything which is risky and dangerous is hazardous. Cleaning of insanitary latrines manually is also hazardous as many people (especially women) who are engaged in this work

[4]Noronha, Kimberly & Singh, Tripti& Malik, Mahima. (2018). Manual Scavenging in India: A Literature Review and Annotated Bibliography. 10.13140/RG.2.2.30605.64480.

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have suffered from various kinds of skin diseases.[5] This process is also a clear violation of Right to Dignity.

3. **Disadvantage caused due to Article 10 of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013: -**Cognizance of any offense punishable under the Act[6] cannot be taken by the court, except in instances or cases in which a complaint with regard to manual scavenging has been filed, that being within three months of the occurrence of the alleged offence., under Article 10 of this Act. The hindrance that is caused by this Article is that people working as manual scavengers are already marginalized and belong to the lower strata of the society and it is very difficult for them to raise voice against such inequalities and inhuman behavior, as they face suppression from the upper classes, who exploit them. It would be in the best interest of the manual scavenging communities that the court take *suomotu* cognizance of the matter and try to remove this harsh practice from the society as soon as possible.

Infringement of Legislative Framework

Every member of the international community, irrespective of his/her race, caste, creed sex has a right to equality, right against exploitation, right to life, right to help, right to food and freedom from hunger, clothing and housing/ shelter, enshrined in the Universal Declaration of Human Rights.

Manual scavenging is one of the highest degrees of human rights violation which infringes articles 3, 23 and 25 of the UDHR, according to which everyone has the right to life, liberty and security, has the right to work, to free choice of employment, just and favourable conditions of work and protection against unemployment, has the right to a standard of living adequate for the health and well-being of himself and of his family, respectively.

This horrendous practice is predominantly present in India and impinges upon Article 16 (1) and (2), and Article 21 of the Constitution of India which grant the citizens the right to equality and the right to life. The continuation of this practice in India violates Section 7 of PEMSR Act, The Protection of Civil Right Act 1955[7], the Scheduled Caste and Scheduled

[5]United Nations Development Programme and UN Solution Exchange, A Report of National Round Table Discussion, Social Inclusion of Manual Scavengers. December 21, 2012
[6]Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
[7]Act no. 22 of 1955 and the Protection of Civil Rights (PCR) Rules, 1977

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Tribe (Prevention of Atrocities) Act, 1989[8] and Employment of Manual Scavengers and Construction of Dry Latrine (prohibition) Act, 1993.[9]

Barriers to ending Manual Scavenging

Failure of state to stop illegal employment of manual scavengers by local households

The track record of the Indian Government's imposition of penalties upon those who promote and perpetuate manual scavenging under the EMSCDL Act, 1993[10] is very poor. In fact, according to the National Advisory Council, "almost no one has been punished under this law."[11]

The root cause of Manual Scavenging in India can be attributed to the lethargy of the administration in eliminating insanitary latrines, and the same can be observed through the 2011 census of India, according to which there were 13,14,652 latrines where night soil was disposed into drain; 7,94,390 latrines were manually serviced and 4,97,236 latrines that were serviced by animals[12].

Difficulties in accessing the Criminal Justice System

Due to the existing discrimination against lower castes, Dalits require assistance in accessing the criminal justice system, if they are victims of manual scavenging. While people throughout India face police inaction and outright refusals to investigate their complaints,[13] these problems are intensified for socially and economically backward people. Individuals belonging to manual scavenging communities are susceptible to this this form of treatment due to the prevalent caste bias by the police and local government officials. Human Rights'

[8]Act no. 33 of 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1993
[9]Act no. 46, 1993
[10]The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
[11]Standing Committee on Social Justice and Empowerment, 32nd Report on The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill 2012, (March 2013).
[12]Siddaramu.B, "Liberation and rehabilitation of manual scavengers", International Journal of Research in Humanities, Arts and Litreture, Vol:1(2), 2013, pp. 29-38.
[13] Human Rights Watch, India—"Broken System: Dysfunction, Abuse, and Impunity in the Indian Police", at 41, August 2009, http://www.hrw.org/sites/default/files/reports/india0809web.pdf (last visited on Oct. 15, 2014).

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activists in India have told the Human Rights Watch that there was a regular failure on the part of the police to register complaints of crime reported by Dalits against the perpetrators of a dominant caste. The claim was that there was police do not look forward to register cases under the Schedule Castes /Schedule Tribes Act, 1988—a law crucial to protect people who work as manual scavengers.[14]

Threats and harassment from Community Employers

According to Human Rights Watch Report of 2014, women who practice manual scavenging confessed that since dry toilets are cleaned daily, they face pressure from the community if they miss even a day.[15]

A refusal by members of lower castes to perform caste-based tasks, i.e. tasks which discriminate on the basis of caste, can lead to a situation in which dominant caste groups may deny them access to community property and property belonging to upper caste landholders. The access to the same is extremely essential and crucial for members of the manual scavenging community, as they hardly own any land and require entry to community and privately owned land for the purposes of grazing livestock, collecting firewood or even defecation.[16]

Lack of Accountability for failing to eradicate Manual Scavenging

District Magistrates and local authorities are to be held responsible and accountable for the implementation of the PEMSR Act[17], and oversee the process of rehabilitation for manual scavengers, under the very Act. Furthermore, this Act allows State Governments to appoint inspectors for examination of premises to detect any insanitary latrines or persons employed as manual scavengers. Finally, the act endorses and calls for the creation of central and state monitoring committees, and vigilance committees in each district.[18]

The Act also allows the State Government to conduct speedy trials. However, a conflict of interest may possibly arise since the same district authority responsible for adjudicating offences under the Act may also be the authority responsible for implementing the law. It is crucial and in fact the need of the hour that sufficient resources and training are provided to

[14] Ibid
[15] Cleaning Human Waste "Manual Scavenging," Caste, and Discrimination in India, Report by Human Rights Watch (HRW) at 42, Aug. 2014.
[16] Ibid
[17] Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
[18] Abhishek Gupta., "Manual scavenging: a case of denied rights", ILI Law Review, Vol.12(9), summer issue 2016, pp.18-23

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activate these monitoring mechanisms in collaboration with manual scavenging communities, rights activists, and civil society organizations,[19] for these provisions to be effectively implemented.

Inadequate surveys and failure to identify people still engaged in manual scavenging

The Supreme Court of India has pointed out to the fact that government surveys have been very ineffective. In particular, the court notes, the 2013 central government survey "has shown remarkably little progress" and has identified "only a miniscule proportion of the number of people engaged in manual scavenging. There are different figures with regard to the no. of manual scavengers in India. For instance, according to National SafaiKaramchari Commission 3rd and 4th Report there are 5,77,228 manual scavengers; according to 2002-03 report of Ministry of Social Justice and Empowerment there are 6,76,009 manual scavengers; whereas SafaikaramchariAndolan (NGO) working for manual scavengers) has estimated around 1.2 million manual scavengers.[20] Whereas SocioEconomic Caste Census report of 2011 puts the figure to 1, 80, 657 manual scavengers, with Maharashtra having the highest number of scavengers i.e., 63,713.Therefore, periodic comprehensive survey, at least once in three years, should be conducted by the government either independently or in collaboration with credible non-governmental organizations (NGO's).[21]

Efforts to eradicate Manual Scavenging

Many efforts have been made by the Government of India to eradicate manual scavenging. However, these efforts have been inconsistent, and due to which Manual scavenging still prevails in India. These efforts made by the government have been in the form of committees and commissions which include Barve committee,Kaka Kalekar commission, Malkani committee,Committee on customary rights,Pandya committee and administrative schemes, which include Self-employment scheme for rehabilitation of manual scavenging (SRMS), National scheme of liberation and rehabilitation of scavengers and their dependents

[19]SaptarishiMandal(2008), "Through the lens of pollution:manual scavenging and the legal discource", Contemporary voice of dalit, Vol:1(1), 2008, pp.91-102.
[20] Rajeev Kumar Singh, Manual Scavenging as Social Exclusion: A Case Study, Economic and Political Weekly, Vol. 44, No. 26/27 (Jun. 27 - Jul. 10, 2009), pp.521-523
[21] Rajesh Pant., "Manual scavenging and technological solutions to eradicate it", IOSR Journal of Mechanical and civil engineering, vol:11(3), 2014, pp.08-15.

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(NSLRSD), Nirmal Bharat Abhiyaan (NBA) and Swachh Bharat Abhiyaan (SBA).[22] The committees have blamed the weak and ineffective administration for the continued existence of manual scavenging, and have suggested to eliminate dry latrines and create more stringent legislations, while the schemes have been working toward the improvement of sanitation facilities.

Judicial Intervention in Manual Scavenging

There has been significant judicial intervention with regard to manual scavenging.The Judiciary in India has always played a pivotal and an active role in empowering the case of social and economic welfare of the downtrodden by converting several directive principles into legal or constitutional rights for the upliftment of marginalized sections of the society. An open minded and non-parochial interpretation of Article 21 of The Constitution of India has created numerous inalienable and egalitarian privileges, and has given new direction to social welfare jurisprudence.

This can be seen through two landmark judgements; *SafaiKaramchariAndolan v. Union of India*[23], in which the Supreme Court acknowledged as an inhuman, degrading and undignified profession, and observed by the Supreme Court that The Prohibition of Employment as Manual Scavengers Act, 2013 and The Employment of Manual Scavengers and Construction of Dry Latrines Act, 1993 neither dilutes the constitutional mandate of Article 17 of The Constitution of India, nor disregards inaction of The Union and State Governments under The Employment of Manual Scavengers and Construction of Dry Latrines Act, 1993, and *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*[24], in which the Supreme Court, the Supreme Court not only directed governments to pay higher compensation to the families of the deceased, but also directed civic bodies to comply with the directions and orders passed by the Delhi High Court for ensuring the well-being and safety of sewage workers.

Suggestions to the Issue at hand

Some of the constructive recommendations in this regard that can be adopted are:

[22] Rajesh Pant., "Manual scavenging and technological solutions to eradicate it", IOSR Journal of Mechanical and civil engineering, Vol:11(3), 2014, pp.08-15.
[23] 2014 (4) SCALE 165
[24] 2011 (8) SCC 568

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1. **Linking of MNREGA and other social security schemes with the PEMSRA 2013**: Due to the absence of any express provision in the PEMSRA, with regard to linking rehabilitation programmes for scavengers with the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) 2005,[25] an amendment must be brought in the PEMSRA, 2013 to this effect, and the rehabilitation programmes must be linked with MNREGA and other social security laws like Unorganized Sector workers' Social Security Act, 2008.[26] By doing so, activities of manual scavenging can be eliminated in rural areas, where it is still practiced.
2. **Responsibility of railways:** The largest institution in India that uses dry latrines is the Railways. This practice must immediately be prohibited by the Railway ministry and for the next three years present progress reports in every session of Parliament. This should be done, so that the Government of India can ensure total abolishment of scavenging in Indian railways in stipulated time.
3. **National level monitoring system and social audit:** A National level monitoring committee should be formed by the Government for regularly monitoring the practice of manual scavenging. Representatives from ministries, public representatives, state representatives, community representatives as well as representatives from civil society organizations may constitute or be a part of this committee. A high level social audit of PEMSR Act, 2013 and all allied schemes should be conducted by Comptroller and Auditor General of India, as the implementation of Acts is of vital importance. The executive and lawmakers can acquaint themselves with the loopholes in the system and ensure effective implementation of the law with the help of such audits.
4. **Role of local authorities:** Provisions not to allow the construction of any new house with dry latrine or without a water sealed latrine or sanitary latrines with appropriate technology should be added to Municipal and Panchayat bye laws. Measures should also be taken to demolish dry latrines made in the past and construct new water sealed latrines or sanitary latrines with appropriate technology.
5. **Legislative and executive will:** Amendments in different statutes can be made to ensure stringency and consistency among different laws on scavenging and social welfare.

[25] Mahatma Gandhi National Rural Employment Guarantee Act (no. 42 of 2005).
[26] Act no. 33 of 2008.

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Conclusion

The issue of Manual Scavenging remains one which is of serious concern with regard to human rights violations. Looking at the conditions and plight of manual scavengers, it can be said that despite several initiatives by the government, there has been no significant improvement in the condition of manual scavengers. Several social welfare reforms initiated by policy makers for the purpose of eradication of manual scavenging and rehabilitation of manual scavengers have considerably failed.

Despite enactment of legislations, budgetary allocations and initiation of programs for economic assistance, the most pivotal and vital pre requisite which is required is the rigorous enforcement and scrutiny measures required to ensure proper implementation of laws and effective use of budgetary allocation. Lastly, awareness must be created among the public to discourage degrading occupations like manual scavenging.

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