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With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL

CRITICAL ANALYSIS OF MANUAL SCAVENGING

ACT 2013

-Swati Yadav

INTRODUCTION

Manual scavenging is a practice of manually cleaning, carrying, disposing or removing human excreta from dry latrines, sewers or any other place with bare hands or with aid of basic tools such as broom, metal scrappers, and buckets. In India, manual scavenging is a caste based occupation imposed on the dalits.¹ “The manual scavengers have different caste names in different parts of the country: Bhangis in Gujarat and Uttar Pradesh, Phakis in Andhra Pradesh and Sikkaliars in Tamil Nadu. These communities are invariably placed at the bottom of the caste hierarchy as well as dalit sub-caste hierarchy”.²

In India, people performing work based on their caste is a reality; manual scavengers are one such occupational group. India has attained the dubious distinction of being the only country in the world to customarily subject a particular section of the society to the inhumane practice of manually cleaning the human excreta.³ Caste based discrimination is a dark reality of Indian society and to address this problem our Constitution makers provided a range of fundamental rights viz., *right to equality* under Article 14, *abolition of untouchability* under Article 17 and *right to life* under Article 21. Some monumental pieces of legislation such as **The Protection of Civil Rights Act, 1955**, **The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989** were enacted to abolish the practice of caste based discrimination. Still, the malice of social exclusion of certain castes, occupying the lowest rung in the caste hierarchy, could not be eliminated.

With the passage of **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (EMSCDL)** manual scavenging was banned in India. However, this practice of manual scavenging could not be eradicated from the root because of “caste apartheid and poverty”.⁴ The ineffectiveness of the 1993 legislation in eradication of the practice of manual scavenging and improving the condition of manual scavengers lead to passing of another anti-manual scavenging legislation named **The Prohibition of Employment as**

¹ Rajeev Kumar Singh, *Manual Scavenging as Social Exclusion: A Case Study*, Economic and Political Weekly, Vol. 44, 2009.

² Ibid.

³ Bindeshwar Pathak, *Action Sociology and Development*, Concept Publishing Company, New Delhi, 1992.

⁴ Supra Note 1.

Manual Scavengers and Their Rehabilitation Act, 2013 (PEMSR). This anti-manual scavenging legislation aims to ameliorate the deplorable condition of manual scavengers by rehabilitating them and restoring dignity to their lives. However, there are several fissures beneath the veneer of this seemingly perfect piece of legislation.

Before embarking on careful assessment of the PEMSAR Act 2013 it is crucial to observe the existing statistics on manual scavenging to gauge the prevalence of this menace in the country. Moreover, it is significant to understand the role played by caste dynamics in propagation, perpetuation and continuance of the practice of manual scavenging till date.

STATISTICS

In last two decades, a few national surveys have been conducted to record total strength of manual scavengers in the country. The 1992 survey identified around 5.88 lakh manual scavengers in the country. This figure shot up to 6.76 lakh in the 2002 survey conducted by Ministry of Social Justice and Empowerment. This figure was further revised to nearly eight lakh. However, after promulgation of PEMSAR Act in 2013 another national survey was commissioned which ironically recorded only a few thousand manual scavengers, just 13,639. Moreover, as per a recently conducted survey in 18 States, a total of 48,345 manual scavengers have been identified in the country till 31st January 2020.⁵ However, accuracy of this data becomes questionable in presence of around 21 lakh dry latrines throughout the country as per 2011 Census. In India, the official data available, on this unorganised sector, is highly insufficient and contradictory. Most of the States and districts in the country either do not provide any data or provide inadequate data on total number of workers engaged in occupation of manual scavenging. In India, the practice of manual scavenging is far entrenched, prevalent and bigger than any government would like to acknowledge. As per Safai Karamchari Andolan (SKA), a movement for elimination of manual scavenging from the country, around 7 lakh workers are engaged in sewer cleaning despite clear directive of Supreme Court against forcing any worker to enter manhole or sewer line. As many as 36, 176 workers are engaged in manual scavenging at railway stations, which largely fall out of purview of PEMSAR Act, 2013.⁶

In December 2019, Ministry of Social Justice and Empowerment declared that from 2016 till first week of November 2019 282 deaths were recorded in the country from cleaning sewers. In last few years, the year of 2019 recorded maximum numbers of manual scavenging deaths

⁵ India's Manual Scavenging Problem, The Hindu, available at <https://www.thehindu.com/news/national/indias-manual-scavenging-problem/article30834545.ece> (last accessed on 27th May 2020).

⁶ Safai Karamchari Andolan, available at <https://www.safaikaramchariandolan.org/crisis> (last accessed on 27th May 2020).

with 110 workers losing their lives while cleaning septic tanks and sewers.⁷ However, these figures are the tip of iceberg as most of such cases are never recorded officially. As per SKA around 1760 manual scavenging deaths have been recorded from across the country, with maximum deaths recorded from State of Tamil Nadu.⁸

It is disappointing that the 'Crime in India' reports released by National Crime Record Bureau (NCRB), responsible for collecting information on crimes and criminals to assist investigation agencies, continue to fail in providing data on cases filed under the PEMSR Act of 2013.

MANUAL SCAVENGING : CASTE BASED DISCRIMINATION

It is difficult to point out the origin source of caste system in the Indian society. There are multitudes of theory and interpretations attempting to mark the genesis, propagation and continuance of this system. As per Dr. B.R. Ambedkar, "endogamy is the key to the mystery of Caste system"⁹. The genesis and mechanism of this system can be understood if one understands that "caste in India means an artificial chopping off of the population into fixed and definite units, each one prevented from fusing into another through the custom of endogamy"¹⁰. The absence of practice of intermarriage between different castes has been the foundational base on which the entire superstructure of caste system has been established and run. The origination of caste system was preceded by formation of a closely circumscribed circle beyond which one was not allowed to contract marriage.¹¹

There are theories that Manu was the originator of the caste system; or this system was laid down in the Shashtras. However, these theories are not sufficient to accurately analyse the true nature of caste system of our society. The Hindu society, like any other society, was divided into different classes; the Brahmins or the priestly class; the Kshatriya, or the military class; the Vaishya, or the merchant class; and the Shudra, or the artisan and menial class. These classes were not rigid but porous units which allowed mobility from one to another on attainment of requisite qualifications. However, with time the 'priestly classes' of the society detached themselves and became distinct units or castes following rigid customary practices of endogamy. There begin the process of formation of classes into castes by practicing "imitation

⁷ Supra Note 5.

⁸ Supra Note 6.

⁹ Dr. B.R. Ambedkar, Castes in India: their Mechanism, Genesis and Development, Dr. Babsaheb Ambedkar: Writings and Speeches, Vol.1, available at http://www.columbia.edu/itc/mealac/pritchett/00ambedkar/txt_ambedkar_castes.html (last accessed on 27th May 2020).

¹⁰ Ibid.

¹¹ Ibid.

and excommunication”¹². The greater degree of observance of the customs of the higher caste by the lower caste signified better position of that particular caste in the caste hierarchy.

The next question that arises for scrutiny is ‘when and how’ the occupation became characteristics of caste. Many a times, the justification of caste system is given by stating that it began as a system of “division of labour”. However, no “division of labour” is so rigid as to completely rule out mobility. Therefore, it is crucial to state that caste system is not merely “division of labour” but instead is “division of labourers”. In this system, individuals are already assigned the tasks to be performed by them not on the basis of their capabilities but on the basis of the caste in which they are born. This system rules out any possibility of making a reasoned choice but instead follows the precept of predestination.

The concept of purity is an integral part of the caste system with those occupying the topmost level being considered purest while those occupying the lowest rung being considered ‘impure’ or ‘polluted’. The social status of each caste is reflected in the kind of work carried out by them. The castes which were pushed to the lowest rung of the caste hierarchy were forced to undertake menial tasks which were commonly regarded dirty and inhuman. And, thus, began the degraded caste based practice of manual scavenging performed by those occupying the lowest rung in the caste hierarchy.

In the ancient scripture of Naradiya Samhita, one of the fifteen enumerated duties of slaves is manual scavenging¹³. With settling of societies and urbanisation, the role of manual scavengers became more defined involving disposal of solid waste and other sanitary work. This separate class of manual scavengers eventually became “lowest among the low and ‘untouchables’ among the untouchables”¹⁴. It is the nature of the work performed by manual scavengers which lead to their further social exclusion as their work started to be associated with ‘impurity’, ‘disease’ and ‘decadence’. Moreover, any refusal on the part of these people to perform these tasks resulted in their social boycott and further physical and mental abuse.

Thus, it can be stated that manual scavenging is a form of caste discrimination and cannot be uprooted entirely from the Indian soil without annihilation of the caste system. The “societal morality” has resulted in maintenance and further perpetuation of this unnatural institution. Therefore, it is crucial to look at what is our “constitutional morality” as dictated by our

¹² Ibid.

¹³ Abhishek Gupta, *Manual Scavenging: A Case of Denied Rights*, ILI Law Review, 2016.

¹⁴ Available at https://shodhganga.inflibnet.ac.in/bitstream/10603/70243/8/08_chapter%201%20introduction.pdf, (last accessed on 26th May 2020).

Constitution for elimination of this derogatory practice of manual scavenging rooted in the highly unjust caste system.

ANTI-MANUAL SCAVENGING LEGISLATIVE FRAMEWORK

The makers of Indian Constitution abolished the derogatory practice of untouchability by including Article 17 as one of the fundamental rights under Part III. Article 17 reads as:

Article 17: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

However, this provision has proved insufficient in eliminating the practice of untouchability from the society as it penalises the practice rather than eliminating the root cause of its origination. The genesis of ‘untouchability’ lies in caste based notions of purity and impurity. Therefore, untouchability which is practised as a form of caste based discrimination can never be eliminated without annihilating the caste itself.

As eliminating caste system in entirety seems a utopian vision it is crucial to look at the present safeguards, in form of fundamental rights, anti-manual scavenging statutes and progressive judicial decisions, for elimination of the practice of manual scavenging from the country.

The Constitution of India guarantees certain fundamental rights to its citizens to ensure them a dignified life. It also imposes certain directives on the State to keep in mind while formulating laws and policies for governance of the citizens of the country. These rights and directives are namely:

right to equality (Article 14); right to practice any profession or to carry on any occupation, trade or business (Article 19 (1) (g)); right to life and personal liberty (Article 21); Prohibition of traffic in human beings and forced labour etc. (Article 23); Right to work, to education and public assistance in certain circumstances (Article 41); Just and humane conditions of work (Article 42); Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections (Article 46).

These constitutional safeguards are the ray of hope to change the status quo and ensure meaningful and dignified life to those engaged in the inhumane work of manual scavenging. Our Constitution allows one to approach the apex Court of the nation, under Article 32, on violation of any of the fundamental rights.

The role of judiciary has been crucial in upholding fundamental rights of the citizens and their enforcement. One such landmark case is **Safai Karamchari Andolan v. Union of India**¹⁵ wherein the Supreme Court acknowledged the menace of manual scavenging in the country and the significance of both PEMSAR Act, 2013 and EMSCDL Act, 1993 in eliminating this practice and rehabilitation of manual scavengers. In this case, the Supreme Court directed both Union and State government to take appropriate measures to ensure effective implementation of provisions of PEMSAR Act, 2013. Supreme Court laid down following guidelines for rehabilitation and assimilation of manual scavengers into the society:¹⁶

“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. i. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them. ii. Rehabilitation must be based on the principles of justice and transformation.”

Besides judiciary, there are other organs of the State machinery which are crucial for upholding the rights of the citizens. These organs are legislature and executive which are entrusted with task of formulating laws and enforcing them respectively. It is crucial to examine anti-manual scavenging statutes passed by the Parliament of the country to ascertain its commitment in eradication of this inhumane practice from the country.

The Parliament of India passed **The Protection of Civil Rights Act** in 1955 to prescribe punishment for practice of untouchability. This Act did not singularly deal with manual scavenging; hence **EMSCDL Act** was passed in 1993. However, this Act proved insufficient in abolishing manual scavenging and improving living conditions of those engaged in it. Hence, **PEMSAR Act** was passed in 2013. The main objectives of the Act are as follows:

- (i) Prohibition of Employment as manual scavengers

¹⁵2014 (4) SCALE 165.

¹⁶ Ibid.

(ii) Rehabilitation of manual scavengers

The **Section 2(g)** of the Act defines manual scavenger to be “a person engaged or employed....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 insanitary 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 spaces or premises...”. However, the Explanation clause under this Section excludes those from category of manual scavengers who are (a) “engaged or employed” means being engaged or employed on a regular or contract basis; (b) a person engaged or employed to clean excreta with the help of such devices and using such protective gear, **as the Central Government may notify in this behalf, shall not be deemed to be a ‘manual scavenger’**.

Thus, usage of “protective gears” has been used as a subterfuge to carry on the practice of manual scavenging. The practice of manual scavenging is **not entirely prohibited** by the Act but instead allowed to continue especially by the state functionaries and bodies.

Another provision that needs to be examined is **Section 4** which puts a mandatory obligation on local authority to provide for sanitary latrines. The fall-out of this provision lies in ignoring the practice of open defecation, especially in cities, which involves manual cleaning of excreta by the manual scavengers.

The PEMSAR Act focuses on construction of dry latrines by stipulating under **Section 5(1)** that no **person or local authority or any agency** (i) Construct an insanitary latrine (ii) Employ or engage, directly or indirectly, a manual scavenger. Sub section (2) ordains every owner of insanitary latrine to convert or demolish it at his/her own cost and construct sanitary latrine. The local authority shall convert insanitary latrine and recover cost as per **Section 5(3)**. However, this entire provision falls flat if one pays attention to the exemption given to Indian Railways from following the mandate. Under **Section 2(1) (e)** water flush latrines of railways are given an exemption and shall not be considered insanitary latrine. The Indian railways are the biggest employers of manual scavengers and providing them exemption runs contrary to the spirit of the Act.

The analysis of the Act is incomplete without referring to Section 7 which prohibits engagement or employment of any person for hazardous cleaning of sewers and septic tanks. However, **Section 2(1) (d)** defines hazardous cleaning by “an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his

obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder". Thus, indirectly hazardous cleaning is allowed provided it's done using protective gear and other cleaning devices. However, there is no monitoring over the providing, usage and quality of protective gears provided to the cleaners. Most of the time, gears or equipment provided are of substandard quality. Moreover, the manual scavengers should be provided training and only well trained workers should be allowed to get down septic tanks, manholes, sewers and drainage to clean. However, that never really happens.

Section 24 provides for detailed vigilance mechanism and monitoring committee at district, state and central level. With granting of powers on State government to conduct special trials, the same authority has become responsible for adjudicating offenses and implementing them thus leading to the situation of conflict of interest.

Lastly, **Section 11** provides for rehabilitation of the manual scavengers but that cannot be achieved entirely without giving them proper training, alternative employment opportunities and education facilities. Mere monetary compensation is not enough to rehabilitate them.

MENACE OF MANUAL SCAVENGING: GROUND REALITY

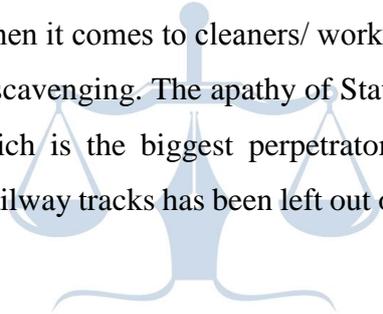
United Nations Organisation in its 2007 annual report of the Committee on the Elimination of Racial Discrimination expressed serious concern on the deplorable condition of manual scavengers in India. Also, India has ratified Discrimination (Employment and Occupation) Convention, 1958 which deals with "work related discrimination and promotes equality in employment and occupation". Thus, it is crucial for India to eliminate the practice of manual scavenging.

Along with social exclusion manual scavengers suffer from several health hazards, abuse and other sorts of marginalisation. The range of health hazards affecting manual scavengers are virulent skin disorder, tuberculosis, respiratory disorder, and other diseases affecting their eyes, ears, limbs etc. Many manual scavengers risk their lives on daily basis while working, without any protective gears, in inhumane conditions. The protective gears are rarely provided to the manual scavengers and if provided they are of substandard quality and causes more harm to the workers rather than affording them any viable protection. Many a times, the gloves provided to the manual scavengers are uncomfortable, stinky and sticky; forcing users to remove them and work with bare hands. Sometimes, manual scavengers are given protective gears, as a formality, just to enact that rules are being followed, few minutes later after playing the charade of 'following the rules' workers are stripped of their protective gears and compelled

to work without them. In many instances, manual scavengers are compelled to get down and clean poisonous and filthy septic tanks, gutters, and sewers bare bodied and without any protection. This casual attitude towards the safety and well-being of the scavengers has exposed them to severe health hazards and, in extreme cases to, even death.

The lack of socio-political will has been a significant factor behind continued suppression and marginalisation of manual scavengers. Along with it, the lack of education, other job opportunities, skills, and societal acceptance has been major roadblocks in improvement of the living condition of the manual scavengers. Generation after generation have fallen in the same loop of decadence, poverty and continued oppression. Their lives have been affected in unimaginable ways; many manual scavengers drink cheap alcohol before entering sewage pits otherwise it is difficult to work in such dehumanised conditions. Some cannot eat or drink or sleep after entering gutters.

One would presume that condition of workers employed by government would be better. However, that's not the case when it comes to cleaners/ workers employed by the government to perform the jobs of manual scavenging. The apathy of State towards the condition of these workers persists; railways which is the biggest perpetrator of inhumane job of manually cleaning human excreta from railway tracks has been left out of the purview of the anti-manual scavenging legislation.



W H **CONCLUSION** A C K

Though manual scavenging is a caste based discrimination, however there are several other reasons for continuance of the practice of manual scavenging in India such as lack of other employment opportunities and alternative 'work skills'. Open defecation is another problem, especially in urban areas, which requires bare handed manual cleaning of excreta by the scavengers. Usage of bio-toilets and technologically upgraded equipment for cleaning sewers, drainage, manholes etc. can be stepping stones in ameliorating the condition of manual scavengers in India. Also, the stigma and discrimination attached with this practice cannot be eliminated without providing alternative livelihoods, establishment of dry latrines and imparting requisite skills. Thus, abolition of the practice of manual scavenging requires concerted efforts of everyone, from government to civil society.