

# MANUAL SCAVENGERS AND THEIR UNENDING CONFLICT WITH LAW

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## INTRODUCTION

I may not be born again and if it happens, I will like to be born in a family of scavengers so that I may relieve them of unhealthy, inhuman and unhealthy practice of carrying head loads of night-soil'.<sup>1</sup> These are the words of Mahatma Gandhi as he expressed his plight about the practice of manual scavenging in India. Manual scavengers, considered to be wretched and untouchable face the greatest form of untouchability that exists. Their daily living is based on one of the most demeaning activity- cleaning faeces from public and dry latrines. Manual scavenging is the degrading and illegal task of cleaning human excrement from India's roads and dry latrines. Using little more than a broom, a tin plate, and a basket, scavengers are made to clear feces from public and private latrines as well as carry them to dumping grounds/ disposal sites. Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable or deemed too menial by higher caste groups<sup>2</sup> Despite the technological advancements and developments which could have tackled the problem of manual scavenging and the safe disposal of human excreta, manual scavenging continues to exist in India, and with it, the deplorable deaths. Manual Scavenging is not only a blatant violation of human rights but also a disgrace to human dignity and humanity at large.

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<sup>1</sup> *National Humans Rights Commission, Know Your Rights Human Rights and Manual Scavenging*, pg 18 National Human Rights Comission, New Delhi -110001, 2011

<sup>2</sup> *Cleaning Human Waste : "Manual Scavenging," Caste, and Discrimination in India*, Human Rights Watch, August 2014, p.1, available at [http://in.one.un.org/wpcontent/uploads/2016/09/india0814\\_ForUpload.pdf](http://in.one.un.org/wpcontent/uploads/2016/09/india0814_ForUpload.pdf)

It's a practice deeply rooted in the Indian case system and is performed exclusively by the lower caste Dalits even after five years of the enactment of the Prohibition of Employment of Manual Scavengers and Their Rehabilitation Act, 2013 which states that it is the '*duty of local authorities and other agencies to use modern technology for cleaning of sewers*<sup>3</sup>' but this issue still fails to grab the attention of the Central Government.

### **CURRENT LEGAL STATUS**

There's a plethora of laws that are existing to end this grave social evil, but it still fails to achieve the end goal. It's prohibited both under the Constitution and is also unlawful but fails to get implemented because of the shackles of society and social practices.

#### **The Constitution and Manual Scavenging :**

The Constitution of India strictly abolishes untouchability under Article 17 and prohibits any form of caste based discrimination under Article 15, but manual scavengers still remain victims of this age-old discrimination.

Furthermore, The Indian constitution also guarantees human dignity as an inalienable right to life under Article 21. The Courts have held human dignity to be the [most important, fundamental, inalienable and transcendental of rights](#) but for manual scavengers, all such rights cease to exist

Article 23 deals with prohibitions of traffic in human beings and forced labour. 'Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law'. Manual scavenging is both a forced labour under forms of physical force and also, forced by the societal, traditional and discriminatory practices. As per Article 46, it is the duty of the state to protect the weaker section of the society but it has failed to do so for these manual scavengers and their rehabilitation.

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<sup>3</sup> Prohibition of Employment of Manual Scavengers and Their Rehabilitation Act, 2013

Some of the other rights that manual scavengers are entitled to under the constitution are

- Article 14: Equality before law (Right to Equality)
- Article 16(2): Equality of opportunity in matters of public employment
- Article 19(1)(a): Right to practice any profession, or to carry on any occupation, trade or business
- Article 23: Prohibition of traffic in human beings and forced labour etc
- Article 41: Right to work, to education and public assistance in certain circumstance
- Article 42: Just and humane conditions of work
- Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.
- Article 338: Constitution of a National Commission for Schedule Caste.

**Legislative Frameworks :** Other than the plethora of Constitutional mandates there also have been various legislative frameworks that have been enacted to uplift this section of the society.

The Protection of Civil Rights Act, 1955, Bonded Labour System ( Abolition) Act, 1976, The Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989 all have been enacted to protect and uplift sections of the society like that of manual scavengers who have been the victims of inhuman and discriminatory treatment in India.

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

This Act was introduced to curb the employment of people as manual scavengers and also to discourage the continuance and construction of dry toilets. Under this Act construction of dry toilets, as well as hiring scavengers was made a punishable offence with a term of imprisonment up to 1 year and a fine of Rs. 2000<sup>4</sup>. The fine was also subject to an increase

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<sup>4</sup> The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46 of 1993, Chapter IV, Section 14.

of Rs. 100 per day if the violation continued. Despite the stringent penalties imposed under the Act, there was not much success in ending manual scavenging. It has been widely accepted that even after two decades since the law was passed, the states did not commit themselves fully to the cause, which resulted in the improper implementation of the 1993 Act. The major drawback of this Act was that it majorly focused on sanitation requirements and not on the issues of rehabilitation and that of human dignity being violated, thus the Parliament enacted the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 to address the issues which were left untouched by the earlier existing legislation.

### **The Prohibition of Employment as Manual Scavenger and Their Rehabilitation Act, 2013 and the Reasons for its failure.**

After the failure of the 1993 Act, a new Act was brought in improve the mechanisms, increase accountability and widen the ambit of the definition of scavenging. The focus shifted from not only to end scavenging but also improve their lives and ensure protection of those who are victims of scavenging.

The new act prohibits not only cleaning of dry latrines but also outlaws all type of manual cleanings such as cleaning of sewers, gutters and septic tanks without protective gear.<sup>5</sup> The Act of 2013 seeks to correct the injustice which has been meted out to the manual scavengers previously. This act looks to provide the manual scavengers with alternative ways of earning a livelihood or any other assistance which they require. This is an improvement as the Act of 1993 focused only on prohibition to employ people as manual scavengers and construct dry latrines. Under the new Act, one-time cash assistance is given to individuals who have been engaged as manual scavengers at any point of time, housing for them and their family, a scholarship to their children and other legal assistance<sup>6</sup>. The Act also has mentioned and included about their rehabilitation which the 1993 Act failed to do but no specific authority is made responsible for rehabilitation. No interim measure till rehabilitation/alternative employment is secured has been provided.

It is noteworthy that the offences under this Act are not only cognizable and non bailable

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

<sup>6</sup> The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013, section 11-12

but also attract higher penalties. Speaking of the authorities, the Act mentions that there will be a Vigilance/Monitoring Committee at sub-Division, District, State and Central Govt. levels. In addition, a National Commission for Safai Karamcharis (NCSK) has been established to monitor implementation of the Act and also to enquire into complaints as regards the contraventions under the Act. Since manual scavenging exists primarily because of absence of water borne latrines, the Act also makes provision for the construction of adequate number of sanitary community latrines in urban areas so as to eliminate the practice of open defecation.<sup>7</sup>

### **CRITISISM OF THE 2013 ACT**

Though the Act is an improvement of the previous legislations but still is not free from fallacies.

*Section 2 (1) (e) of the Act says: “ insanitary latrine” means a latrine which requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed:*

*Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee 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 an insanitary latrine<sup>8</sup>.*

One of the major criticism of the Act is the exemption of Indian Railways from the ambit of the definition of insanitary latrines under the Act, when Indian Railways is the largest supporter of the manual scavenging. Thus, Indian railway will continue to practice this inhumane practice. Water flush latrine in a railway passenger coach at railway stations will make someone to clean manually human excreta and practice will continue even after the sensitivity towards human rights.

Section 2(1)(g) which defines the term ‘manual scavenger’ as

*“ manual scavenger” means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or local authority or agency or a contractor, for*

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<sup>7</sup> The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013, section 18

<sup>8</sup> The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013

*manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in 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, as the Central Government or a State Government may notify, before excreta fully decomposes in such manner as may be prescribed, and the expression “ manual scavenging” shall be construed accordingly,*

*Explanation.- For the purpose of this clause,-*

*(b) a person engaged or employed to clean excreta with the help of such devices and using such protective gears, as the Central Government may notify in this behalf, shall not be deemed to be a “ manual scavenger”.*<sup>9</sup>

The main aim of this Act was to prohibit any form of manual scavenging but it has has, on the other hand, legitimized manual scavenging by stating that it can be done by using protective gears and other devices.

**4 (1) of the Act says:** *Every local authority shall,-*

*carry out a survey of insanitary latrines existing within it`s jurisdiction, and publish a list of insanitary latrines, in such manner as may be prescribed, within a period of two months from the date of commencement of this Act;*<sup>10</sup>

Here, the Act talks identification of only insanitary latrines. But, the Act does not mention of identification of spots where open defecation is done and consequently someone has to clean manually human excreta from the open spaces in urban areas. Also, according to me a period of two months is insufficient for carry out survey of insanitary latrines.

**39. (1) of the Act states:** *The appropriate Government may, by a general or special order published in the Official Gazette, for the reasons to be recorded, and subject to such conditions as it may impose, exempt any area, category of building or class of persons from any provisions of this Act or from any specified requirement contained in this Act or any rule, order, notification, bye –laws or scheme made thereunder or dispense with the observance of any such requirement in a class or classes of cases, for a period not exceeding six months at a time;*

<sup>9</sup> The Prohibition of Employment as Manual Scavenger and their Rehabilitation Act, 2013

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

This is a major gap in the Act as it empowers the Government to exempt the provisions of the Act and thereby creating a major gap that can defeat the entire purpose behind passing this piece of legislation.

Thus, manual scavenging should be stopped, prohibited, and stringent measures should be taken to ensure that its prevalence ceases to exist. There's a collective responsibility on the part of the citizens as well as the law makers to help reach the end goal.

According to me, the clause of the practice of manual scavenging with the use of safety equipments and head gears should be completely removed as it is a blatant violation of their right to dignity.

### **SAFAI KARAMCHARI ANDOLAN AND Ors V UNION OF INDIA**

#### **Analysis:**

This is a landmark case as it brings to light the oppression faced by the safai karamcharis over a long period of time and the case was filled in the year 2003 and the judgement was passed in the year 2014. The inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal is a practice that is still prevalent in many parts of the country. While the surveys conducted by some of the petitioner- organizations estimate that there are over 12 lakh manual scavengers undertaking the degrading human practice in the country, the official statistics issued by the Ministry of Social Justice and Empowerment for the year 2002-2003 puts the figure of identified manual scavengers at 6,76,009. Of these, over 95% are Dalits (persons belonging to the scheduled castes), who are compelled to undertake this denigrating task under the garb of "traditional occupation". The manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation. The relief sought for them was that to ensure complete eradication of dry latrines, to declare continuance of the practice of manual scavenging and the operation of dry latrines violative of Articles 14, 17, 21 and 23 of the Constitution and the 1993 Act<sup>11</sup> To direct the respondents to adopt and implement the Act and

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<sup>11</sup> Human Rights Watch, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ,chp 1(1) <https://www.hrw.org/reports/1999/india/India994-19.htm>

to formulate detailed plans, on time bound basis, for complete eradication of practice of manual scavenging and rehabilitation of persons engaged in such practice and to direct Union of India and State Governments to issue necessary directives to various Municipal Corporations, Municipalities and Nagar Panchayats (all local bodies) to strictly implement the provisions of the Act and initiate prosecution against the violators. The court also stated that there are various international conventions to which India is a part of as under the UDHR , CEDAW and CERD.<sup>12</sup>

In light of the above mentioned case the court enacted the Prohibition of Employment of Manual Scavengers and Their Rehabilitation. The court directed the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. Henceforth the court also declared that persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.

#### **SUGGESTIONS THAT WOULD HELP IN IMPROVING THE POSITION OF MANUAL SCAVENGERS**

- 1) There should be an effective coordination and administration among public and private authorities so that immediate steps to end this age old grave issue.
- 2) Initiations by communities, at National, State and local level should be taken. Community initiative is very important for abolishing manual scavenging. Therefore, communities should help and discourage the discrimination that exists with the service like sewer cleaning within the scavenging community. Moreover, individuals as a citizen of India should also pledge to adopt sanitary practices and vow to not encourage or employ manual scavengers for such menial tasks as the Untouchables are also fellow human beings like everyone else. Their major agenda should be to spread awareness, the manual scavengers of their rights, and the citizens towards their responsibility.

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<sup>12</sup> Safai Karamchhari Andolan and Ors v Union Of India, writ petition 58 of 2003, <http://supremecourtindia.nic.in/outtoday/wc583.pdf>



- 3) Responsibility of railways: The Indian railway is the largest institution in the country to use dry latrines. The railway ministry must prohibit this practice. There has to be a committee to review it, so that the Government of India can ensure total eradication of scavenging in Indian railway in stipulated time. This can be achieved by the construction of bio-toilets in railway stations and trains, as soon as possible. There has to be use of technology to come up with other alternatives in railways which are affordable and hygienic.
- 4) Sanitation programmes and awareness: Since poor sanitation or lack of sanitation i.e., toilets, in rural and urban areas is the fundamental cause and a hurdle to the abolition of manual scavenging. Thus, speeding up sanitation programmes and awareness regarding proper toilets is very essential to achieve total eradication of Manual Scavenging.
- 5) The law is there, but there is role of the Government to ensure that it is being implemented at the earliest, so the Government should speed up to formulate rules and regulations to prohibit any form of manual scavenging.
- 6) At a local level, a Special Officer should be appointed so that he would completely monitor and help in eradicating manual scavenging.
- 7) Those without houses, should be given housing and their medical health should be taken care of as an urgent requirement.
- 8) They should be given internal reservation in colleges and government jobs, so that they get social acceptance, and are able to be a part of the society they deserve to be in.
- 9) The Government of India should form a national level monitoring committee that regularly monitors the Manual Scavenging profession. This committee may constitute of representatives from ministries, public representatives, state representatives, community representatives and representatives from civil society

organisations.

## CONCLUSION

Even after multiple Government schemes and various anti-scavenging legislations that are existing, the cruel practice continues. Intervention by the legislative and judiciary have not seen much success in eliminating the problem. The manual scavenging communities still suffer due to persistent discrimination, lack of information, improper implementation of laws, lack of social acceptance and lack of alternative methods of employment. Manual scavenging is nothing short of a moral tragedy. The daily routine of people engaged in manual scavenging should serve as a reminder to all of us about the harsh realities of the society we have created and are living in.

The need of the hour is not just to pass laws but collective come with a action plan to help those trapped in the shackles of caste, discrimination and come up with practical solutions to give them better and alternative means of livelihood.