

MANUAL SCAVENGERS: 'UNTOUCHABLES' IN THE MODERN ERA

Written by *Vanisree Ramanathan** & *Alphonsa Neethu Alex***

** Assistant Professor, Symbiosis Law School, Pune*

*** Assistant Professor, symbiosis Law School, Pune*

INTRODUCTION

The Hindu notions of purity and pollution, inextricably linked with the caste system and the practice of untouchability, underlie the unsanitary practices in Indian society. 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.¹ There has been specific mention about scavengers in almost all writings on India's caste system. In India largely two communities continue this inhuman practice – the 'Valmiki's'² (Hindus) and the 'Haila' (Muslims). While the Hailas come under the OBC category the Valmiki's

¹ *Cleaning Human Waste : "Manual Scavenging," Caste, and Discrimination in India*, Human Rights Watch, August 2014, p.1, available at http://in.one.un.org/wp-content/uploads/2016/09/india0814_ForUpload.pdf

² Manual scavenging is a hereditary occupation of Dalits (also known as Valmiki's, Bhangis in Gujarat and Uttar Pradesh, Phakis in Andhra Pradesh and Sikkaliars in Tamil Nadu etc). *"Socio-Economic Conditions Of Manual Scavengers With Special Reference To Gulbarga District Of Karnataka State"*, Jnanmitra Bhimasha and Chandrakumar. B. Sedamkar, Vol.4, Issue 12, Jan 2015, Indian Streams Journal, available at <http://isrj.org/colorArticles/5895.pdf>

belong to the scheduled caste and the both are placed in the lowest rung of the Indian society, and therefore – untouchable within the untouchables.³

This caste-designated occupation reinforces the social stigma that people engaged in scavenging are unclean or “untouchable” and perpetuates widespread discrimination. Though the Census of India 2011 pegs the number of dry latrines at 7,94,390, there are over and above this another 1,314,652 toilets where the human excreta is flushed in open drains which are also cleaned up by human beings. The census also adds that there are 497,236 toilets in the country where the human excreta is cleaned up by animals through eating it.

SOCIO-ECONOMIC STATUS

Unsurprisingly, manual scavengers are victims of grave discrimination owing to their ‘low’ caste and ‘disgusting’ job. They are shunned from the rest of the society and forced to live an ‘outcast’ life just because they were born into a caste which had been labelled as the ‘lowest’ by our ancestors. Even though in modern times these people desire to leave the profession, it is very difficult for them to find an alternate profession owing to the social stigma of untouchability attached to their identities. According to the 2012 UNDP report,⁴ manual scavengers face discrimination in social, political as well as economic spheres; They are not allowed to enter places of worship; or access basic services.

The extreme form of exploitation inherent in the caste system has made a mockery of modern India's labour laws and international conventions on the rights of the workers.

³ “Violence Against Manual Scavengers: Dalit Women in India”, Rashtriya Garima Abhiyan, Report submitted to UN Special Rapporteur on Violence Against women during her visit to India between April 22-May 1, 2013, <http://www.dalits.nl/pdf/violenceagainstmanualscavengers.pdf>

⁴ “Social Inclusion of Manual Scavengers”, A report of National Round Table Discussion, Organised by United Nations Development Programme and UN Solution Exchange (Gender Community of Practice), Dec 21, 2012, available at <http://in.one.un.org/wp-content/uploads/2016/09/Social-inclusion-of-Manual-Scavengers.pdf>

Manual scavengers, for example, are paid a pittance.⁵ Health is also another issue of prime concern. Manual contact with excreta exposes manual scavengers to various diseases; infection of skin, rotting of fingers & limbs, tuberculosis and nausea are common. Several complain inability to have food due to exposure to excreta. Most women from the manual scavenging communities tend to be addicted to tobacco (Gutka) and men are given to liquor in an attempt to diminish the repulsive nature of their work and beat back their state of hopelessness. Social discrimination against scavengers is also rampant. While women usually clean dry toilets, men and women clean excrement from open defecation sites, gutters, and drains, and men are called upon to do the more physically demanding work of cleaning sewers and septic tanks (Human Rights Watch, 2014).⁶ The status of the women is the worst. They become vulnerable for being women, for being a Dalit, and for being a manual scavenger.⁷

In short, it can be said that manual scavengers are considered to be the most oppressed and disadvantaged of any community in India. They have been rendered so powerless and vulnerable that they are neither aware of the rights conferred upon them nor they are competent enough to fight for their rights like the rest of the citizens.

GOVERNMENT INITIATIVES

In the past (before 1980), the main efforts of the Government were concentrated on improving the working and living conditions of scavengers and not the core problem of converting dry latrines to pour flush latrines in any systemic manner. In 1908-81, the Ministry of Home Affairs took up the Centrally Sponsored Scheme for Liberation of Scavengers by way of conversion of existing dry latrines into low cost pour flush latrines

⁵ *Liberation And Rehabilitation Of Manual Scavengers*, Siddaramu. B, Vol. 1, Issue 2, July 2013, 29-38, International Journal of Research in Humanities, Arts and Literature (IJRHAL), available at <http://www.impactjournals.us/download.php?fname=2-11-1374308004-5.%20Humanities-Liberation-Siddaramu.%20B.pdf>

⁶ *Cleaning Human Waste : "Manual Scavenging," Caste, and Discrimination in India*, Human Rights Watch, August 2014, p.1, available at http://in.one.un.org/wp-content/uploads/2016/09/india0814_ForUpload.pdf

⁷ *Id.*

and providing alternative employment to the unemployed scavengers as one of the measures for removal of Untouchability and providing financial assistance in selected towns. A Task Force constituted by the Planning Commission in July 1989 on the subject suggested for separate scheme for liberation and rehabilitation. It also explored the bases for the enactment of certain legislation to ban construction and continuation of dry latrines and prohibit the practice of manual scavenging.

In 1992, the scheme of 'Liberation of Scavengers' was bifurcated. For conversion of dry latrines into water borne flush latrines, an 'Integrated Low Cost Sanitation (ILCS) Scheme' was started. The National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents (NSLRS) was started for providing alternative employment to the liberated scavengers and their dependents.

CURRENT LEGAL POSITION

As mentioned earlier, the modern society still perceives scavengers as 'untouchables' and treats them indifferently even though the supreme law of the land, i.e. the Constitution of India, has declared that "*untouchability is abolished and its practice in any form is forbidden*" under Article 17.⁸ Manual scavengers are victims of severe human rights violations. The fundamental rights guaranteed under Articles 14⁹ and 15¹⁰ remains dead letter to the scavenger community as they have been constantly discriminated and downtrodden by the society for generations in addition to denying them to have a dignified life.¹¹

It might be all the more interesting to note that manual scavenging, in contrast to its continued practice, is prohibited in our nation by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.¹² In fact, as the 1993 Act did not

⁸ The Constitution of India, 1949

⁹ Article 14: Equality before law

¹⁰ Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

¹¹ Article 21: Right to life and personal liberty

¹² The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Available at <http://labour.gov.in/sites/default/files/TheEmploymentAct1993.pdf>

have any provision for rehabilitation, the Parliament even came up with a new legislation 'the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013'¹³ recently to plug the gaps in the earlier enactment. Yet, the practice of manual scavenging persists in India as a caste occupation imposed upon those in the lowest rung of social hierarchy.

Manual scavenging can be perceived as another mode of forced labour wherein the untouchables/Dalits are compelled to pursue their hereditary occupation. While there are other laws also such as Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act, 1989, Protection of Civil Rights Act, 1955, and Bonded Labour System (abolition) Act, 1976¹⁴ which aims to protect interests of communities like that of manual scavengers, they continue to be victims of inhuman treatment. This is mainly due to the lack of effective implementation of the provisions and necessary action by the administrative authorities despite receiving reports of their constant violation.

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

While the 1993 Act focused on sanitation requirements, it paid little or no attention to the deep rooted social problem of the degradation of human dignity and thus was unable to come up with long term sustainable measures to eradicate the practice.¹⁵ Hence, after much deliberation and discussion, 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 2013 Act reinforces the prohibition imposed upon the practice manual scavenging. The main features of this Act that makes it stand apart from the earlier 1993 Act are that

¹³ "Dalit Women in Rajasthan: Status of Economic, Social and Cultural Rights", Fact-Finding Mission Report-1, PWESCR, p.2, available at http://www.pwescr.org/Dalit_Report.pdf

¹⁴ "Manual Scavengers and their Health", Rashtriya Garima Abhiyan, available at <http://www.mfcindia.org/main/bgpapers/bgpapers2013/am/bgpap2013h.pdf>

¹⁵ "Will the scourge of manual scavenging end: Analyzing the 2012 Bill", Gayatri Loomba, (January 13, 2013), JILS, available at <https://jilsblognujs.wordpress.com/2013/01/13/will-the-scurge-of-manual-scavenging-end-analyzing-the-2012-bill/>

it is wider in scope with broader definition of manual scavengers cover not only dry latrines but other insanitary latrines as well, inclusion of rehabilitation provisions and so on. It is noteworthy that the offences under this Act are not only cognizable and non-bailable 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.¹⁶

Critical Analysis of the 2013 Act

Despite being an improvement of the earlier legislation, this 2013 Act is not free from criticisms. There are certain apparent provisions under the 2013 Act which puts its effective implementation under question considering the reality of the situation. For instance, section 2 (1) (g)¹⁷ which defines the term 'manual scavenger', when read in its entirety reveals that the Act which was supposed to prohibit any form of manual scavenging has, on the other hand, legitimized manual scavenging by stating that it can be done by using protective gears and other devices.¹⁸

Further, section 2 (1) (e) of the Act which defines the term "insanitary latrine" carves out an exception 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*". This irony of this exemption comes into picture when it is brought to light that the Indian railway is one of the major promoter of manual scavenging. Hence, by exempting water flush latrine in a

¹⁶ Section 4

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¹⁸ Explanation to s.2(1)(g)

railway passenger coaches exempted from the purview of 'insanitary latrines', the Act is silently nodding to continued practice of manual scavenging at Indian railways where someone has to clean manually human excreta which is as prevalent at present.¹⁹

It should also be noted that the Act talks more on insanitary latrines, open drain and pit (e.g. section 4) while wide spread manual scavenging due to open defecation in most of the urban areas due to lack of sufficient sanitation is not addressed effectively. Also, the executing rules of the 2013 Act do not contain any provision to implement the important provisions of the new legislation nor does it speak about actions to be taken on implementing authority for non implementation of the provisions of the Act.²⁰

Section 39 (1) poses the most glaring challenge as it empowers the Government to "*exempt any area, category of building or class of persons from any provisions of this Act..*", thereby creating a major gap that can defeat the entire purpose behind passing this piece of legislation.

CONCLUSION

Manual scavenging is the most visible feature of the Hindu caste system and according to a recent news article, "*1.3 million Dalits make living as manual scavengers, most are women*"²¹. The practice has been long outlawed; however, it continues today in most states. In fact, it is one of the most prominent forms of discrimination against Dalits, and it is central to the violation of their human rights."²² Even though the 2013 legislation has made few

¹⁹ Critical Analysis of The Prohibition of Employment As Manual Scavengers and Their Rehabilitation Act, 2013, (Sept.29, 2013), available at <http://beyondheadlines.in/2013/09/critical-analysis-of-the-prohibition-of-employment-as-manual-scavengers-and-their-rehabilitation-act-2013/>

²⁰ "Manual scavenging – The Oppression Continues", Abhijit Prabhat and Pramit Bhattacharya, Vol. 2, Issue 1, 48-56, International Journal of Socio-Legal Analysis and Rural Development (IJSARD), available at <http://ijsard.org/wp-content/uploads/2016/04/MANUAL-SCAVENGING-THE-OPPRESSION-CONTINUES.pdf>

²¹ *Manual scavenging may be prohibited but continues unhindered in India*, (May 27, 2016), IndiaSpend, available at <http://www.firstpost.com/living/manual-scavenging-may-be-prohibited-but-continues-unhindered-in-india-2801604.html>

²² *Id.* at p.2. This report is based on research Human Rights Watch conducted between November 2013 and July 2014 in the Indian states of Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, and Uttar Pradesh.

improvements as compared to its predecessor, the Act still doesn't offer a complete satisfying solution to the persisting issue of manual scavenging and the underlying discrimination of scavengers in our nation. Despite coming up with better provisions, the 2013 Act still seems lacking in ensuring the effective implementation of the same. There are also certain major gaps in certain definitions and provisions under the Act that might severely affect the fulfilment of its objectives. If the abovementioned loopholes in the Act are not adequately addressed at the earliest, the 2013 Act might turn into another "toothless legislation"²³ like the 1993 Act which was widely condemned for its ineffectiveness. Discrimination and social religious, economic exclusion to vulnerable groups in India have resulted in a loss of identity and dignity. Caste based stratified social structure, corrupted bureaucracy and class inequality and capitalist ethos curb the resource ownership and opportunities to these vulnerable groups, and a democratic awakening through an able leadership is essential to uplift them from degrading discriminatory and inhuman practices.

²³ *"Will the scourge of manual scavenging end: Analyzing the 2012 Bill"*, Gayatri Loomba, (January 13, 2013), JILS, available at <https://jilsblognujs.wordpress.com/2013/01/13/will-the-scurge-of-manual-scavenging-end-analyzing-the-2012-bill/>