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Original Article

Rights of Manual Scavangers in India: A Socio-Legal Analysis

Karlapudi Venkata Ravi Kumar

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Abstract

Manual scavenging has been called the worst surviving symbol of untouchability. Decades after Independence and despite its leaps in science and technology, India is yet to find an alternative for manual scavenging. 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 not only diabolic but perhaps the highest degree of human rights violation. The Report of the Human Rights Watch also indicated that the occupation of manual scavenging is a caste based practice in India. Even after 75 years of Independence of the country, lakhs of the dalits are continuing in the unclean occupation. They are the worst victims of cruel social order and they are forced to continue in the same work and are suffering the caste based social exclusion. They are also paid low for their work. Their health and life are threatened, as the occupation is associated with hazardous working condition. They are prone to physical and psychological disorders. They are suffering objective hardship, humiliation, exploitation and social expulsion. Social compulsion to indulge in such heinous and hazardous work is both the rights issue and a social crime as well. Therefore, I have made an attempt in this paper to throw light upon the working conditions and living standards of the people performing scavenging operations and also it highlights the need of changing the beliefs and laws related to manual scavenging.

Keywords: Scavengers; Dalits; Caste based inhuman practice; Rehabilitation; Labour welfare.

INTRODUCTION

"I do not want to attain Moksha, I do not want to be reborn. But if I have to be reborn, I should be born an untouchable, so that I may share their sorrows, sufferings and the affronts levelled at them, in order that I may endeavour to free myself and them from that miserable condition. I therefore, pray that I should be born again, I should do so not as a Brahmin, Kshatriya, Vaishya or Shudra but as an Atishudra a Bhangi" -Mahatma Gandhi

The filthy and humiliating occupation of manual scavenging is still widely practiced in modern India. Manual scavenging is the removal of human excreta from households with dry toilets by members of the lowest rungs of society. In some of the remotest parts of the country, night soil is collected in buckets, only to be picked up by scavengers the next morning. The scavengers' own lives are deplorable with very low wages and a few morsels of food in return for their services.

Author Affiliation: Assistant Professor, ICFAI Law School, Hyderabad 502032, Telangana, India.

Corresponding Author: Karlapudi Venkata Ravi Kumar, Assistant Professor, ICFAI Law School, Hyderabad 502032, Telangana, India.

Email: ravikarlapudi74@gmail.com

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There are a very large number of people engaged in manual scavenging in different parts of the country, in rural areas as well as urban areas.[1] Manual scavenger means a person engaged in or employed for manually carrying human excreta.[2] But, under The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, the definition amended as 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, as the Central Government or a State Government may notify, before the excreta fully decomposes.

India records 5 million sanitation workers currently working in nine different types of sanitisation work. As of 2021, the survey conducted by Swachh Survekshan covered 4,242 cities and 17,475 villages in India, making it the largest cleanliness survey in the world. Identifying the numbers of manual scavengers in India through these Survekshan will not only provide more extensive coverage but will also uniform the data collection process across different states through formalised techniques like service level progress (data collected by local bodies), citizen feedback, and certification process.[3] According to the Safai Karamchari Andolan, a Social Services Organisation said that "We may have succeeded in sending people to space, but we still have a long way to go when it comes to understanding human dignity. Manual scavenging involves people cleaning human excreta. Indian society, which is mainly guided by the caste system, has thrust this practice on people from specific communities, who are from the 'untouchable' castes,"It is pertinent to mention that manual scavenging includes sweeping night soil on the street (dry excreta) followed by cleaning of water borne toilets. It also includes removal of bodies and dead animals followed by sewerage sweeping, and carrying night soil by basket/ bucket or on head. The scavengers crawl into the dry excreta and collect the human excreta with bare hands, carry it as head load in a container to dispose it off. During the British period with the setting up of army cantonments and municipalities, a large number of people were required to do these services on a regular basis.

The inhumane manual scavenging practice enslaves an estimated 1.2 million people in India, who belong to the scheduled caste and are placed in the lowest rung of Hindu society "untouchables among the untouchables". They are subjected to on-going, intergenerational torture, and severe mental and physical pain rooted in caste based discrimination.[4] Manual scavengers (95% women) manually clean dry latrines, used by others in their villages or semi-urban areas. They lift and carry heavy loads of excrement in cane baskets to designated sites of disposal. In the heat of summer and during the rains, the excrement leaks on to their faces and bodies. The stench and working conditions are unbearable. Additionally, manual scavengers are expected to carry out other "polluting" tasks, including disposing of dead animals, cleaning placentas after delivery, and various funeral related activities. Their children also face discrimination in schools.[5]

It is to be noted that there is a complete violation of basic human rights and dignity on the part of the Oppressed people in India. Specifically, Dalits of our country continue to be pushed to practise caste based occupations such as manual scavenging, and this type of discrimination emanates from the notion of purity and pollution and untouchability, which is deeply rooted into the mind set of upholders of caste in the country. The prevalence of caste based occupations such as manual scavenging, is a prime example of how caste, as a social construct continues to pervade economic activities and perpetuates discrimination, exclusion and victimization.[6]

GENESIS OF MANUAL SCAVENGING IN INDIA

The practice of manual scavenging in India dates back to ancient time. India is a country where since long exists the unique system of social stratification dividing individual into 4 different castes/groups in the society, namely Brahmins, Kshatriyas, Vaishyas and, Sudras. The Brahmins were considered to be at the top of the hierarchy followed by Kshatriyas, Vaisyas and with Sudrasat the bottom considered as the less privileged section of the society. One of the basic dogma of the caste system is to allocate labor on the basis of caste.[7] According to contents of sacred scriptures and other literature, scavenging by some specific caste of India exist since the beginning of civilization.[8] One of the 15 duties of slaves enumerated in Naradiya Samhita was of manual scavenging. This continued during the Buddhist and Mauraya period also. It is pointed out that the bhangis share some of the clan names with Rajputs, and propose that the bhangis are descendants of those captured in wars. There are

many legends about the origin of bhangis, who have traditionally served as manual scavengers. One of them, associated with Lal Beg bhangis describes the origin of bhangis from Mehtar.[9] Manual scavenging still survives in parts of India without proper sewage systems. It is thought to be most prevalent in Gujarat, Madhya Pradesh, Uttar Pradesh, and Rajasthan. Some municipalities in India still run public dry toilets. The scavenging castes which were known by different names in different states like Bhangi, Balmiki, Chuhra, Mehtar, Mazhabi, LalBegi, Halalkhor etc. in northern India. Har, Hadi, Hela, Dom and Sanei etc., in eastern India; Mukhiyar, Thoti, Chachati, Pakay, Relli etc., in Southern India; and Mehtar, Bhangias, Halalkhor, Ghasi, Olgana, Zadmalli, Barvashia, Metariya, Jamphoda and Mela etc., in western and central India, also made an effort to get united and have a common name.

In our country, earlier the biggest violator of this law is the Indian Railways which has toilets dropping all the excreta from trains on the tracks and they employ scavengers to clean it manually.[10] Later on, in line with Prime Minister NarendraModi's mission of Swacch Bharat, 100 per cent of passenger coaches have been fitted with bio-toilets. This has ensured that no human waste is discharged from coaches of passenger trains on rail tracks. With this effort of the Railway Ministry, around 2,74,000 litres per day of excreta on rail tracks are being avoided.[11]

INTERNATIONAL CONVENTIONS REGARDING MANUAL SCAVENGERS

The issues and concerns of manual scavengers have also been raised and reflected on and by the international forums, especially the United Nations (UN), in recent times. Data from the Joint Monitoring Program of United Nations Children's Fund and World Health Organisation show that global access to improved sanitation has increased between 1990-2015, the official end of the Million Development Goals era. The use of improved sanitation has increased almost everywhere. Almost 2.5 billion people still have no access to improved sanitation, but the said Program estimates that over 600 million have access to shared sanitation. Sanitation access in low income countries remains highly unequal.[12] It is to be noted that the UN High Commissioner for Human Rights Navi Pillay on 31st January 2013 welcomed the strong movement that has been developing over the past few months in India to eradicate the practice known as 'manual scavenging' which, because of the stigma attached to it, has traditionally been carried out by Dalit women in a clear manifestation of discrimination based on caste and gender. The focus on manual scavenging essentially the manual removal of human excreta from dry latrines and sewers has recently been significantly heightened in India by a National March for the Eradication of Manual Scavenging and is also known as "Maila Mukti Yatra".[13] With particular regard to the Indian government's legal protection of Manual Scavengers, it could be noticed that despite the boastings and despite the incorporation of international human rights standards into national law, India could not seemingly implement those laws and commitments. A commitment under International Covenant on Civil and Political Rights[14] and Universal Declaration of Human Rights has become a mere rope of sand in current scenario. In 2009, the special rapporteurs constituted by the sub-commission on the promotion and protection of human rights studied the issue of discrimination based on work and descent at a global level. The report of the special rapporteurs, which contains draft principles and guidelines for the Effective Elimination of Discrimination Based on Work and Descent, is one of the major developments in evolving norms and standards regarding discrimination based on work and descent or caste.

NATIONAL LEGISLATIVE FRAMEWORK RELATING TO MANUAL SCAVENGERS

Since manual scavengers belong to the backward section of society, they are entitled to some special rights apart from rights under the Indian constitution. Apart from plethora of constitutional provisions the legislature has enacted several enactments for the upliftment of the schedule class including manual scavengers.

a) It is pertinent to mention that initially the Untouchability (Offences) Act, 1955, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the scheduled castes. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955.[16]

b) The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989,[17] came into force on January 31, 1990. The Act, inter alia, specifies some types of offences as atrocities, provides for imposition of stricter penalties for the guilty and setting up of special courts for speedy trial of such cases. The main objective

of the Act is to prevent the commission of offences of atrocities against the members of the scheduled castes and the scheduled tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

c) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993[18] recognizes the link between manual scavenging and Dalits and viewed it as violation of the right to dignity. The Act prohibits manual scavenging in the form of employment. It also prohibits construction of dry latrines as the existence of dry latrines is one of the main reasons for continuation of the practice. Where as The National Commission for Safai Karamchari Act, 1993 aimed at constitution of the National Commission for Safai Karamchari to monitor various programmes and schemes for the welfare of SafaiKaramcharis. The Commission is merely an advisory body without real authority of any kind.

d) As the 1993 legislation failed to check the inhuman practice, a more comprehensive and deterrent form of legislation, The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 was enacted.[19] The Act aimed at upholding Constitutional values of protection of dignity and life and also to protect the vulnerable sections of the society from social injustice and exploitation. The objectives of the Act are prohibition of manual scavenging in the form of employment and rehabilitation of manual scavengers to a life of dignity. Rehabilitation is recognized as the effective means of eradication of the menace and it is extended even to family members.

LIFE THREATENING WORK

Number of deaths have been reported due to this age old inhuman practice in India. It is to be noted that the Ministry of Social Justice and Empowerment informed the Lok Sabha that 22 people had died while Manual Scavenging in 2021 so far. Whereas according to the National Convener of the Safai Karmachari Andolan, 472 manual scavenging deaths across the country were recorded between 2016 and 2020. In a report under Indian Express in March, 2022, Three labourers in Mumbai hired for manual scavenging, died after inhaling toxic fumes in a septic tank of a public toilet. Another case reported near Benguluru that 82-year-old Buranuddin lost his elder son, his son-in-law and nephew in an accident of manual scavenging in Kalaburagi district. They all worked for the Karnataka Urban Water Supply and Drainage Board.[20]

NEED FOR TECHNICAL INTERVENTION

Activists allege that the government has not been serious about eradicating this evil. The Act of 2013 says that scavengers should be replaced with machinery and technology. However, the required machines have not been bought. The safety equipment including gloves is not fit for use. Many organizations including the corporation continue to use open barrels for moving waste which is hazardous.[21] In order to abolish the practices of Manual Scavenging, the foremost alternative proposed by various stakeholders was of technological intervention.[22] It is to be noted that it would be believed that if we can hand over some gadgets to the people who engaged in toilet cleaning, it could help them in making them comfortable, and raise self-esteem in them. This way they can be part of new breed of social engineers. It is pertinent to note that technical interventions may help to replace manual scavenging to a great extent. For instance, the Water Supply and Sewage Board of Hyderabad is currently using mini jetting machines to clean choked water pipes in the narrow alleys. In Kerala, engineers have designed robots which can clean septic tanks. Further, use of anaerobic bacteria to treat human excreta has been explored but research on it needs more funding.

CONCLUSION

Yet, despite these laws and periodic intervention by the courts, the practice continues to prevail today. Thousands of people at the bottom of the caste hierarchy, belonging to the Scheduled Caste and Scheduled Tribes group, are compelled to do this job, attributing it to unemployment and social pressure, as well as the failure in implementing these laws by administrative bodies like panchayats in villages and municipal corporations in cities. Manual scavenging is a grave social evil, in violation of human dignity and all principles of decent work. It is firmly barred under the Constitution of India and treated as unlawful, yet it has endured because of consistent failures in implementing the law in the backdrop of embedded social practices and beliefs of culturally sanctioned caste and gender inequality. The practice of manual scavenging

is a caste based, dehumanizing, harmful and a filthy practice which is prevalent amongst the few sections of our society. It is not only human rights violation, but it also expose them to lot of health hazards as they work daily in a much polluted area without any precautions. There are still number of people in our society whose day start and end with carrying on the filthy practice of collecting night soil. Though government and our judiciary have taken lot of steps to eradicate this inhuman act, poor implementation of law, acceptance of the practice by that community itself, corruption and most importantly prevailing caste system.

Manual scavenging a caste based and hereditary profession, which is handed down, as a legacy from one generation to the next and it has been an age-old routine for this community, which is untouched by technological advancement in sanitary practices. What is worse is the fact that those born in this community are considered agents of pollution due to their background of social hierarchy, based on birth. They are the most oppressed and suppressed class of Indian society; hated and avoided by all other castes and classes. The appalling hardship, humiliation and exploitation they face, have no parallel in human history. It is also recommended that the low education among scavengers indicates that the existing facilities provided by the government for promotion of education among scavengers are not fully made use of till so far. Thus, concerted efforts are needed to be made for making the community aware of the existing legislative provisions and motivate its members to avail of the facilities and offer them special incentives. The local Non-Government Organisations, educated persons from the community, and Department of Education may be involved actively in order to mitigate this evil practice.

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