

# Manual scavenging in India: Violation of Human Rights

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## ABSTRACT

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Manual Scavenging is one of the worst forms of practice that is prevalent in India even after a number of legislations, policies, schemes, rules adopted by States and Centre in order to eradicate it. It is the practice of removing night soil either through bare hands or with the help brooms. Manual scavenging has been in existence since human civilization. It is basically a stigma that is being related to the lower sections of the society, exclusively Dalits, and more particularly the lower class Dalits. At its worst, most of the people don't even realize it as a social problem. Therefore, this study is being made to understand the reason behind the origin of this deplorable practice and how this practice has grown to be a big issue at present which has also become so hard to be eradicated.

The study is being made to focus on the life of the manual scavengers and the challenges they face socially as well as economically in a day to day lives. The study shows how this inhuman practice is violative of human as well as fundamental rights of the manual scavengers. The study further covers the present condition of this section of people and that the recognition of the issue and then rehabilitation followed by opportunities and exposure to different jobs can lead to the extinction of this problem. Further, it is so disgusting on part of a country like India where with the great leads in science and technology, still left are some sections of the Indian Society that collect night soil through their bare hands, broom or metal scrappers.

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## 1. Introduction

*Sanitation has a strong connection not only with personal hygiene but also with human dignity and well-being, public health, nutrition and even education. There must be total sanitation for all.*

- M.K Gandhi

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 Sudras at 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.

The constitution of India under Article 17 prohibits untouchability which, however, is still existing in the roots of the country in many forms and it's one such form can be seen as the community of the Manual Scavengers.

Manual Scavenging generally refers to the inhuman practice of collecting human excreta manually from dry toilets or an open drain or pit into which the human excreta from the latrines is disposed of.

Section 2 (g) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 defines manual scavenger 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..."<sup>1</sup>

The practice of manual scavenging, therefore, has its beginning with the caste system wherein the individual belonging to the lower caste were made to involve in such kind of inferior works. The basic reason that the lower classes were involved in this type of practice was that earlier there were no flush toilets available and it was required to remove the excreta from those dry toilets for its further use, therefore, no other than the lower class people were made to perform such filthy tasks. The practice of manual Scavenging is mainly performed by the Dalits, particularly the lower class Dalits.

There are many forms to manual Scavenging such as Removal of human excrement from public streets and "dry latrines" (meaning simple pit latrines without a water seal, but not dry toilets in general), Cleaning septic tanks, Cleaning gutters and sewers as is declared by The International Labor Organization.<sup>2</sup> Not just this, there is also one more prominent form to this practice which is collecting human excreta dropped in the railway tracks through the toilets in the train.

The founder of Sulabh Toilets, Bindeshwar Pathak in his book "Road to freedom" has mentioned that according to the contents of the ancient scriptures and other pieces of literatures, it can be realized that the practice of removing night soil was in practice since civilization. One of the 15 duties of slaves as is specified in *Naradiya Samhita*, was to dispose of

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<sup>1</sup> Sec 2(g) of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ( Act 25 of 2013)

<sup>2</sup> Human rights watch, Report on Cleaning Human Waste "Manual Scavenging," Caste, and Discrimination in India (August, 2014)

human excreta. In *Vajasaneyi Samhita* the *Chandals* and *Paulkasa* have been referred to as slaves for the disposal of night soil. Also, it was not until the advent of Muslims that the practice of manual scavenging became a formal profession. It is said that the system of Bucket privies was designed and constructed by Muslims for their women in purdah. Those who were captives were made to clean latrines, bucket privies and throw off the night soil in distant places. And when these captives freed they were not accepted by the society and therefore they formed the separate caste and continued the work of scavenging.<sup>3</sup>

This is how this practice of manual scavenging has grown and spread to the whole of the country leaving the people belonging to this section helpless.

## 2. Manual Scavenging and Human Rights Violation

As their brooms wear down, they have to bend their backs lower and lower to sweep. When their baskets start to leak, the [human] shit drips down their faces. In the rainy season, the filth runs all over these people, onto their hair, their noses, and their mouths. Tuberculosis and infectious diseases are endemic among them.<sup>4</sup>

Manual scavenging continues to exist in India, despite being unacceptable and hazardous as method for human waste disposal, despite scientific and technological advancement on various fronts that saves manual labor, and despite the availability of simple and low-cost alternatives which can eradicate both the problems of manual scavenging and safe disposal of human excreta. It passes on from generation to generation. The culture of acceptance prevailing among them is also one of the factors that deprive them of their basic human rights. Despite several schemes, laws and policy initiatives the state has failed in its endeavors due to lack of a reliable number of manual scavengers, poor enforcement of laws, corruption and strict caste hierarchy that exists in rural as well as urban areas of India.<sup>5</sup>

Manual Scavenging along with being a caste-based is also a gender-based practice with 90% of women being engaged in such occupation. Though the Constitution guarantees to every human being dignity as inalienable to existence, the indignity and social prejudices which Dalits face endure to haunt their lives. Seventy years after independence, a section of Dalits has been forced to continue with the indignity of manual scavenging.<sup>6</sup>

This practice of manual scavenging is a blatant violation of the human rights and fundamental rights under Article 14, Article 17, Article 23 and Article 21 of The Constitution of India. In such violation of basic human rights, they suffer physical torture and if they forbid carrying such filthy caste base task they are frightened to be socially and physically excluded from the community.

<sup>3</sup>Bindeshwar Pathak, *Road to freedom : Sociological Study on the Abolition of Scavenging in India*, (Motilal Banarsidass Publisher, 1999).

<sup>4</sup>Sujatha Gidla, *Ants among Elephants: An Untouchable Family and the Making of Modern India* 114 (Harper Collins 2017)

<sup>5</sup>Abhishek Gupta, "Manual Scavenging: A Case of Denied Rights" *ILI Law Review* 38(2016)

<sup>6</sup>ibid

Article-1 of the Universal Declaration of Human rights (UDHR) says that all human beings are born free and equal in dignity and rights.

Article-2(1) of UDHR says about the entitlement to everyone all the rights and freedom set forth in this Declaration, without any distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article-23(3) of UDHR provides that everyone who works has a right to just and favorable remuneration enduring for himself and his family an existence worthy of human dignity and also if necessary, by other means of social protection.

India having ratified the UDHR and the most of the fundamental rights in the constitution of India being similar to those in UDHR, the Constitution of India provides for the protection of the Scheduled Caste (Dalits) with the aim of eradicating their social problems and also promoting their interests. Therefore, the Practice of Manual Scavenging violates the following fundamental Rights:

- **Art 14** which deals with equality before law and equal protection of law is violated in the sense that the communities of Manual scavengers are treated differently by the other section of the society. In fact, they are number of times forced to get involved in such type of filthy occupation because of their non- acceptance in the mainstream section of the society. Their situation is so worse that there exists a notion that a person who touches a member of such community themselves becomes untouchable.

Also, those that practice manual scavenging is denied access to communal water sources and even public places of worship, they are even excluded from community religious and cultural events, and subjected to private discrimination from upper-caste community members. For instance, a temple in Rudawal town in Bharatpur district, Rajasthan, a Valmiki families clean garbage and open defecation from around the temple, but are not allowed to enter the temple.<sup>7</sup>

- **Art 21** of the COI talks about Right to life which includes Right to live with dignity<sup>8</sup> which the communities of the manual Scavengers are being deprived of as they are made to collect human excreta manually in return of few pennies. Due to bad economic condition and no other work to carry on they are left with no other option than to carry such dehumanizing work which deprives them of a dignified life.

Sanitation workers enter drains/pipes and manholes for manually cleaning it without any safety equipment which expose them to various short- term and long term health risks health risks, and in the worst case, death.<sup>9</sup>

Since 2017, one person has died every five days across the country, as analyzed by the National Commission for Safai Karamcharis.

<sup>7</sup>Supra note 2

<sup>8</sup>Maneka Gandhi v Union of India, AIR 1978 SC 597

<sup>9</sup>Philippe Cullet and Lovleen Bhullar (eds.), *Sanitation Law and Policy in India* 112 (Oxford University Press, 2015)

Moreover, the courts have recognized the existence of the fundamental right to sanitation as derived from the fundamental right to life.<sup>10</sup> This right equally belongs to these communities of Manual scavengers as it belongs to the other section of the society. This practice of removing the night soil from dry latrines, pits blatantly violates the fundamental right to sanitation.

- **Art 17** of the COI prohibits the Practice of Untouchability. It was a promise to lower castes that they will be free from social oppression. Yet for the marginalized communities, little has changed. The list of the daily atrocities committed against Dalits is endless.<sup>11</sup> The major section of the society has not accepted them as part of their society and therefore, always treats them indifferently. They face discrimination when they try to go for other forms of employment, and therefore they are unable to escape their designated occupation even after the practice itself has been prohibited by law.

### 3. Legislations and Judicial Decisions for the protection and rehabilitation of Manual Scavengers

A number of laws have been adopted over time to realize the constitutional rights of manual scavengers but they have not been properly implemented. When these legislations failed to cure the cause of manual scavengers, public interest litigations were filed which led to various judicial pronouncements concerning the issue.

#### Legislations

**The Protection of Civil Rights Act, 1955** was enacted to abolish the practice of untouchability and social disabilities arising out of it against the members of scheduled castes. Moreover, with the further amendment, the practice of untouchability was made both cognizable and non-compoundable offence. Under the Act, compelling any person on the ground of untouchability to do any scavenging or similar related job will be deemed to have enforced a disability arising out of untouchability and will be punishable.<sup>12</sup>

**The Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989** was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes, and the Schedule tribes, to provide for special court for the trial of such offences and also for the relief and rehabilitation of the victims of such offences. Sec 3(j) of the Act specifically provides making, employing, permitting a member of Scheduled Tribe or a Scheduled Caste to do manual scavenging, a punishable offence.<sup>13</sup>

**The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993** was the first act enacted by the parliament, specifically to abolish

the practice of manual scavenging. But this law couldn't be effectively implemented which led to various PIL, which led the government to enact more effective law concerning the issue. Therefore, The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 was enacted which outlaws all forms of manual scavenging, beyond just dry latrines, prescribes penalties for those who perpetuate the practice, aims to protect and rehabilitate the person engaged in such kind of practice and their families, communities by providing alternate livelihood and other assistance. These were the legislations that specifically dealt with the plight of the manual scavengers.

**Bonded Labor System (Abolition) Act, 1976** provides for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people.<sup>14</sup>

**Protection of Human Rights Act, 1993** provides for the constitution of a National Human Rights Commission, State Human Rights Commission and also for Human rights courts for better protection of human rights.<sup>15</sup>

**National Commission for SafaiKaramcharis Act, 1993** established the National Commission for SafaiKaramcharis to study evaluate and monitor the implementation of various schemes for safaikaramcharis as an autonomous organization and also to redress their grievances.

Moreover, **the National commission for Scheduled caste (NCSC)** was further constituted through Constitution (Eighty-Ninth Amendment) Act, 2003 with a view to safeguard the interest of Schedule castes in India.

#### Judicial Decisions

The enactment of 1993 Act was not of much help in the eradication of the practice of manual scavenging. Thereafter, many PILs were filed by various organizations seeking for mandamus against the State to direct them to take actions against the inhuman and discriminatory practice of Manual Scavenging.

In *SafaiKaramchari Andolan v. Union of India*<sup>16</sup>, the Supreme Court directed all the State government and Union territories to effectively implement the provisions of 2013 Act in order to completely abolish the practice and provide for the rehabilitation of people released from manual scavenging.

*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewage and Allied Workers and ors.*,<sup>17</sup> wherein the court reaffirming the judgment of Delhi High Court and held that the State and their instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed.

### 4. Present Condition

<sup>10</sup> Municipal Council, Ratlam v. Vardhichand and others, AIR 1980 SC 1622, Virendra Gaur and ors v. State of Haryana and ors., (1995) 2 SCC 577

<sup>11</sup> Supra note 6.

<sup>12</sup> The Protection of Civil Rights Act, 1955 ( Act 22 of 1955)

<sup>13</sup> The Schedule Castes and The Schedule Tribes (Prevention of Atrocities) Act, 1989( Act No. 33 of 1989)

<sup>14</sup> Bonded Labour System ( Abolition) Act, 1976 (Act 19 of 1976)

<sup>15</sup> Protection of Human Rights Act, 1993 ( Act 10 of 1994)

<sup>16</sup> (2014) 1 SCC (LS) 765

<sup>17</sup> (2011) 8 SCC 568.

Despite the plethora of legislation and a number of judicial decisions the life of manual scavengers seems to have taken no turn. In the Recent survey by the Central Government, the count of Manual scavengers has increased to 53,000 which moreover accounts for only 121 districts in the country and focuses only on a few kinds of Manual scavenging.<sup>18</sup> The failure in the part of the executive in eliminating insanitary latrines can be construed from the fact that according to 2011 census of India, there are 13,14,652 latrines where night soil is disposed into the open drain; 7,94,390 latrines are manually serviced and 4,97,236 latrines are serviced by animals.

The State is failing to implement the laws and punish the violators of it. In fact, according to the National Advisory Council, "almost no one has been punished under this law."<sup>19</sup>

According to SC, government surveys have been ineffective. In particular, the court notes, the 2013 central government survey "has shown remarkably little progress" and has identified "only a minuscule proportion of the number of people engaged in manual scavenging."<sup>20</sup>, which obviously not reality.

The Indian railway is the largest institution in the country that is responsible for the promotion of manual scavenging as it uses dry latrines. Only after expeditious solution to this issue, the Government of India can ensure the clearance of scavenging to some extent. At present, a major concern should also be towards speeding up construction of bio-toilets in railway stations and trains.

## 5. Conclusion

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 and economic pressure over shadows these laws.

It is to be construed that the attempts of the legislation and judiciary will be of no use until and unless these communities rise up and stand for them against this disgusting practice. The members of the community together should form a self-help group and together start working in different fields like was the case of manual scavengers from Dewas, Madhya Pradesh wherein group of 20 people formed a self- help group thereafter leased a local village pond and began fishing, which

served two-fold purpose, namely, leaving the filthy occupation and also increase in the family income.

Also, the most imperative requirement in order to eradicate the issue is the rigorous enforcement and scrutiny measures required to ensure proper implementation of laws and effective use of budgetary allocation. As Sanitation is the state subject, therefore the State shall come out with different innovative programmes in order to curb this menace.

Moreover, the criminal justice system should be made easily accessible to such sections of the society as owing to the prevalent discrimination it is not possible for them to fight against the major section of society which obviously stands higher to them.

The harsh reality of this social problem is that many of us are hardly even aware about the existence of such an evil practice and the daily challenges face by this community socially and economically. Therefore, awareness should be made among the public about this dehumanizing practice and should be instructed to discourage such practices.

Other than this, one of the steps that can be adopted in order to eradicate this dehumanizing practice is to find an alternate solution to it. There have already been many innovations developed across the country that is successful in replacing manual scavenging. For instance, Hyderabad Metropolitan Water Supply and Sewerage Board are using 70 mini jetting machines that can access narrow lanes and smaller colonies to clear the choked sewer pipes and in Thiruvananthapuram, a group of engineers has designed a spider-shaped robot that cleans manholes and sewers with precision<sup>21</sup>, new technologies like suction pumps loaded onto trucks are being designed for removal of silt from manholes to avoid manual scavenging in Bhopal.

Henceforth, the aim to eradicate such practice can only be successful if attempt is made equally by: **The Government** in effectively implementing the laws concerning manual scavenging, **Manual scavengers** in coming together and helping themselves to overcome this filthy practice, **The Criminal Justice System** to identify and punish the violators of the laws and lastly the remaining sections of the society by firstly identifying it to be a major social issue and working towards its eradication by not employing anyone for such tasks.

<sup>18</sup>The Wire Staff, "Centre Counts 53,000 Manual Scavengers in India, 4x Higher than Last Survey, The Wire, June 15, 2018.

<sup>19</sup> Standing Committee on Social Justice and Empowerment, 32nd Report on The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill 2012, (March 2013)

<sup>20</sup> Supra note. 16

<sup>21</sup>Subhjit Goswami, "Manual scavenging: A stinking legacy of suffocation and stigma", Down to Earth, 11 September 2018