
The Practice of Manual Scavenging in India and Its Deleterious Effects on Human Rights: An Exploratory Study

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Abstract

Manual Scavenging exists since time immemorial and is imbibed in the caste system in India. The practice of manual cleaning, even with the use of safety equipment not only violates the legal mechanism but also reveals the inhuman behavior inflicted upon a particular class of people and their unfortunate circumstances. There have been various legislative and judicial attempts made to eradicate this problem of Manual Scavenging. It is therefore imperative to understand the measures undertaken to eradicate this practice. The paper suggests a probable solution to curb the problem.

Keywords: Manual Scavenging, India, Government Efforts, Barriers, Caste system

Introduction

“The day everyone in India gets a toilet to use, I shall know that our country has reached the pinnacle of progress.”-Jawaharlal Nehru [1]

Manual scavenging, one of the worst existent symbolizations of untouchability, has been defined as the “*removal of human excreta from public streets and dry latrines, and cleaning septic tanks, sewers and gutters*” by the International Labour Organization.[2] Despite its prevalence across the globe, the practice is predominantly widespread in India, especially in the states of Uttar Pradesh, Rajasthan, Maharashtra, Madhya Pradesh and Gujarat. [3]

Further, in India, the practice largely witnesses the engagement of the lower castes, referred to as Dalits. They are customarily placed at the bottom of all other castes and professions, with different designations being given to them all over the country. However, caste discrimination is not the only evil lurking within this practice. The difference in the payment based on gender is appalling, with men earning around Rs. 300 per day for cleaning sewer lines, while women get remunerated with amounts between Rs. 10 and 50 per month, for each household.[4]

Even though the “*Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013*” (hereinafter referred to as PEMSAR Act, 2013) was enacted by the legislature, which sought to prohibit the employment of individuals for the purpose of hazardous cleaning of sewers lines and septic tanks, it was full of contradictions and imperfect provisions. It legalizes the practice under the veil of the utilization of protective equipment, a loophole that is largely misused by employers.

The continuation of manual scavenging, to say the least, is a statutory violation, but at its very core, it violates human rights.[5] Without societal pressure and political will being exercised, an increasing number of lives could be lost. Himanshu Pandey and Minakshi Goswami [6] addresses the numerous issues and challenges connected with the practice of manual scavenging within the country, and the role played by the judiciary in identifying and highlighting the condition of the individuals engaged in the practice. They recommend several measures to end the practice in its entirety, specifically focusing upon the need for considering the prevailing statutory and administrative policy. The origin of this issue is associated with the poverty and caste apartheid in our country.[7]

The report published by the non-profit *Human Rights Watch*[8] plays a significant role in underlining how individuals who undertake activities pertaining to manual scavenging are customarily from castes and communities which are designated the bottommost position in the hierarchy, creating social stigma which perpetuates discrimination on a large scale “*The Shadow Report to the UN Committee on the Elimination of Racial Discrimination*”[9] deals with the caste-based discrimination prevalent in India, analyzing how the practice has

come to be prescribed as a social and hereditary occupation, thereby imposing social disabilities on individuals solely on the basis of their birth in certain caste groups.

The paper therefore seeks to analyze the various facets of manual scavenging as is practiced in India, the problems arising out of it and attempts to provide feasible solutions to address the same.

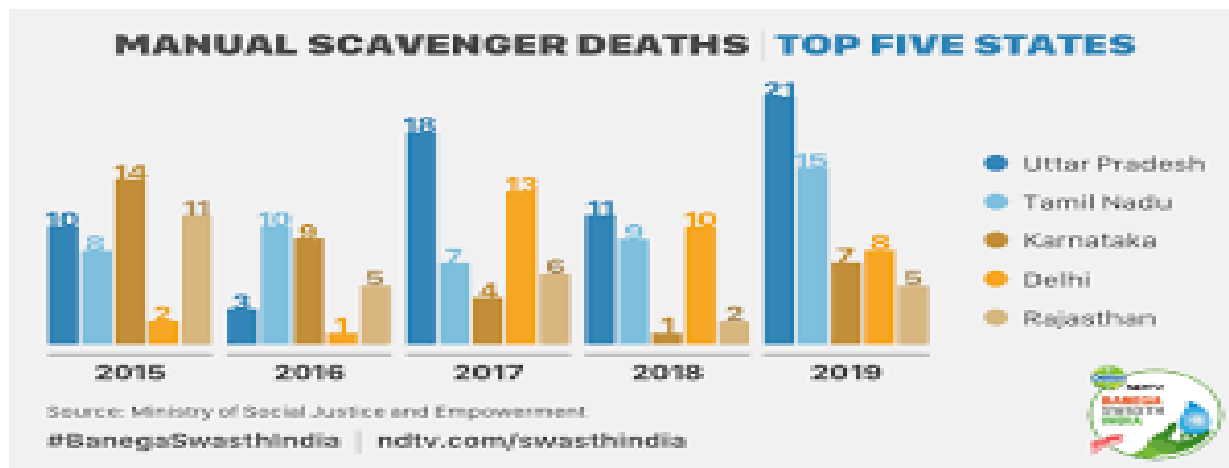
Persistence Of Manual Scavenging in India

The practice is said to have been initiated in Europe in 1214, with the concept of public toilets being first introduced.[10] With Sir John Harrington inventing the water closet in 1596 [11] and S.S. Helior developing the concept of flush-type toilets by, [12] the western world discarded the idea of all other toilets. However, India persists as the only country wherein a specific segment of the society is given the responsibility of cleaning the surroundings, by taking away all the waste produced, even human excreta.[13]

Even with the passing of the PEMSAR Act, 2013, which prohibits the employment and engagement of manual scavengers as defined under Section 2(g),[14] the inhuman practice still prevails in the country. As per the data of the 2011 Census, there exist 794,390 dry latrines across the nation, with 73% of them being based in rural areas. Further, 1,314,652 toilets are being used wherein human excreta is being flushed in open drains.[15]

The profession has been prevalent in India ever since human civilization was compartmentalized into the Varna system. [16] Perceived as a deplorable and filthy occupation, it came to be performed exclusively by individuals belonging to the Dalit castes and sub-castes, which were considered ‘untouchable’ by others. [17] The occupation in itself was seen as extremely degrading by the Hindu society, such that it constituted a permanent state of pollution.[18] Consequently, as a hereditary profession, it applied to entire communities, which came to be treated as untouchable and unapproachable.[19]

Issues Related to Manual Scavenging



Source: Ministry of Social Justice and Empowerment
Lacunae in the System

While the PEMSAR Act, 2013 imposes several obligations upon the authorities, it does not lay down the penalties or punishment in case of non-compliance or neglect. The absence of such provisions only encourages lethargy, as there would be no inquiry or punishment against the offenders. Even though various committees have been formed under the act for proper implementation and supervision over the authority, no action has been undertaken yet. It is pertinent to note that the definition of *hazardous cleaning*[20] does not explicitly prohibit the cleaning of septic tanks and sewer lines manually by the workers, thereby promoting the deplorable practice, albeit with the utilization of protective equipment and cleaning devices. It does not even include the cleaning of human excreta manually from insanitary latrines, which often leads to various diseases amongst the workers, proving to be extremely hazardous.[21] The most dreadful definition within the Act, however, is the one which states that individuals engaged in the cleaning of human excreta would not be considered manual scavengers, so long as they carry out the activities with the help of “cleaning devices and protective gear.”[22] The legislation must aim at completely

prohibiting the practice, instead of preserving the inhuman character of the practice by continuing it with the use of protective equipment, which has not even been defined within the Act.

It is pertinent to note that the court cannot take cognizance of the offences committed with relation to the PEMSR Act, 2013, unless a complaint is filed within three months of commission of the offence.[23] Perceptibly, it is difficult for workers belonging to the lower castes, who have already been marginalized enough, to oppose the inhuman treatment inflicted upon them, moreover within a minor time frame. Therefore, the court must take *suo motu* cognizance of the issues and try to eradicate the practice from the society.

The loopholes present in the legislative system must be eliminated, by enforcing stricter laws and regulations to completely eliminate the practice and rehabilitate the individuals involved in the practice. Manual scavenging is a form of forced labour, violating Article 23 of the Constitution, besides the numerous human and fundamental rights. These workers belong to the lower castes, and are not accepted in the society owing to their profession. Accordingly, the Government must undertake action to protect their right to a dignified life, within a healthy environment. However, the responsibility does not lie on the legislature alone. The executive must ensure that there is effective implementation of the law after its enactment. Even with the prohibition on employing manual scavengers in 1993, with additional liabilities being imposed in 2013, the practice is still prevalent throughout the country, especially in the railway sector. Employing the workers on a contractual basis privately and labelling them as *Safai Karamcharis* does not change the truth about the practice being that of manual scavenging.

Obstacles to ending Manual Scavenging

Failure of the State

According to the resolution of the National Advisory Council,[24] “almost no one was punished under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993”[25] for perpetuating manual scavenging. The lethargy displayed by the administration can be witnessed by taking note of the lakhs of dry latrines present across the nation, which require manual servicing. [26]

Hinderances in obtaining access to the criminal justice system

While police inaction for investigation into complaints is a challenge faced by people all over the country, the condition is considerably worse for people who belong to classes which are socially and economically backward.[27] Owing to the caste discrimination, Dalits often require a substantial amount of assistance while knocking the doors of the criminal justice system. The failure to act varies from local government officials to police personnel, who do not even register the complaints of these individuals under the “Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988,” (*hereinafter* referred to as the SC/ST (Prevention of Atrocities) Act, 1988), a law which is particularly significant in the protection of individuals employed as manual scavengers.[28]

Pressurization By Community Employers

Refusal to undertake caste-based professions and activities often results in dominant caste groups denying them access to property owned by upper-caste individuals, or even community property. Belonging to poor financial backgrounds, the workers do not have their own land and require access to these areas for their basic livelihood, thereby being coerced into the practice by people belonging to the upper caste. [29]

Lack of Accountability

The PEMSR Act, 2013 has not only conferred responsibility upon district magistrates and local authorities to ensure that Act is implemented effectively, but has also provided for the appointment of inspectors to be appointed for examination of the premises to prevent the employment of manual scavengers. Further, Vigilance committees are constituted at the district level as well as the sub-divisional level, in addition to monitoring committees at the state and central level.

However, it is necessary for the provisions to be executed efficiently, by means of adequate resources and training being provided for setting these mechanisms into motion, along with communities involved in the practice, civil rights activists and organizations.[30]

Absence of Adequate Alternative Employment Opportunities

For eradicating the practice from the country, individuals ought to have access to alternative employment opportunities. Further, the social and economic boycott faced by them for denying the continuance of the practice,

the caste discrimination involved in the access to different opportunities, and the corruption present in the entire system is all factors that obstruct the eradication of the practice. [31]

Inadequate Survey Data

The Supreme Court observed in 2014, that the surveys conducted by the central government have exhibited considerably low progress, identifying only a small percentage of the number of workers actually employed within the practice. Therefore, it is of extreme significance to undertake comprehensive surveys over fixed periods of time, either by the Government alone, or with the help of credible NGOs.

Efforts To End Manual Scavenging

GOVERNMENT APPOINTED COMMITTEES AND COMMISSIONS

V.N. Barve Committee (Appointed In 1949):[32] The “Scavengers’ Living Conditions Enquiry Committee” Was appointed in order to analyze the living conditions of individuals engaged in scavenging in Bombay and accordingly put forth suggestions to improve their working conditions.

Kaka Kalelkar Commission (Appointed in 1953):[33] The Commission was set up to determine the criteria to be adopted while classifying particular sections of the society as socially and educationally backward. After extensive investigation, the committee provided a list of all such classes and put forth several recommendations for improving their conditions.

Malkani Committee (Appointed in 1957):[34] The Committee recommended that the system of bearing night-soil as a load on the head must be eliminated, along with all the filth and indignity involved in the process of scavenging, in order to improve the social status of these communities.

Committee on Customary Rights:[35] (***Appointed in 1957***): The committee dealt with the issue of abolishing customary rights of manual scavengers, wherein it found that a specific individual obtained rights hereditarily, to cleanse the sewer lines and latrines, as opposed to other such workers, by mutual understanding and agreements.[36] Further, the household requiring such services develops a customary relationship with the scavenger for all payments.[37]

Pandya Committee (Appointed in 1968):[38] The Pandya Committee recommended that a Central law be enacted to control the living conditions and working environment of individuals employed as manual scavengers, in addition to the conception of an efficient enforcement mechanism.

GOVERNMENT ADMINISTRATIVE SCHEMES

“Self-employment scheme for rehabilitation of manual scavenging” (SRMS): Introduced with the aim of liberating and rehabilitating persons engaged in manual scavenging, and revised in consonance with the Manual Scavengers Act, 2013,[39] the scheme encourages alternative occupations by offering cash assistance and concessional loans with subsidies.

“National scheme of liberation and rehabilitation of scavengers and their dependents” (NSLRSD): The scheme was launched with a vision to liberate manual scavengers from their inhuman profession, but failed to achieve its purpose, even with an investment of Rs. 600 crores.

Swachh Bharat Abhiyaan: The national campaign, which replaced the Nirmal Bharat Abhiyaan in 2014, was visualized with the objectives of eradicating manual scavenging, eliminating open defecation, scientific solid waste management and promoting healthy sanitation practices.

INTERVENTION BY THE JUDICIARY IN THE PRACTICE OF MANUAL SCAVENGING

Highlighting the significance of rehabilitation, the Court in Safai Karmachari case[40] issued several directions in the public interest litigation filed by the petitioners,[41] so as to ensure that the individuals who have been released from the practice do not face obstacles in obtaining their legal rights and privileges. The Court not only directed the state level governments to effectively implement the provisions under the PEMS Act, 2013[42] but also directed that appropriate action be undertaken in case of non-compliance and violation.

Further, it directed that a compensation amount of Rs. 10 lakhs be provided to the families of such persons who died while doing sewage work and that support be provided to *Safai Karamchari* women by means of livelihood schemes made available to them. In the landmark case of *Delhi Jal Board*,^[43] the Supreme Court criticized the government administration for its sheer insensitivity towards the deprivation of fundamental rights, that of life and personal liberty, equality and dignity of such individuals who undertake inherently dangerous jobs solely due to economic compulsion.

In addition to directing that higher compensation be paid to the families of the persons who lost their lives working, the Court directed that local, municipal bodies must make sure that compliance with all such orders and directions passed by the High Court is ensured immediately, so as to ensure the protection and wellbeing of the workers.

Conclusion And Suggestions

“I may not be born again but if it happens, I will like to be born into a family of scavengers, so that I may relieve them of the inhuman, unhealthy, and hateful practice of carrying night soil.”

- M.K. Gandhi

It is extremely pertinent to note that even with the introduction of the various initiatives that the government has undertaken, the condition of manual scavengers in India is far from improvement. The reforms, although initiated for social welfare, have failed at ensuring effective implementation at the grassroot levels, with the very basic needs and enrichment of these communities remaining unsatisfied. Even with extensive legislations and financial strategies like budget allocation and assistance programs, there exist no measures for enforcing and analyzing the efficient utilization of these resources.

Linking the Manual Scavengers Act, 2013 to social security schemes: The Act must be amended, so as to link rehabilitation programs with social security legislations, including the provisions under the MNREGA, 2005 [44] and the “Unorganized Sector Workers' Social Security Act, 2008”.^[45] This would not only eliminate the practice of scavenging activities, but will also assist these communities to secure employment opportunities provided under the various legislations.

Establishment of coordination between public and private authorities: With the effective assistance and coordination of the various Ministries of the Central Government, including those dealing with rural development, poverty alleviation, social justice, labour and sanitation, a huge paradigm shift can be brought in, with reference to the eradication of the practice. Further, private authorities like Non-Governmental Organizations and Resident Welfare Associations must be given the status of extended public authorities, so as to ensure the enforcement of the law.

Creation of Awareness: The lack of proper sanitation in different areas across the country is one of the major obstacles in the abolition of the practice. Thereby, setting up sanitation programs to raise awareness about the need for proper toilets becomes extremely significant. The Ministry of Sanitation and Drinking Water was created by the Government in 2009, in order to oversee the system revolving around sanitation programs, which not included the construction of modern toilets, but also strongly discouraged the system of open defecation. The Swachh Bharat Abhiyan was also launched with a similar aim, that of awareness creation, in rural as well as urban areas.

Contribution by the Railway system: The Indian railways, the largest organization utilizing dry latrines, must be prohibited from engaging in the practice of manual scavenging, and a corresponding progress report must be presented by the respective ministry in every session of the Parliament for a period of at least three to four years. Construction of bio-toilets in trains and railway stations, with the assistance of organizations dealing with research and development, can also help in abolishing scavenging in the railway system.

National Monitoring Committee and Social Audits: A monitoring committee, constituting representatives from the public, government ministries, state or civil society organizations, must be formed by the Central Government, which would frequently supervise the practice on a national level. Since the effective implementation of the legislation is extremely significant, an advanced social audit for the provisions under the Act and its corresponding schemes must be carried out by the CAG of India. It would allow policy makers in identifying the various loopholes in the system, thereby facilitating implementation. Further, in order to identify such workers in various states, an extensive survey must be conducted by an advanced state-level committee, which would function under the chairmanship of a high court judge, constituted by representatives from state bureaucracy, or commissions working towards furthering the cause of different human rights.

Role of Municipal Authorities: Not only is it extremely significant to empower local, municipal authorities to disallow the construction of houses with latrines which are dry, unsanitary or sealed without water, appropriate measures must also be taken to demolish older constructions which retain the older models and convert them into the newer technology, within a certain time period. The authorities must be permitted grants on the basis of fulfillment of these obligations, and penalties must be imposed in case of non-compliance. The proceedings must include a discussion regarding the progress related to the eradication of manual scavenging, which must be led by the committee responsible for social justice and recorded by the president for official purposes.

Legislative Measures: Amendments must be made to different legislations, instead of a constitutional amendment, in order to bring about consistency in the framework surrounding the eradication of scavenging as a practice. The Amendment brought in 2015 to the SC/ST (Prevention of Atrocities) Act, 1989 brought about significant changes to ensure more stringent punishment for protecting the communities, and has become an important milestone, promoting social welfare.

Therefore, that health of the community will improve through improved sanitation system. Even in India, although there have been numerous attempts at establishing and improving urban sanitation services in the country, a large segment of households is unable to access them. Further, owing to overall poor sanitary coverage and high dependence on traditional methods, substantial involvement of these workers is witnessed in cleaning and scavenging toilets.

Despite having a number of legislative measures, programs and schemes to improving the plight of manual scavengers still, its implementation needs support from the community at all stages. Individuals must also undertake the adoption of sanitary practices, and discourage the participation of manual scavengers for such menial activities.

Thus, based on the above analysis, Hypothesis I and II stand proved as it is well established that manual scavenging in India is primarily caste based and the current legal mechanism has not been successful in protecting the dignity of the individuals engaged in the practice of manual scavenging, which needs to be addressed.

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