



ANALYSIS OF THE INDIAN LEGAL SYSTEM ON MANUAL SCAVENGING: A SHAME TO DIGNITY

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Abstract-

The Indian Constitution, a natural document, guarantees each individual's dignity while acknowledging and embracing the diversity of the nation. However, due to the ingrained nature of the System of caste prevalent in India, members of many different castes are considered to be on outside of mainstream Indian culture. Primarily, members of the Dalit castes, Manual Scavengers, are marginalized because of their involuntary participation in the activity that has been passed down through generations. In 2013, however, the Supreme Court of India condemned this practice as "inhumane" and ordered its reversal. The limitations of the legislation enacted in 2013 that bans manual scavenging are analyzed, and suggestions for replacing manual scavenging with technological equipment and the role of the media in altering public perception of scavengers are offered.

Keywords: Manual Scavenging, Rehabilitation, Low-Cost Sanitation, Sanitation Engineering, etc.

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Introduction-

India's complex culture offers a wide range of experiences in all spheres of social interaction. The Indian environment is riven by the many strands of diversity that run through its people and culture. India's democratic system and tremendous economic boom over the years have spawned a plethora of successful infrastructural and scientific initiatives, such as the much-praised Moon and Mars expeditions (the latter of which made headlines for costing less than a movie in Hollywood). We have the world's largest constitution because it is an organic document, and this has allowed us to put in place political and institutional safeguards that respect and celebrate the country's many and varied inhabitants. The Preamble to the Constitution recognizes that all people are created equal and worthy of respect under the law. Several fundamental human rights are enshrined in the constitution as Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of the Indian Constitution. But the constraints of the assigned caste system continue to hold sway, making people of different castes feel on the periphery of Indian culture. The shameful relic of the millennium known as "manual scavenging" (*ResourceHandbookForEndingManualScavenging.Pdf*, n.d.) has not been eradicated despite the greatness of the law and the strength of the state. At first glance, these groups of manual scavengers appear to be members of the marginalized Dalit Castes, who are marginalized because of their hereditary employment. It's already bleak, but the scavengers can't escape their fate because of the constraints of caste and discrimination.

Meaning of Manual Scavenging-

Manual scavenging refers to the technique of removing human waste from non-flushing toilets and sewers by hand, including cleaning, transporting, disposing of, and handling the waste in any way (Garg, 2016). Manual scavenging and its variations are widely practiced in India and are often attributed to "lower castes" who are said to have a "cultural occupation" of scavenging (Swaroop, n.d.). It requires the use of simple equipment like buckets, brooms, and handbaskets. It's no exaggeration to say that in India, manual scavengers are among the country's most hopelessly off-the-grid citizens (Garg, 2016). Manual scavenging is broken down into three different categories by the International Labor Organization: "Removal of human excrement from public streets and dry latrines; Cleaning septic tanks; Cleaning gutters and sewers" (ForumIAS, 2018). Manual Scavenging is defined elaborately in "The Prohibition of Employment as Manual

Scavengers and their Rehabilitation Act, 2013" (The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013), which was passed by the Parliament of India a few years ago (Swaroop, n.d.) to outlaw the practice because of its inherent dangers, lack of security, poor hygiene standards, lack of respect, and humiliation.

Caste Influence on the Practice of Manual Scavenging-

In a liberal society, the economic and social structure is threatened by the practice of manual scavenging (Sachan, 2020). Unsanitary customs in India have their roots in the religious concept of "purity and pollution," which is tied to the system of caste and the institution of untouchability. These bad customs maintain the exploitation of the "polluted castes," who are compelled to engage in manual scavenging, clear out clogged sewers, and clean up after other people's waste. One of the reasons why modern waste management and sewage management systems, as well as toilet facilities, have been ignored by now is the availability of inexpensive Dalit labor to perform these unpleasant duties (GATADE, 2015). The system of castes has such severe repercussions for manual scavengers that even if they try to improve their social and economic standing by switching careers, they are often unsuccessful and compelled to go back to their original work (Singh, 2009). Discrimination based on gender is rooted in the perpetuation of existing caste disparities, making an already precarious situation even worse for women. Thus, "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" (Bhattacharya, 2014). The notion about them being dirty or "untouchable" because of their caste-assigned work persists and contributes to wider prejudice against them (Bhattacharya, 2014). Members of a given community would keep doing the work they've always done, even if it doesn't pay well by today's standards. Manual scavenging has evolved into a "caste-based custom" perpetuated by a profoundly unequal society (2-11-1374308004-5. *Humanities-Liberation-Siddaramu. B.Pdf*, n.d.), which in turn has impeded efforts toward social equality and technological advancement. To paraphrase Dr. Ambedkar: "We are not scavengers because we are poor, weak, or ignorant; or because we have chosen to be scavengers. It's because outside forces have turned us into scavengers" (Dr. Ambedkar, 2017).

Designing a Community of Manual Scavengers Under Slavery-

Working with human waste is not a noble profession but rather a sort of slavery imposed and enforced by a brutal and exploiting caste structure that relies on the involuntary and inherited nature of the task (Dr. Ambedkar, 2017). Manual scavenging has been referred to as a “caste-based and hereditary occupation form of slavery” by the “International Dalit Solidarity Network” located in Copenhagen (Chandran, 2016). Due to being paid below the poverty line, manual scavengers frequently enter into debt bondage with their higher-caste employers (Chandran, 2016). The ‘employers’ of manual scavengers typically exhibit a pattern of conduct consistent with slavery, such as treating their employees as personal property (Agarwal, 2018). Therefore, the 1926 Slavery Convention, which is widely recognized as the legal definition of slavery, may also include manual scavenging as a type of slavery (The Slavery Convention, 1953). According to Human Rights Watch's study on manual scavenging from 2014, “the manual carrying of human excreta is not a form of employment, but an injustice akin to slavery” (2-11-1374308004-5. *Humanities-Liberation-Siddaramu. B.Pdf*, n.d.). Members of the Dalit caste are required to submit to structural and systemic reasons in the case of manual scavenging. These dangers exist at all three levels of society—the structural, interpersonal, and state levels—even though they aren't always obvious at first (2-11-1374308004-5. *Humanities-Liberation-Siddaramu. B.Pdf*, n.d.). They have no choice but to keep working, even if doing so puts their lives in danger due to the multilayer dominance structure. Thus, the greatest remaining emblem of untouchability in modern India is ‘manual scavenging’, and the government inability to abolish it is one of India's grave shames (Tripathi, n.d.).

Manual Scavenging: A Disgrace to Human Dignity-

Part III of the Constitution of India ensures that everyone has the “right to life,” which includes the “right to live with honor and respect from society” (The Constitution of India, 1950). Human dignity has been deemed the supreme, fundamental, inalienable, and transcendent right by the Courts. Dignity is defined as the state of having one's worth recognized and respected by other people; according to the Oxford English Dictionary (“Dignity,” n.d.)—meaning and worth come from inside. The Constitution of India mandates that all citizens be treated with respect and dignity, something that has been recognized by India's

highest court (*Naz Foundation v. Govt of NCT Delhi & ors*, n.d.). Human existence is more than the simple act of breathing; the right to live a dignified life is part of what it is to be human (*Maneka Gandhi v. Union of India*, n.d.). According to Justice J.S. Verma, the law merely recognized that everyone has an intrinsic right to life. Therefore, the international system for defending and advancing human rights must be centered on human dignity (“*Human Rights -- The Essence of Constitutional Governance*” | *National Human Rights Commission India*, n.d.). The Supreme Court has noted that assigning individuals to clean manholes is brutal labor and a breach of the dignity of the scavenger, drawing parallels between the two. That it is a breach of the manual scavenger's right to life and a kind of cruel treatment of the employer to not provide him with sufficient protective gear (Service, n.d.). It's crucial to keep in mind that Article 21 establishes the notion that the right to life encompasses more than simply the capacity to exist; it additionally includes the capacity to lead a respectable life, neither of which the state has been able to offer. Manual scavengers' exposure to unsafe and degrading circumstances runs counter to the principles enshrined in the Indian Constitution. Numerous deaths have occurred, many of which have not even been documented, endangering the Directive Principles of State Policy and Articles 14, 17, and 21 of the Indian Constitution. The very high number of deaths will persist until municipal officials, independent contractors, and the property's owner accept responsibility (*Criminal Justice Society of India v. UOI & Ors. (Manual Scavengers)*, n.d.).

Work Environment for Manual Scavengers-

Manual scavengers are compelled to operate without proper safety equipment in filthy environments such as sewage and garbage dumps, putting them at risk of contracting a wide variety of diseases. Because of the unsafe working conditions mentioned above, manual scavengers may get serious or acute diseases or get hurt, but there are no healthcare facilities to treat them. They may also die too soon, and in most cases, their families don't even get compensation from the State (*Criminal Justice Society of India v. UOI & Ors. (Manual Scavengers)*, n.d.). Being exposed to human excreta and hazardous gases like H₂S and methane can have serious health implications for those who engage in manual scavenging. These include persistent uneasiness and headaches, lung and skin infections, vomiting and diarrhea, jaundice, and poisoning from carbon monoxide (ForumIAS, 2018). They may be given food and other

necessities in exchange for their labor, but remuneration is typically low and sometimes nonexistent. The already-high societal stigma that they face is exacerbated by their low remuneration. They are malnourished and have no access to quality primary care or specialty treatment (ForumIAS, 2018).

International and National Legal Framework against Manual Scavenging-

1. International Legal Framework- Activism against caste-based discrimination and violence by the Dalit community began in the 1980s (Bob, 2007). It, therefore, became apparent that discrimination based on caste constituted a kind of racism as well. The country's top court determined in 2014 that manual scavenging breaches “The Convention on the Rights of Women,” “The International Convention on the Elimination of All Forms of Discrimination Against Women,” and “The Universal Declaration of Human Rights” (*Safai Karmachari Andolan & Ors. V Union of India & Ors.*, n.d.). “The Committee on Economic, Social, and Cultural Rights,” “The Committee on the Elimination of Racial Discrimination,” and “The Committee on the Rights of the Child” all issued a set of observations insisting India curb the menace of manual scavenging during its most recent review for compliance with “The International Covenant on Economic, Social, and Cultural Rights” (*Concluding Observations of the Committee on Economic, Social and Cultural Rights, India*, 2008), “The International Convention on the Elimination of All Forms of Racial Discrimination” (*Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, India*, 2007), and “The Convention on the Rights of the Child” (*Concluding Observations of the Committee on the Rights of the Child, India*, 2004). “The United Nations Children's Fund” (UNICEF), “The World Health Organization” (WHO), “The United Nations Development Programme” (UNDP), and “The International Labor Organization” (ILO) are just a few of the organizations that have addressed manual scavenging (2-11-1374308004-5. *Humanities-Liberation-Siddaramu. B.Pdf*, n.d.).

2. Constitutional Provisions- The explicit prohibitions on manual scavenging are found in Articles 16(2), 19(1) (a), 21, 17, and 23; they call for the abolition of untouchability, the right to life, including the right to human dignity, the freedom to choose one's profession, equal employment opportunities in the public sector,

and the outlawing of forced labor, respectively. Articles 14, 15, 41, 42, 46, 47, and 338 are also geared toward putting an end to this behavior.

- 3. National Legislations-** Many laws have been passed in recent years to benefit manual scavengers and other members of the scheduled class. These are the two main instruments-
- **“Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993”-** This legislation was replaced by the PMSR Act of 2013, which prohibited the use of manual scavengers, prohibited the construction or upkeep of dry latrines, and governed the use of water-tight toilets and other related issues (2-11-1374308004-5. *Humanities-Liberation-Siddaramu. B.Pdf*, n.d.).
 - **“The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013”-** As part of its mandate to ban dry latrines, the Act of 2013 also requires personal protective equipment (PPE) to be worn anytime human faeces is removed from a building or the inside of a structure. This includes cleaning drains, sewers and septic tanks. (The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013). By providing them with alternative means of livelihood and other types of aid, the 2013 Act acknowledges efforts to compensate manual scavengers and their families for past wrongs. In particular, the 2013 Act guarantees that manual scavengers would be able to receive a wide range of benefits, including as financial compensation, access to higher education for their children, safe housing, help finding new work, and more (The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013).

These components of rehabilitation were recognized by the Supreme Court in its decision in “Safai Karmachari Andolan v. Union of India” in 2014, which also mandated all those on the last list of manual scavengers be given rehabilitation “in accordance with these provisions” (*Safai Karmachari Andolan & Ors. V Union of India & Ors.*, n.d.).

The government has invested in modernizing sanitation facilities via a number of national initiatives, including the “Sulabh Shauchalaya Scheme (1974)”, “The Integrated Low-Cost Sanitation Scheme (1981)”, “The Nirmal Bharat Abhiyan (2009)”, and most recently, the “Swachh Bharat Abhiyaan (2014)” (Gupta, 2016).

Judicial Approach-

The Apex Court recognized manual scavenging as a threat to India and an inhumane, demeaning, and

dishonorable profession in “Safai Karamchari Andolan v. Union of India” (*Safai Karmachari Andolan & Ors. V Union of India & Ors, 2014(4) SCALE 165, n.d.*). Rehabilitating manual scavengers must address the following issues if we are to put an end to this inhumane practice and safeguard future generations from repeating it: (a) Deaths in the sewers, which can be prevented by making it illegal to get into sewer lines without proper protective gear, even in times of emergency. The immediate family of the dead should get Rs. 10 lakhs for every fatality. (a) Railways ought to implement a time-sensitive plan to put a stop to trackside manual scavenging. (c) Help Safai Karamchari women make a living doing what they love, based on the livelihood programs they choose, Find the families of those who died working on sewers (manholes, septic tanks) since 1993 and give them compensation. Integrity and growth should serve as the guiding principles of the process of rehabilitation.

The Supreme Court's landmark decision in “Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers” brought to light the indifference towards society's underprivileged members (*Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers 2011 (8) SCC 568, n.d.*), especially the sewage workers who endanger their well-being by going into sewers unprotected and who have spent more than 60 years being denied their most fundamental rights to equality, life, and freedom. The government and state machinery were also criticised by the Supreme Court for being indifferent to the safety of individuals who, as a result of extreme poverty, are forced to work every day in the most appalling conditions conceivable, endangering their lives. The court issued an order requiring that additional funds be handed to the family of those who had passed away and that the directives issued by the Delhi High Court safeguarding sewage employees be quickly reaffirmed. (*Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers 2011 (8) SCC 568, n.d.*).

Challenges in Overcoming Obstacles in the Existing Legal and Social Framework to Prevent Manual Scavenging-

1) Insufficient Definition- The Act of 2013 forbids manual scavenging; however, it excludes the water flush toilet used by the Indian Railways from its definition of an unsanitary latrine. The irony of this situation is that the Indian Railways employ the most manual scavengers than any other organization

in the nation (Ali, 2017). In addition, if the septic tank or sewer is cleaned by someone wearing safety gear, or if any other kind of excreta is cleaned, then it is not considered manual scavenging. Equally unclear is the meaning of “protective equipment” within the context of the document. One of the stated goals of the act is to prevent the violation of human dignity, although it is clear from the text of the law that manual scavenging is not outright prohibited; rather, it is regulated with limited exceptions (Ali, 2017).

- 2) No Details about Protective Gears-** The legislation does not specify any safety equipment. The guidelines include a section on safety equipment detailing the necessary protective gear. Scavengers are seldom given adequate safety equipment beyond gloves, boots, and masks. In most cases, the offered masks are cheap, ineffective masks that make it difficult for dumpster divers to breathe. Tank cleaners are given huge, uncomfortable boots that are replaced every five years and are not suitable for frequent use while entering septic tanks or sewers (*Kakkoos, Documentary Film: The Unknown and Untold Story of Manual Scavengers, 2017*). When cleaners enter septic tanks, muck quickly accumulates in their boots. Contractors sometimes skimp on providing adequate safety equipment, putting lives at risk, in an effort to keep prices down (*Kakkoos, Documentary Film: The Unknown and Untold Story of Manual Scavengers, 2017*).
- 3) Risks Associated with Manual Scavenging-** Rather than being a necessary evil in the workplace, manual scavenging is a social stigma that cannot be overcome by just giving scavengers access to machines. Retraining scavengers for employment unrelated to sanitation would be liberating since it wouldn't put their lives in danger as much as it would stop insulting their dignity.
- 4) Contractor's Liability-** Typically, private contractors would force private laborers to clean sewage pits and septic tanks without providing the workers with any protective equipment since the act does not define protective equipment (Bose, 2018). Furthermore, these contractors do not maintain any kind of roll list for these scavengers, which further allows them to sidestep the law. These sewage maintenance workers are often recruited on a daily rate basis. Bezwada Wilson, a member of the Safai Karamchari Andolan, said that gloves, masks, and shoes should be supplied if a person needs to be placed in a sewer. An on-call physician and

ambulance service are necessities. These steps are seldom taken, though (Bose, 2018)

5) Manual Scavengers Employed in Indian Railways- The Indian Railways is the largest single employer of people in India who clean up after themselves manually. The people who do the manual scavenging, however, are not government employees. Train cars in India feature bathrooms that empty directly onto the track. Contractors with the lowest bids Indian government is engaging in prohibited conduct, then it will spread rapidly across the country (Thacker, 2023).

6) Hiring Sewer Cleaners- According to the documentary "Kakkoos," which concentrates on the practise of manual scavenging, prospective workers for the work of cleansing septic tanks and manholes or sewers are needed to go into the sewer hole and then keep holding their breath while working within the septic tank. This is a requirement for the job. The job goes to the person who has had it the longest. This activity exemplifies a cruel and inhumane disregard for human life (*Kakkoos, Documentary Film: The Unknown and Untold Story of Manual Scavengers*, 2017).

7) No Data Maintained of Manual Scavengers- When compared to the widespread use of dry toilets, the number of persons working as manual scavengers is astonishingly low, according to the figures that were provided. For example, the National Safai Karamchari Finance and Development Corporation said in its 20th Annual Report (2016-2017) that there were a total of 26,00,000 unsanitary latrines across the country. Of these, 13,29,000 were found in urban areas, while 12,719,000 were found in rural areas. According to the research, an excessive number of manual scavengers, 12,742, have been documented in 13 states as of March 31st, 2017. Excavating 26 lakh unhygienic latrines would be impossible for 13,000 manual scavengers (2019).

Conclusion and Suggestions-

Scavenging by hand is looked down upon and goes against the principles of social fairness. The elimination of danger from a manual scavenger's task does not elevate the status of his occupation. This behavior goes against the objectives of the Indian Constitution and must be thought to be a social menace, not a sanitary one. The following are some suggestions for helping scavengers and eventually ending the activity altogether:

1. To achieve the objective of the Act of 2013, which is the abolition of manual scavenging rather than regulation, it is essential that the

problematic definitions in the act be remedied. Misleading definitions open the door to situations where manual scavenging is legal, which in turn legitimizes human rights violations, slavery, and discrimination. These changes need to be implemented without delay.

2. The capacity of nations to engage in manual scavenging depends on their economic, political, and social settings; therefore, a comparative examination of the two is necessary before sanitation models can be implemented in different districts and areas. Poorer communities may strive for less expensive sanitation programs, while more prosperous regions can afford more high-tech options. Therefore, it is crucial to find ways to replace people with machines, and the enforcement authorities might work with colleges and research organizations to develop low-cost, handmade cleaning equipment. The government's goal should also be to fund innovations in sanitation engineering-based equipment. In order to make India's sanitation system entirely mechanized and scientific, educational fairs should be arranged to promote and recognize such equipment and technology, and these innovations may be tied to the Make in India Scheme.
3. Railways ought to set up bio-toilets like those seen in offices and restaurants, in which human waste is collected in boxes and then disposed of or composted as needed. Currently, the model is only applicable to a subset of trains.
4. The state might direct law enforcement to launch retraining programs for former Scavengers so that they can find employment that is lucrative. Workers will have access to a one-time investment for the launch of a small company as well as ongoing monthly maintenance once their abilities have been assessed and a range of vocational training has been offered at a low cost. The female trash pickers might link up with others who share their interests and talents via mutual aid organizations. If manual scavengers' rehabilitation programs were linked to MNREGA, participants would get financial support from the program's employment guarantee component even if they were unable to find gainful work.
5. The creation of helpline centers in partnership with NGOs where manual scavengers may go for rehabilitation and file complaints about legal infractions is an option. It would be helpful if there were phone numbers the general public could call to lodge complaints about any

instances of manual scavenging they encountered.

6. By airing commercials on television and other electronic media with information on hotlines, rehabilitation programs, penalties for violations, etc., the media might play a significant role in enforcing the ban on manual scavenging. These commercials need regular airtime on television and in public spaces like theaters.
7. The consensus is that this practice must end and that emancipation can only come about if the scavengers are retrained for something other than sanitation. Substituting machines and technology for scavenging is merely the first stage in the restoration process. For the sake of accountability, it is essential that caste be eradicated. This can be achieved only via the proper acknowledgment of each individual's dignity rather than through pity. As a result, occupancy will be seen as a social issue rather than a purely health-related sanitation concern.

By outlawing the practice, we want to dismantle the ingrained mentality of exploitation and give manual scavengers the respect and dignity they deserve. Making legal laws is merely the first step on the ladder toward dismantling this internalized mindset, which can only be achieved by removing the constraints of caste and recognizing that this activity is for entertainment and not survival. The accurate interpretation of "Bhangi Jhaddu Choro" and Dr. BR Ambedkar's vision for social justice may be found in a world where human life and dignity are prioritized.

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