



Process of Manual Scavenging in India: A Study

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Abstract

The population of India is the second highest of any country in the world. Among all the nations ours is having the most rapid economic growth in the whole world. Nevertheless, the event of waste management systems is not up to the standard, and there is still the practice of manual scavenging in various regions of the nation. This review aims to investigate the factors contributing to the perpetuation of this social ill, which includes a very unhealthy lifestyle and working in highly unclean settings. Even today and age, the manual cleaning of the sewage system, septic tanks, and manholes in our country is still practiced, despite the shocking mortality rate among these workers is common knowledge. The manual scavenger's occupation is dangerous, hazardous, unclean, and degrading. A manual scavenger is someone who cleans, transports, disposes of, or handles human excrement from dry toilets and sewers by hand. Other job titles for this position include "handler" and "carrier." Even though the Indian government outlawed the practice by three distinct Acts in 1993, 2013, and 2020, it is still commonly practiced across the country. The practice of manual scavenging may be traced back to the caste system, which dictated that members of the "lower castes" were the ones who were responsible for carrying out the labor. As a result of the elimination of manual scavenging systems, cleaning has become more routine and less hazardous, protecting the lives of individuals now employed in manual scavenging labor. This paper focuses on the process of Manual Scavenging.

Keywords

Manual Scavenging (MS), Constitution of India (COI), Dalit Women (DM), Human Rights (HR), Safai Karmachari Andolan (SKA), Human Excreta (HE).

1. Introduction

Manual Scavenging has a long history in India, and it is in the practice till today, albeit in various ways. The responses of the law to Manual Scavenging varied from case to case. Currently, it is acknowledged as an improper hygienic practice and a violation of several

other fundamental human rights¹. The community of people who engage in Manual Scavenging has resorted to organised opposition and protest, as well as legal action, as a result of the sluggish progress being made toward the abolition of Manual Scavenging. Manual Scavenging, also known as "the inhuman practise of manually removing night soil," is still widely practised throughout India². The Hindu social system forces members of the lowest caste, sometimes known as Dalits or formerly untouchables, to labour in degrading and brutal professions because its caste-based discrimination has deep historical origins. One illustration of such an activity is Manual Scavenging³. Since the creation of India's Constitution in 1950, Article 17 has condemned untouchability based on ideas of purity and contamination as a violation of the law. Manual Scavenging has an intersectional component since caste is so deeply ingrained in it.

Manual scavengers make up around 95% of the population involved in this unhumaly profession, and 99% of them are Dalit women⁴. According to the "2011 Census of India", there are around "2.6 million unhygienic latrines" in India. The current sanitation condition in India may be better understood by examining "insanitary latrines", which are toilets that must be manually cleansed of human waste. Approximately 1.2 million individuals are being forced to work in this industry today. In India, however, raw faeces is not confined to private latrines and regularly spills into public locations, so this number likely understates the number of individuals that come into touch with it . It is estimated that millions of individuals engage in the practise of "open defecation," which may be found in both rural and urban settings, along with riverbanks and railway lines, in shrubland, woods, and fields, as well as along the sides of streets and highways⁵. The sewage that is produced by train toilets continues to be discharged directly onto the tracks. The smell of faeces may be deluged in garbage dumps. When they do exist at all, sewage systems are often antiquated and in disrepair; as a result, their contents frequently escape owing to obstructions brought on by residents who thoughtlessly flush any type of garbage, including condoms and sanitary napkins, down the toilet. Not stormwater but sewage is carried through storm drains. As a result, around five million safai karmacharis, or sanitation workers, who are responsible for the cleaning and maintenance of public areas also come into close touch with human faeces⁶.

One of the most horrifying aspects of Manual Scavenging is the reality that it is a caste-based vocation that is passed down through families from generation to generation. The vast majority of those who are coerced into scavenging are Dalits, who are the members of such castes that were formerly considered "untouchable." In point of fact, certain Dalit castes are

categorised as 'scavenging castes,' which means that cleaning is their primary employment. Their deplorable state is based on pernicious ideas of cleanliness and filth that have been a blight on the Indic culture for countless generations. The horrifying reality is heightened by the fact that women make up more than ninety percent of the total number of victims. As a result of being trapped at the junction of patriarchy and caste, they face the highest weight of violence⁷. The equipment that is supplied for this operation is really basic and inadequate. Pit latrine cleaning is often done by women, who use a cardboard or metal scraper, a broom, and a basket. When the basket is full, women in villages and towns go from home to home and latrine to latrine. After filling the basket, they dump it. This style of head loading is regarded the most horrible and savage because the basket itself, in addition to its contents, must be carried on the head⁸. The basket is not watertight, and when it does rain, it pours. This unspeakable tragedy is reenacted over and over again, without pause or respite, in the lives of the ladies, who are already overworked and stressed.

2. International conventions, treaties, and instruments

In recent years, the problems and worries of those who engage in Manual Scavenging have also been brought up in international venues, most notably at the United Nations (UN), where they have been discussed and pondered upon. Discrimination in the workplace and racial discrimination throughout the world were both given to special rapporteurs by the sub-commission on the promotion and protection of human rights in 2009. The report of the special rapporteurs provides fundamental principles and recommendations for the successful eradication of discrimination based on work and ancestry or caste, and is one of the most recent advances in the continuous process of defining norms and standards relevant to such discrimination. In 2009, special rapporteurs appointed by the sub-commission on the promotion and protection of human rights looked into the worldwide problem of discrimination on the basis of a person's place of employment and/or heritage⁹. The special rapporteurs' report, which includes drafted principles and guidelines for the effective elimination of work and descent discrimination, is one of the most recent and important developments in the ongoing process of developing norms and standards regarding work and descent or caste discrimination. The Discrimination (Employment and Occupation) Convention, adopted in 1958, tackles the issue of workplace discrimination and promotes equality in employment and occupation. In addition to this, the convention mandates the establishment of a national agency for equal opportunity, as well as the removal of laws and practises that are conflicting with one another. On June 3, 1960, India approved a law that made it illegal to discriminate against people based on their social background as a

justification for doing so. The "International Labour Organization (ILO) passed a convention in 1930 called the Forced Labour Convention to prevent the use of forced or compelled labour" in any of its forms. This was done in response to the issue of forced labour. The annual report of the "United Nations Committee on the Elimination of Racial Discrimination in 2007" voiced grave concern on the appalling working conditions. According to the Study, "The Committee notices with concern that an extraordinarily large number of dalits are obliged to labour as manual scavengers"¹⁰.

3. Laws to Prevent Manual Scavenging:

3.1 "The Employment of Manual Scavenging and Construction of Dry Latrines (Prohibition) Act, 1993": legislation that the passage of this law does double duty, it makes manual scavenging illegal while protecting the human rights of those who participate in it. It is clear from the name of the law that the construction of unsanitary toilets and the usage of manual scavengers are outlawed. Open pit toilets are also outlawed under the Act. In the event of a breach of this rule, the offender faces a maximum of one year in jail, a maximum fine of two thousand rupees, or both. As a result of weak implementation and ignorance, no convictions were secured, and the practise persisted and is still prevalent even after the passing of this Act.

3.2 "The Self Employment Scheme for Rehabilitation of Manual Scavenging, 2007 (SRMS)": legislation that laws adopted to support and assist manual scavengers, as well as members of their families, in their quest of rehabilitation into other occupations.

3.3 "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013": this Act was enacted to "demolish all of the insanitary latrines." This was the very first step that was outlined. According to this Act, the local authorities, such as municipal corporations, railway authorities, and other similar organisations, shall be held accountable for provision of care for public toilets, as well as ensuring that these facilities are both functional and sanitary. The physical cleaning and scavenging of sewers and septic tanks was deemed too dangerous to be performed by any employee, thus the second step was to outlaw such work.

In addition, the Act required that all unsanitary latrines must be upgraded to sanitary and hygienic facilities within a period of six months. In addition, the authorities that are named in This Act requires the construction of a certain number of communal latrines that are hygienic, since this is seen as vital particularly in the places where unsanitary latrines have been discovered. These are some of the goals that were hoped to be accomplished by adopting this Act.

3.4 "The Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020": The principal goals of this Bill are to end the practise of Manual Scavenging nationwide and to end the employment of anybody already engaged in this practise. Furthermore, the Bill wants to remove all workers who are currently employed in this position. The government would also provide rehabilitative services to them and their family members. Because of the provisions of this measure, which lays forth an acceptable and comprehensive procedure for doing so, septic tanks and sewers will no longer require any physical labour. To ensure that no human beings engage in such conduct, this Act mandates the construction of clean, safe community latrines.

4. Violation of Article 21

The COI has a comprehensive list of Fundamental Rights that are guaranteed to each and every member of our nation, regardless of factors such as their caste, colour, gender, place of birth, and so on. These rights are universally accessible. The inviolability of certain rights, such as the right to freedom, the right to free expression, the right to freedom of religion, the right to protection of life, etc., can be guaranteed by a statement of basic rights. The "Right to the Protection of Life and Personal Liberty, as envisioned in Article 21 of the COI", is available to all of the "citizens" as well as the "non-citizens" of India. As a result of the historic ruling in "*Maneka Gandhi vs. Union of India, AIR 1978 SC 597*¹¹," the "Honorable Supreme Court of India" has broadened the application of Article 21 of the COI, which has led to the establishment of India as a welfare state.

5. Locating root causes and reclaiming dignity and rights

The group of individuals who rely on manual scavenging has been ignored for a long time, and the problem has gone unnoticed. It seems that even those who earn their living through physical scavenging assimilated the stories that helped them rationalise or accept the tyranny and brutality they experienced. Similarly, he stated that he had blamed the manual scavengers themselves for their plights and miseries, rather than looking at larger structural issues like caste. This is why the Movement's first goal was to promote acceptance of manual scavengers as fully human beings, deserving of the same rights and liberties as everyone else. It was a process of uprooting their long-held beliefs about their place in society, government, and the law in order to start over with a fresh perspective as full human beings and legal citizens. They underwent a transformational change in outlook when they learned the structural causes of their helplessness.

The Movement's pivot to present itself as a fight for human dignity and civil liberties was a watershed moment in its evolution. One of the most visible forms of the Movement's public

protest was the daliya jalao (burning the basket) campaign, which capitalised on the negative connotation of baskets and brooms. One may see this as a return to the Bhangi Jharoo Choro slogan first used by Dr. B.R. Ambedkar over four decades ago (Bhangi, Leave the Broom). Quickly, members of the Movement began to use flaming brooms and baskets as a sign of their freedom. In a culture where brooms and baskets were considered "important labour equipment or property" and were even bequeathed from one generation to the next, the story becomes all the more fascinating. In the manual scavenging culture, it was typical for the bride's mother to give her new daughter-in-law household items like a basket and broom as part of the wedding rites. Women manual scavengers in particular have been burning brooms and baskets in public in a number of locations to express their independence from a centuries-old dominant and repressive tradition. Because of the Movement, people's perceptions of manual scavenging shifted from that of a "occupation" to that of a behaviour that violates the dignity and many other human rights provided by India's Constitution.

6. The PIL and the Judgement of the Supreme Court

Recent obiters of the SCI have gained momentum in two ways: in a hearing and a ruling, both of which addressed the judicial treatment of the manual scavenging prohibition. Before undertaking an analysis of the case "*SKA v Union of India-583 of 2003*"²¹, key case in India's fight against caste discrimination, it's important to evaluate its less famous obiter dicta. This is because the "*SKA v Union of India*" case was a key case in India's fight against caste discrimination.

During the hearing of "*Union of India vs. the State of Maharashtra*"¹⁶, the case that involved review of "*Dr. Subhash Kashinath Mahajan v The State of Maharashtra*"¹⁷—the case that diluted "the scope of SC/ST Atrocities Act—the SCI expressed serious concerns over the deaths of manual scavengers".

In the obiter dictum of the final verdict in the case of "*State of Maharashtra (supra)*", the "Supreme Court of India (SCI)" admits the widespread practise of untouchability despite the fact that untouchability is expressly outlawed under "Article 17 of the Constitution". In addition, the panel reflects that:

"The plight of untouchables is that they are still denied various civil rights; the condition is worse in the villages, remote areas where fruits of development have not percolated down. They (Dalits) cannot enjoy equal civil rights. So far, we have not been able to provide the modern methods of scavenging to Harijans due to lack of resources and proper planning and apathy... The answer can only be found by soul searching."¹⁵

The bench's inquiry into the root causes of caste discrimination sparked a debate over

whether or not the institution of legal protection is required to prohibit discriminatory social practises that are supported by prejudices, discriminatory attitudes, and strong sociocultural and religious sanctions. However, it has been claimed that it failed to look into the 'conditional prohibition' of manual scavenging under the 2013 Act, as indicated above, which has allowed the practise to continue automatically and has contributed to the propagation of bias against manual scavengers.

Judicial activism on the part of the Supreme Court beginning in 2003 resulted in the court issuing multiple mandamus¹⁹ rulings, in which it demanded that state governments apply the 1993 Act within their respective jurisdictions. In addition, the SCI requested comprehensive information on all of the rehabilitation programmes that were being run by the government as well as the total number of manual scavengers who had been helped by these programmes.

The SCI noted the appalling denial of MS's existence by several state governments and the dismal track record of the "1993 Act", which was to be implemented by those governments. This was so because individual states were responsible for carrying out the provisions of the 1993 Act. In light of this, the order issued in October 2007 gave the states two months to implement the 1993 Act in their respective territories²². Due in large part to the SCI's forward-thinking approach to protection, data on manual scavengers was made available to the public by "the National Commission for Safai Karamcharis, the government's nodal agency for their welfare" ²³. This was a major benefit of the SCI's innovative approach to safety. It was the first time the Indian government officially acknowledged the existence of 6,76,009 manual scavengers.

The judicial system has created difficulties for SKA by putting doubt on the existence and validity of manual scavengers in India. The SKA used public mobilisation to conduct surveys in five representative states to gauge the extent to which Dalits were engaged in manual scavenging. Personal and socioeconomic details were collected by questionnaire²⁴. "The SCI ordered local authorities to implement the requirements of the Act that was approved in 1993 after establishing that manual scavenging activity existed on a broad basis" ²⁴. The SKA's instrumentalization of the SCI's instructions forced the local authorities to carry them out and eliminate dry latrines under their jurisdiction²⁵. In 2011, the SCI delegated its ability to oversee the case to all 21 High Courts in India to make sure the 1993 Act and its orders were followed. This was a groundbreaking decision in the court's history.

This final judgement matters for three main reasons: "Article 17 (the prohibition of

untouchability), Article 14 (the right to equality), Article 15 (the right against discrimination), Article 21 (the celebrated right to life in the context of human dignity), and Article 23 were all read in conjunction to provide an explanation of the anti-caste discrimination jurisprudence (prohibition of forced labour)" ³⁴. Using this strategy, the government has made strides in its battle against caste discrimination in the judicial system. As a result, the SCI mandated stricter rehabilitation measures, such as the elimination of barriers preventing manual scavengers from receiving benefits under rehabilitation schemes, the elimination of manual scavenging on railway tracks, and the prohibition of entry into a sewer without protective gear and compensation for the families of those who died in sewers for up to Rs. 10 lakhs. In order to save future generations the same shame and Indian The Supreme Court has finally ordered the states to fully implement the Act and the Court's orders, or face legal action for failing to do so

Insights into the "emancipatory potential of rights in social transformation" are supplied in further detail by the case study that was just discussed, but only under the condition that these rights are supported by ongoing social mobilisation. Overall, the situation of manual scavengers in India has not changed significantly as a result of these changes in sustained judicial activism and social mobilisation, nor have they led to a systemic transformation in terms of the elimination of caste discrimination and the practise of untouchability³⁵. One of the shortcomings of the PIL was that the SCI did not conduct an in-depth analysis of the issues that are present in the manual scavenging 2013 Act and which allow the practise to continue as a result of conditions-based permissibility. The topic of conversation has now shifted to doing an in-depth investigation of the primary factors that contributed to such a failure and engaging in normative inquiry, which suggests completely eradicating the problem, completely rehabilitating the area, and completely mechanising the process.

7. The Struggle Towards Total Prohibition

In general, there are two factors that may be linked to the failure of judicial activism in stopping manual scavenging:

- (1) the limits of rights discourse in addressing systemic human rights abuses when a favourable socio-cultural infrastructure for norm adherence is missing in the society; and
- (2) the conditional ban of manual scavenging under the 2013 Act worked as a crucial stimulus in sustaining the status quo of discrimination, stigma, prejudice, and humiliation for Dalits working in the practice.

Socio-legal theory has analysed and debated at length the function of law as a mechanism for social transformation. When rights are entwined with other social institutions, such as

ethnicity, race, or caste, it may be difficult to determine which one takes priority, leading to conflict. Rights, being a vital component of any society's culture, are a cause of dispute. The difference between what people really do in society and what is expected of them according to the law creates friction between law and social change. When the legislation is not updated to reflect the social changes that have taken place in society, this tension develops into a "lag"²⁵. In the event of caste discrimination, social behaviour in practise deviates from legally required standards. As a result, individuals do not feel a feeling of duty to comply with legal norms, which results in non-adherence to legal norms. Therefore, in order to close the gap, "parallel adjustments" in both society and the legal system are required.

Thus, in order to ban and eliminate manual scavenging on the one hand, and to continue to enable the practise of manual scavenging via conditional authorisation based on definitional exclusions, the government's policy must recognise the limits of the legal language and fix the evident errors in such discourse. These objectives are at odds with one another. No amount of protective equipment would ever be able to legitimise an indecent behaviour like manual scavenging, and it is argued that the definitional language just helps to reinforce earlier disadvantages.

8. CONCLUSION:

An examination of the last 120 years of efforts to regulate manual scavenging in India indicates a fundamental conflict in the process of tackling the intertwined issues of discrimination based on caste and hazardous working conditions. The public's attitude toward manual scavengers, which is characterised by apathy and indifference toward their professional safety and well-being, has been maintained by the correlation between caste status and uncleanness. Government authorities used a number of ways to counteract the vicious loop generated by the demand for manual scavenging as a result of substandard sanitation facilities and the use of caste-based labour pools to maintain them. These strategies varied according on the political context at the moment. Local and British government officials were involved in letting racist "traditional" practises to flourish and proliferate during British colonial control. The scavenger organisations' attempts to establish their autonomy were countered with crackdowns. After India's independence, there was friction between government awareness of the scavengers' hardship and the romanticization of caste-based notions of Safai Karamcharis' allegiance to higher castes. Several decades passed during which time this strained relationship persisted. After adopting current neoliberal thought, reformers in the 1990s sought to address scavenging

as a question of supply and demand, marking a departure from this paternalistic manner of change. All of this was done to combat the problem of illegal dumping. It was thought that criminalising demand and implementing reeducation programmes would reduce availability. Due to lax enforcement, the inaccessibility of support schemes to scavenging organisations, and the omission of scavengers from official data, policies and programmes that may have been beneficial were made ineffective. While the need for scavenging has been reduced because to the current wave of legislative reform and technical investment in sanitary infrastructure, the practise has not been eliminated and the prejudice that scavenging groups encounter has not been addressed.

In many ways, Gandhi's spectacles, incorporated in the official Swachh Bharat Mission insignia, are a perfect depiction of scavengers' ongoing marginalisation. Over the course of more than a century, technology has been employed in a number of ways to either prosecute, 'defend,' 'liberate,' or seem to 'disappear' Safai Karamcharis. Despite this, Karamcharis continues to work for the agency to be able to speak for itself, even while political elites continue to speak for them.

Partnerships with impacted communities in search of technological, environmental, social, and cultural solutions are necessary for addressing manual scavenging and improved sanitation and sanitary labour, rather than seeing these problems as paternalist or market-based policy concerns. The same will be true regardless of whatever political party governs India during the next decade. Reforms must end the exploitative informal employment of scavengers, especially by public bodies, and address the desires and needs of the sanitation worker communities for affordable healthcare, insurance, employee benefits, and education for their children in order to meet the continuing demand for sanitary labour.

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