

PROHIBITION OF MANUAL SCAVENGERS IN INDIA -A CRITICAL STUDY**VIKAS SHIVAJI WAGHMODE**Assistant Professor
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Pune**Introduction**

Manual scavenging is not a career chosen voluntarily by workers, but is instead a deeply unhealthy, unsavoury and undignified job forced upon these people because of the stigma attached to their caste. The nature of the work itself then reinforces that stigma.¹ Within the caste structure, Dalits who work as manual scavengers are usually from the Hindu Valmiki sub-caste, which is further subdivided into regionally named groups such as Chuhada, Rokhi, Mehatar, Malkana, Halalkhor, and Lalbegi, or the Muslim Hela sub caste.² Prohibition of manual scavengers to relieve them from inhuman, unhealthy and hateful practice of carrying human waste is a need of today. Indian Constitution provides various fundamental rights one of it is right to live with human dignity. But from adoption of constitution of India most violation of this right of manual scavengers happening that is removing of human waste by human being. The dehumanizing practice of manual scavenging is closely interlinked with untouchability so to protect manual scavengers the prohibition of employment as manual scavengers and their rehabilitation act, 2013 was enacted. Manual scavenging is rooted in caste and with very few exception, all the manual scavengers are from the Scheduled Castes. Manual scavenging is thus a caste based occupation, with a large majority of them being women. The continuance of manual scavenging constitutes a gross violation of human rights and the worth of the human person and flies in the face of the Constitutional guarantee assured, in its very Preamble, of a life with dignity for every individual in the country. According to Government of India statistics, the states chosen have had the highest number of people engaged in manual scavenging³ Communities engaged as manual scavengers have distinct communal or caste names in various parts of the country.⁴

The government identifies those that belong to the most marginalized, so-called untouchable castes as Scheduled Castes, eligible for quotas in education and employment. Rights activists from the community refer to themselves as Dalits, literally “broken people.” However, many from manual scavenging communities also call themselves Harijan, a term used by Mohandas Gandhi to describe them as people of God.

Preamble to the Constitution contain that promoting among the citizens fraternity assuring the dignity of the individuals enshrined as one of the goal of government to be achieved and protected.

DEFINITION OF MANUAL SCAVENGERS

“**MANUAL SCAVENGER**” means a person engaged in or employed for manually carrying human excreta and the expression “manual scavenging” shall be construed accordingly⁵

This definition is very restrictive. It does not cover all those who are employed to clear, carry and dispose human excreta in places other than the dry latrines who clean the sewers, septic tanks, drains where human excreta is washed.

“**MANUAL SCAVENGER**” means a person engaged or employed, by

- a) An individual

- b) A local authority
- c) An agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in
 - a) An insanitary latrine
 - b) In an open drain
 - c) Pit into which the human excreta from the insanitary latrines is disposed of,
 - d) On a railway track or in such other spaces or premises,
 as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression “manual scavenging” shall be construed accordingly.

Explanation to the section

(a) “Engaged or employed” means being engaged or employed on a regular or contract basis;

(b) a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a ‘manual scavenger’;⁶

On September 6, 2013, due to significant efforts from former manual scavengers and Dalit rights activists, the Indian parliament enacted a new law to strengthen accountability mechanisms, widen the definition of manual scavenging, and shift the focus of initiatives to end manual scavenging beyond sanitation to protection of the dignity of communities engaged as manual scavengers. The 2013 Act not only prohibits dry latrines, but also outlaws all manual cleaning of excrement as well as cleaning gutters, sewers, and septic tanks without protective gear as per above definition.

The International Labor Organization (ILO) distinguishes three forms of manual scavenging:

1. Removal of human excrement from public streets and dry latrines,
2. Cleaning septic tanks,
3. Cleaning gutters and sewers.⁷

These tasks are subdivided by gender: 95 percent of private and village toilets are cleaned by women; both women and men clean open defecation from roads, open areas, and open gutters; and men typically clean septic tanks, closed gutters, and sewers.⁸

“The new bill provides a solid framework for the prohibition of manual scavenging,” Pillay said. “India already has strong legal prohibitions on caste discrimination, so the key to the new law will be effective accountability and enforcement. It is also crucial that adequate resources are provided to enable the comprehensive rehabilitation of liberated manual scavengers. This is the only way these grossly exploited people will be able to successfully reintegrate into a healthier and much more dignified work environment, and finally have a real opportunity to improve the quality of their own lives and those of their children and subsequent generations.”⁹

“**HAZARDOUS CLEANING**” by an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made there under;¹⁰ for this purpose the prohibition of employment as manual scavengers and their rehabilitation rules, 2013

have been made and nodal is established that is District Magistrate of the district. So under the act engagement and employment is prohibited for cleaning of sewers and septic tanks.

“INSANITARY LATRINE” means a latrine which requires human excreta to be cleaned or otherwise handled manually, either *in situ*, or in an open drain or pit into which the excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed: Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine.¹¹

Whereas the 1993 Act aimed only to prohibit employment of manual scavenger’s and construction of dry latrines, the 2013 Act recognizes obligations to correct historical injustices suffered by manual scavengers and their families by providing alternate livelihood support and other assistance. In particular, the 2013 Act entitles individuals who have been engaged as manual scavengers to one-time cash assistance, scholarships for their children, housing, alternative livelihood support, and other legal and programmatic assistance.

We focus on human rights violations faced by communities engaged in the manual cleaning of excrement in homes, open defecation areas, and open drains. We do not address the health and safety regulations necessary to protect sanitation workers and those who clean septic tanks, or examine the hiring, subcontracting, and sanitation practices of the Indian Railways that perpetuate manual scavenging¹²

In formal legislative and legal contexts, the term Safai Karmachari has been introduced by rights activists to refer to manual scavenging as an occupation rather than an identity; but the term Safai Karmachari refers to people employed as sweepers and sanitation workers as well as those who manually clean excrement

In the absence of reliable government survey information on the prevalence of the manual scavenging, when possible, researcher has used both government data and data collected by Rashtriya Garima Abhiyan in our assessments of prevalence.

The Indian government has passed laws and adopted policies aimed at ending caste discrimination, but has done too little to address widespread failure to implement these measures and the role of local government officials in perpetuating discriminatory practices¹³

The Social Justice and Empowerment minister, Thaawar Chand Gehlot, told the Indian parliament in August 2014: “The practice of manual scavenging, arising from the continuing existence of insanitary latrines, still persists in various parts of the country.”¹⁴ Neither the Supreme Court estimate, nor Gehlot’s statement, however, take into account manual cleaning of open defecation from roads and other areas, removing excrement flushed into uncovered drains by private households in rural, semi-urban, and underdeveloped urban areas, or manual cleaning of private and government septic tanks. The Protection of Civil Rights Act, 1955, prohibits obstructing access to water sources on the basis of untouchability, people working as manual scavengers are often excluded from water sources in their communities¹⁵

LEGISLATIVE PERSPECTIVES OF PROHIBITION OF MANUAL SCAVENGING

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013

On September 6, 2013, due to significant efforts from former manual scavengers and Dalit

rights activists, the Indian parliament enacted a new law to strengthen accountability mechanisms, widen the definition of manual scavenging, and shift the focus of initiatives to end manual scavenging beyond sanitation to protection of the dignity of communities engaged as manual scavengers.¹⁶ The 2013 Act not only prohibits dry latrines, but also outlaws all manual cleaning of excrement as well as cleaning gutters, sewers, and septic tanks without protective gear.¹⁷ But it allowed a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a 'manual scavenger'¹⁸

If Any contract, agreement or other instrument entered and executed before the enacted Act, engaging or employing a person for the purpose of manual scavenging shall be terminated and such contract, agreement or other instrument shall be void and inoperative and no compensation shall be payable there for.¹⁹

And also no person employed or engaged as a manual scavenger on a full-time basis shall be retrenched by his employer, but shall be retained, subject to his willingness, in employment on at least the same emoluments, and shall be assigned work other than manual scavenging.

So under the act a person, local authority or any agency are prohibited to engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.²⁰

The Protection of Civil Rights Act, 1955:

Initially the untouchability (Offences) Act, 1955, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the Scheduled Castes. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act, the practice of untouchability was made both cognizable and non-compoundable offence and stricter punishment was provided for the offenders.

While the Protection of Civil Rights Act, 1955, prohibits obstructing access to water source on the basis of untouchability, people working as manual scavengers are often excluded from water sources in their communities.²¹

The 1955 Protection of Civil Rights Act made it an offense to compel any person to practice scavenging.²²

Committee on the Elimination of Racial Discrimination (CERD)

The Committee is concerned about the ongoing atrocities committed against Dalit women and the culture of impunity for perpetrators of such atrocities. The Committee is concerned that, despite a law banning manual scavenging, this degrading practice continues with grave implications for the dignity and health of the Dalit women who are engaged in this activity.

The Committee also urges the State party to study the health implications of manual scavenging on Dalits engaged in this profession and on the community as a whole, and to address all the impediments to eradicating this practice, including by putting in place modern sanitation facilities and providing the Dalit women engaged in this practice with vocational training and alternative

It held that the continuation of manual scavenging violated human rights and ordered the State to fully implement the new act and take appropriate action in response to any violations²³

Conclusion and suggestion

So researcher concludes that act which is passed to prohibit manual scavenging does not provide

total prohibition of it but some form of manual scavenging is recognised in the act. There is also need to rehabilitate those who are working on manual scavenging and there must not caste as basis of appointment and also while appointing for cleaning septic tanks, cleaning gutters and sewers safety equipment must be provided.

The new legislation states that manual scavengers must be rehabilitated but the rules are not providing specific provisions for the form of rehabilitation. At some points the rules also counteract with the goal of total eradication of manual scavenging by prescribing what safety equipment should be used in carrying out manual scavenging. Provisions for cash assistance and other rehabilitation plans are not properly specified and risk not being implemented. No clear and concrete provisions have been provided in the draft rules for the enforcement of the law in government institutions like the Indian Railways, a major employer of manual scavengers.

(Endnotes)

- 1 Navi Pillay, UN High Commissioner for Human Rights in 2013. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E>.
- 2 Vibhawari Kamble, "Steps toward the Elimination and Eradication of Manual Scavenging Practice: Advocacy Manual for NGO's, CBO's and other related organizations," http://www.idsn.org/uploads/media/Manual_for_advocacy_2.doc (accessed February 3, 2015).
- 3 Government of India, Working Group on the "Empowerment of Scheduled Castes (SCs)" for the Eleventh Five-Year Plan (2007-2012), Report of Sub Group on Safai Karmacharis Submitted to the Chairman of the Working Group on the "Empowerment of Scheduled Castes (SCs) for the Eleventh Five-Year Plan (2007-2012)," <http://safaikarmachariandolan.org/reports.php>, (accessed February 22, 2015), p. 3.
- 4 In addition to Valmiki, used widely in Madhya Pradesh, Uttar Pradesh, and Rajasthan, these include Han and Hadi in Bengal, Balmiki Dhanuk, and Halalkhor in Uttar Pradesh, Mehar in Assam, Mehatar in Hyderabad and Maharashtra, Paki in coastal Andhra Pradesh, Thotti in Tamil Nadu, Mira, Lalbegi, Chura, and Balashahi in Punjab, and Balmiki, Mehatar, and Chuhra in Delhi. Gita Ramaswamy, *India Stinking: Manual Scavengers in Andhra Pradesh and their work*, (Delhi: Navayana Publishing, 2005), p. 3
- 5 according to "the employment of manual scavengers and construction of dry latrines (prohibition) act, 1993"
- 6 Sec 2(g) of the prohibition of employment as manual scavengers and their rehabilitation act, 2013
- 7 National Conference on Promotion of Equality at Work in India: Manual Scavenging Project, "Background," http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Manual_scavenging/2012/Background_note_on_ILO_conference.pdf (accessed February 3, 2015), and Gita Ramaswamy, *India Stinking: Manual Scavengers in Andhra Pradesh and their work* (Delhi: Navayana Publishing, 2005), p. 3.
- 8 Jan Sahas Social Development Society, *Ending Manual Scavenging: The Jan Sahas Garima Abhiyan (Dignity) Campaign, 2001-2012*, unpublished internal report, April 2012, p. 12 (on file with Human Rights Watch); and National Conference on Promotion of Equality at Work in India: Manual Scavenging Project, "Background," http://idsn.org/fileadmin/user_folder/pdf/New_files/Key_Issues/Manual_scavenging/2012/Background_note_on_ILO_conference.pdf (accessed February 3, 2015).
- 9 See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12959&LangID=E#sthash.zeESFj2z.dpuf>.
- 10 sec 2(d) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
- 11 Sec 2(e) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
- 12 The Ministry of Railways reports that they have 7,114 trains running daily where human excrement is directly discharged on the track. Standing Committee on Social Justice and Empowerment (2012-2013), "Report on The

- Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill 2012,” Thirty Second Report, March 2013, <http://www.prsindia.org/uploads/media/Manual%20Scavengers/SCR%20Manual%20Scavengers%20Bill.pdf> (accessed February 3, 2015), para. 2.1.
- 13 India has various schemes, including education, grants, subsidies, loans, and public sector quota systems aimed at improving the economic situation of scheduled castes and addressing discrimination. For instance, the 2007-2012 Five-Year Plan aims to eliminate discrimination based upon social origin, recognizes the role of legislation in protecting rights to education and employment, and considers the possibility of affirmative action in the private sector. International Labour Organization, *Equality at work: The continuing challenge* (Geneva: ILO, 2011), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_166583.pdf (accessed February 3, 2015), Para. 172.
 - 14 “Manual scavenging continues in India: Minister,” *Times of India*, February 5, 2015, <http://timesofindia.indiatimes.com/India/Manual-scavenging-continues-in-India-Minister/articleshow/39697023.cms> (accessed on February 10, 2015).
 - 15 The Protection of Civil Rights Act (1955), No. 22 of 1955, section 4(iv) (prohibiting any disability with regard to “the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place [or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or [any section thereof], have a right to use or have access to]”).
 - 16 Between 2010 and 2013, delegations of women who formerly worked as manual scavengers met with 64 members of parliament to present draft legislation and demand a new law rather than an amendment to the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Rashtriya Garima Abhiyan, “Liberated Manual Scavenger women met 64 Parliamentarians for new Legislation,” <http://www.mailamukti.org/reports%20and%20documents/Advocacy%20Campaign%20with%20Parliamentarians%20-%20Rashtriya%20Garima%20Abhiyan.pdf>. (accessed February 3, 2015).
 - 17 The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, The Gazette of India, No. 25 of 2013, chapter I, section 2(g).”
 - 18 Sec (2) (g) explanation B of Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.
 - 19 Sec 6 (1) Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.
 - 20 Sec 7 (2). of Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.
 - 21 The Protection of Civil Rights Act (1955), No. 22 of 1955, section 4(iv) (prohibiting any disability with regard to “the use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place [or any bathing ghat, burial or cremation ground, any sanitary convenience, any road, or passage, or any other place of public resort which other members of the public, or [any section thereof], have a right to use or have access to]”).
 - 22 The Protection of Civil Rights Act, No. 22 of 1955, section 7a, added in 1976, provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability that is punishable with imprisonment.
 - 23 A comprehensive compilation of how caste discrimination and similar forms of discrimination based on work and descent have been addressed by the UN treaty bodies www.fidsn.org/%2Fwp-content/%2Fuploads/%2F2015/%2F01/%2FUNcompilation.pdf