

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Manual Scavenging: A Gloomy Side of the Country

DEEPIKA E.¹

ABSTRACT

Manual scavenging has been undoubtedly, one of the greatest evils plaguing our country. Even after 75 years of independence, caste discrimination, poverty, and government indifference continue to hinder manual laborers' efforts to achieve freedom. The manual scavengers risk their lives by manually cleaning the drainage with or without safety equipment and putting their health at great risk. The degrading practice does threaten not only human dignity but also the health of our sanitation workers. Manual scavenging activity affects "the right to live with human dignity". Due to manual scavenging, many people lost their lives in dungeons like manholes and dark pits covered in sewage, the ultimate point being the violation of the dignity of humans. Over the years several laws have come in place regarding the employment of manual scavengers but the problems lie with their implementation. Many manual scavengers lose their lives while cleaning the sewage tank. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 remains silent regarding compensation to the dead person. In this paper, an attempt is made to explain the difficulties in getting compensation from the dependents of the deceased manual scavengers.

Keywords: *Manual scavenging, inequalities, human dignity, implementation, compensation.*

I. INTRODUCTION

"Every life deserves a certain amount of dignity, no matter how poor or damaged the shell that carries it."

- **RICK BRAGG**

In India, manual scavenging was outlawed in 1952 and 1993, but both bans failed to eliminate the problem. The employees performing this labor have been negatively impacted by this practice on an emotional, financial, psychological, social, and political level. They endure incredibly challenging living circumstances. Scavenging by hand is a perilous task that poses a threat to one's health and a risk of worker fatality. Caste-based discrimination is outlawed

¹ Author is a student at Government Law College Madurai, Affiliated by The Tamil Nadu Dr. Ambedkar Law University, India.

according to various clauses of the Indian Constitution. The Constitution lays out the ideas of equality and dignity. Nevertheless, society has not yet adopted these provisions. The described fundamental rights are not even close to being put into practice. Manual scavenging is still a common activity, which confirms the persistence of untouchability. Numerous laws offer protection for these workers, but both the laws themselves and how they are put into practice have many flaws. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 remains silent regarding compensation to the dead person. For almost two decades, the dependents of manual scavengers who had passed away had trouble getting compensation. Even though there is no compensation clause, they were requesting reimbursement under the precedent-setting *Safai Karamchari Andolan* case.

II. MANUAL SCAVENGING & HUMAN DIGNITY^[2]

The principles of Human Dignity, though reached late in the official and legal texts of India, are embedded in its cultural practices and beliefs. As of today, the Right to live with Human Dignity is in Article 21 of the Indian Constitution by the means of the case (*Francis Coralie Mullen v. The Administrator, Union Territory of Delhi*)^[3]. In the case of *Bandhua Mukti Morcha v. Union of India*^[4], it was gathered, “*This right to live with human dignity, enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.*”

Manual Scavenging is infringing the Right of Human Dignity as it cannot be said that this practice is humane. Without a doubt, people are becoming more and more aware of their rights as time goes on. The protection of civil freedoms and human dignity has been the subject of many important court decisions throughout history. Despite adopting cutting-edge technology, people must clean their sewers without any security. We still have a long way to go even though the agencies have taken several actions to identify and stop discriminatory behaviors.

² Ishant, ‘Human Rights of Manual Scavengers’, Published on 8 February 2021, <https://legalreadings.com/human-rights-of-manual-scavengers/>

³ 1981 AIR 746.

⁴ 1984 AIR 802

III. CONSTITUTIONAL PROVISIONS

The principles of liberty, equality, and fraternity are incorporated into the Indian Constitution. It attempts to elevate and give prominence to socially underprivileged groups. The Constitution's arguments are taken into consideration when the government develops policies and programs. Untouchability and caste-based discrimination are prohibited by Article 17^[5] of the Indian Constitution. Manual scavenging violates the principle outlined in Article 17 because it is also caste-based violence. The Constitution of India prohibits untouchability (Article 17) and caste-based discrimination (Article 18). It considers human dignity as inalienable yet Manual Scavengers fall prey to discrimination. The oblivion even after such a wide disregard for practices like Manual Scavenging is shameful. It can be said that they are secluded from the definition of Human Beings. It is only when their position in society will be improved that they will be placed in a more secure position and they can live a life of dignity.

- (i) Article 14: Equality before law (Right to Equality);
- (ii) Article 16(2): Equality of opportunity in matters of public employment;
- (iii) Article 17: Abolition of untouchability;
- (iv) Article 19(1)(a): Right to practice any profession or to carry on any occupation, trade or business;
- (v) Article 21: Protection of life and personal liberty;
- (vi) Article 23: Prohibition of traffic in human beings and forced labor etc.;
- (vii) Article 41: Right to work, to education, and public assistance in certain circumstances;

IV. LEGISLATIVE ACT FOR MANUAL SCAVENGING

Manual scavenger employment was made illegal by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. All types of manual salvaging were covered by the 2013 Act when it was passed. The root of the issue is the denial of its existence. In the *Safai Karamchari Andolan & Ors. v. Union of India*^[6] case from 2014, the Supreme Court noted that Manual Scavenging is prohibited under various International Treaties such as the Universal Declaration of Human Rights (UDHR), the International Convention on Elimination of Racial Discrimination (ICERD), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Not limited to this, India is a party to other

⁵ The Indian constitution, 1950

⁶ (2014) 11 SCC 224

International Covenants like the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC). During India's most recent review for compliance with the ICESCR, ICERD, and the CRC, the Committee on Economic, Social and Cultural Rights (ESCR Committee), Committee on the Elimination of Racial Discrimination (CERD Committee).

In a 2014 judgment of *Safai Karamchari Andolan & Ors. v. Union of India*, the Supreme Court established there is a widespread prevalence of Manual Scavenging. The poor implementation of Government Schemes is the biggest reason behind not being able to get rid of this Historical social injustice.

V. COMPENSATION

“LIFE OF AN INDIVIDUAL INDEED CAN NOT BE COMPENSATED BY PAYMENT OF MONEY, BUT AT THE SAME TIME IT RELIEVES FINANCIAL STRAIN AND ALLEVIATES THE SUFFERINGS OF THE VICTIMS AND THEIR FAMILIES”

In most of the death cases of manual scavengers, the dependents are approaching the Supreme court of India under Article 32 of the Indian Constitution^[7] for claiming compensation for the deceased manual scavengers since their fundamental right (Article 21) has been violated.

Granting compensation for violation of fundamental rights is not expressly mentioned in the Indian Constitution though it finds mention in many international human rights instruments including the International Covenant on Civil and Political Rights, 1966 (ICCPR)^[8]. The Supreme Court recognized the right to seek compensation for the first time in the **Khatri & Ors vs. State of Bihar**^[9] and ordered compensation for the violation of basic human rights. In **Rudul Sah vs State of Bihar**^[10], the court has established the validity of compensation jurisprudence for violations of the constitution's fundamental rights on an ad hoc basis without any structured formulation. In **Smt. Nilabati Behara Alias Lalit Behera vs. State of Orissa**^[11], the Supreme Court of India has granted compensation for custodial death.

Compensation Civil Society Organizations have been fighting against these evil practices of removing night soil from the dry latrine, cleaning septic tanks some by descending into

⁷ The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

⁸ Article 9(5) states: “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

⁹ 1981 SCR (2) 408,

¹⁰ 1983 AIR 1086

¹¹ 1993 AIR 1960

manholes; sometimes neck deep, or by drowning in the putrid. PEMSR Act 2013 was the legislation that brings all these categories into the ambit of Manual Scavenging. However, such practices continue to persist in many parts of India even today. The court has on several occasions, directed the state and central government to monitor and implement the Act. Various orders have pushed the state and central government to ratify the law and they have been asked to appoint executive officials. Various state governments have appointed the concerned officials as the law binds the state to collect data and monitor it on a time-to-time basis. On the ground, the law remained redundant as far as the implementation is concerned. On March 27th, 2014, the Honorable Supreme Court of India, in a landmark judgment on *Safai Karamchari Andolan Vs. Union of India*^[12], directed the state government to fully implement the law and take stringent action against the violator. The court further directed the government to identify the families of all the persons who died while cleaning the septic tank since 1993 and award compensation of Rs. 10 lakh to each family of the deceased. The court also categorically pointed out that; if the practice of manual scavenging has to be brought to an end and if future generations are to be prevented from entering into this occupation rehabilitation measures must include:

- Sewer and Septic tank death- entering sewer lines without safety gears should be made a crime even in an emergency. For each death compensation of Rs. 10 lakhs is awarded to the families of the deceased.
- Indian Railway should take time bound strategy to end manual scavenging on the tracks.
- Provide support for dignified livelihood to women manual scavengers in accordance with their choice.

In ***Vimla Govind Chorotiya and 2 Others vs. State Of Maharashtra***^[13] the court referring to the judgment of the Supreme Court in *Safai Karamchari Andolan Vs. Union of India* stated that Government Resolution dated 12/12/2019 has been issued by the Social Justice and Special Assistance Department, Government of Maharashtra. A principle for compensation was also established by the court — Rs 10 lakhs was payable for every case of sewer death since 1993 – and the state is responsible for payment of compensation regardless of whether or not the worker had been employed or contracted by the state.

In the case ***Change India v. Government of Tamil Nadu***^[14] in a PIL seeking to enforce the

¹² (2014) 11 SCC 224

¹³ Writ Petition (L) NO. 15651 of 2021 47

¹⁴ Writ Petition No.25726 of 2017

2014 Judgement, the Court established that the directions, not only applied to manual scavengers engaged by the state but also those employed by private entities falling under the jurisdiction of a municipality. It stated the State's duty to prohibit manual scavenging. It further said that this liability to compensate for the lives of the manual scavengers lost cannot be avoided by the State by reason that it is not able to put an end to manual scavenging.^[15]

In the case, Supreme Court referred to and relied upon its earlier decision in **Union of India vs Prabhakaran Vijay Kumar**,¹⁶ where the supreme court had held that when activities are hazardous and if they are inherently dangerous the statute expects the highest degree of care and if someone is injured because of such activities, the State and its officials are liable even if they could establish that there was no negligence and that it was not intentional.

VI. SURVEY RELATING TO COMPENSATION

In a historic judgment in 2014, the Supreme Court ordered that the families of all those who died during sewer cleaning must be given Rs 10 lakh as compensation.

However, in response to an RTI query, the National Commission for Safai Karamcharis (NCSK) has revealed that according to information provided by different states, 814 people are officially reported to have died during sewer cleaning in 20 states since 1993, out of which full compensation of Rs 10 lakh has been granted in only 455 cases.

However, this figure of sewer-related deaths is still incomplete and the NCSK is continuously writing to states to gather the remaining information. The NCSK works under the Ministry of Social Justice and Empowerment and is responsible for monitoring cases of deaths during sewer cleaning across the country and collecting data related to it.

VII. REASONS FOR THE PERSISTENCE OF MANUAL SCAVENGING^[17]

The term "Manual Scavengers" refers to individuals who clean or remove human waste from dry latrines, public streets, sewers, gutters, and septic tanks. According to a survey that included 18 states, there have been around 50,000 manual scavengers documented since January 2020. Additionally, statistics from 2018 reveal that 30 000 persons were employed in manual scavenging in Uttar Pradesh alone. The number of deaths from manual scavenging in 2019 was the most in the previous five years, and 110 workers died while maintaining sewers and septic

¹⁵ Manav Bhatt, 'The manual scavengers Act: Jurisprudence so far', Published on 9 Feb 2022, <https://cjp.org.in/the-manualscavengers-act-jurisprudence-so-far>

¹⁶ (2008) 9 SCC 527

¹⁷ Sumedha Bhat, 'A detailed study of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act', Published on 23 September 2020, <https://blog.ipleaders.in/detailed-study-prohibition-employment-manual-scavengers-rehabilitation-act/>

tanks, a 61 percent increase from the previous year.

The majority would assume that practices like manual scavenging are commonplace in the present when equality and human rights are more important than ever. Casteism, sexism, and ideas of untouchability among the general populace sometimes lead to manual scavenging. As it has become a catchphrase that manual scavengers exclusively belong to certain classes, hierarchy is the primary cause of the problems that exist in our society. Higher castes, therefore, believed that the quality of their work was too low and disapprove. When lower castes perform these professions, the perception of untouchability and the idea of discrimination against them are strengthened, which only leads to human rights exploitation for people working and their families.

The founder of Rashtriya Garima Abhiyan, Ashif Shaikh, a progressive group that opposes manual scavenging claims that manual scavenging is not a form of employment but rather a form of slavery. Therefore, this continues to be the primary cause of the human rights violation that Dalits experience in their communities. Therefore, even in a nation like India, which has a belief system and legal framework that upholds equality and protects human rights, these individuals must endure humiliation. However, if they take on such jobs, they will only experience social discrimination; conversely, if they do not, they will experience financial hardship, starve to death, and endanger the welfare and shelter of their families. After the Prohibition of Employment as Manual Scavengers and the Rehabilitation Act was implemented, one significant aspect of the law was to eliminate racial prejudice in addition to the activity itself. Under pressure from the community and society, these people have no choice but to resume their menial labor. It is regrettable and disgraceful that they persist in abusing their rights, integrity, and basic human rights even when the law is on their side. Even while the nation is moving forward economically, the existence and practice of inhumane acts set us back and highlight the failure to safeguard and protect fundamental human rights.

VIII. RECOMMENDATION

We need consciousness mixed with solutions like technology programs and skills to remove the persistence of manual scavenging and to suggest alternative possible work options because legislative implementations and amendments alone cannot erase the inhumane actions. Most people would agree that equality and human rights are now more important than ever. **Technology-induced intervention:** To abolish the practices of Manual Scavenging, the foremost alternative proposed by various stakeholders was the technological intervention. Municipal Corporations have adopted a few; among them, the most popular is Suction Machine.

Currently, the Ministry of Housing and Urban Affairs launches 58 “Technology Challenges”, where they are inviting applications from individuals or NGOs to come up with technology-induced methods to eliminate human entry into septic tanks or sewers which is a positive move. Another case is of The Bandicoot Robot, developed by Gen Robotics, Kerala, for cleaning manholes and septic tanks. Such moves should be promoted and (tested) implemented on the ground instantaneously. Further, the use of screeners in sewer lines to prevent the entry of solid non-degradable materials should be installed.

IX. CONCLUSION

The urgent necessity is to do away with manual scavenging. To address this issue and explore all viable options for accurately assessing and eventually eliminating this behavior, the state and society must take an active interest and play a significant role. To ensure that complete mechanization is implemented and made available to everyone who is being compelled to participate in this degrading activity, it also calls for the involvement of all stakeholders. To deal with the problem at hand, the court system should also provide enough help. Because the country needs everyone's help, as our small friend pointed out, if the government is strict about the issue of manual scavengers, we will eliminate this danger. The need of legislation is necessary to facilitate the dependents of deceased manual scavengers in claiming compensation.
