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Manual Scavenging in India: A Legal and Social Perspective

MEGHA GUPTA¹ AND DR. SUDHIR KUMAR²

ABSTRACT

Manual scavenging is a practice where humans are made to clean other humans' waste and excreta. It is the most violent form of caste abuse in today's time. Before delving into the inhumane socio-economic conditions which consistently plague the lives of manual scavengers, it is important to understand the definition of the term "manual scavengers" as provided under The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

The Authors argue that the definition provided in the Act has various loopholes. It is extremely restricted in its ambit, thereby excluding many workers involved in this practice, due to its flawed interpretation. In essence, it does not include the people who handle human waste with proper safety gear, without elaborating on the term "safety gear". It also excludes people who manually clean the dead & rotting animals, abandoned dead bodies or medical waste, which often also carries human waste in various forms. Historically, manual scavenging is a social wrong which has been prevalent since times immemorial and often delegated to the lower castes due their low placing in the caste hierarchy. Despite the evolution of human rights in 19th century, it was only in 1993 that a legislation prohibiting manual scavenging was passed in India, followed by the new Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 with elaborated definitions and punishments.

However, this inhumane practice of manual scavenging is still prevalent in India due to the loopholes in the present legislations. The practice is beneath the dignity of any individual and deprives them of their basic human rights, putting a large section of the society on the fringes of the society to be neglected and looked down upon. The nexus between manual scavenging as the default occupation for few particular castes/sections of society needs to be looked into. The existing legislation is lacking and the ground reality is quite different than envisioned. Therefore, according to Authors, the problems of the inhumane working conditions, the gender bias and the caste nexus need to be deeply studied and analysed to provide workable socio- legal solutions.

Keywords: Manual Scavenging, Human Rights, Legislative Approach, International Laws.

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I. INTRODUCTION

Manual scavenging, the practice of manually cleaning human excreta from dry latrines, open drains, and sewers, is a grim reality that persists despite numerous legal prohibitions. This practice not only exposes workers to extreme health hazards but also reinforces deep-rooted caste-based discrimination.

Section 2(j) of 'The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993', outlines a manual scavenger as 'a person engaged in or employed for manually carrying human excreta'³. Despite the implementation of this prohibitory law in 1993, manual scavenging endures to be practised in various forms due to the marginalisation of manual scavengers (often belonging to backward castes of society), loopholes in the law, including the very definition of the term & the safeguards as provided by the legislation.

In India, the root cause for the prevalence of manual scavenging has always been the caste system. The intricate caste system, a kind of racial social stratification that has historically been based on professional and familial ties, is deeply ingrained in Indian culture and can be seen everywhere in every dealing. The philosophy of caste is contained in the '*Manusmriti*', a sacred Hindu text dating from the second century BCE, which separates people into five distinct classes. The priestly and teaching class, or *Brahmins*, is the highest class, followed by the warrior class or *Kshatriyas*. The *Vaishyas* caste belongs to the farmer and merchant class of people and is third in rank, followed by the *Shudras*, the labourer class and at the bottom comes the *Dalits*, the lowest class, these were the people who were commonly referred to as 'untouchables' in Indian culture. Historically, Dalits were the outcast communities that were prohibited from joining in the religious and social life of the community and were narrowed to tedious tasks that were viewed as contaminating, such as 'animal slaughter and leatherworking.'⁴ Today, many of these tasks are being done with the help of machinery, but even more degrading tasks of cleaning human excreta and sewers are still being done manually by this Dalit community, the sum-total resulting in them still being categorised as untouchables. These lower caste people continue to face prejudice and abuse despite growing government engagement through various empowerment and upliftment schemes. Dalits form around 16.6% of India's population, the 2011 census recorded nearly 20.14 crore people belonging to various Scheduled Caste in the country compared to 16.66 crores in the 2001 census, the Dalit populace presented a decadal growth of 20.8%, primarily concentrated in

³'The Employment of Manual Scavengers And Construction of Dry Latrines (Prohibition) Act, 1993(Act No. 46 of 1993).'

⁴Minority Rights Group International, Dalits, <https://minorityrights.org/communities/dalits/> (last visited Apr. 25, 2025).

four states i.e., 'Uttar Pradesh (20.5%), followed by West Bengal (10.7%), Bihar (8.2%), and the Tamil Nadu (7.2%).'⁵

Every day, Dalits continue to fight for social equality, within Indian towns and villages, there are still spatial divisions that serve as an example of the continuing influence of the caste system on contemporary society⁶. Although many Dalits have sought to escape the caste system by leaving Hinduism, this rarely results in these people being freed from their social and economic tribulations. It was Mohandas Karamchand Gandhi, the father of the Nation, who understood the poor condition of Dalits and made some headway towards achieving equality in Indian society, for the first time, the Poona Pact of 1932 provided for Dalit candidates to run for and be elected to a certain number of seats in the central & provincial legislature reserved for this Depressed Classes, but as part of the joint electorate of all Hindus.⁷ After the signing of 'The Poona Pact', Gandhi gradually denoted the untouchables as 'Harijans', he thought it less pejorative than 'Untouchable', less patronising than the colonial coinage, 'Depressed Classes', and more indigenous-sounding than his own earlier substitute, 'suppressed classes'.⁸ Over time, their campaign has also been aided by gradual changes in society that have led to a wider recognition of Dalit equality and an expansion of the influence of both domestic and foreign non-governmental organisations⁹. Even though the Dalit community has made progress over the previous few decades, there is still hope for more equality in Indian society.

Manual scavengers majorly belong to the 'Scheduled Castes' and thus have formed new yet un-demarkable caste-social strata in the society, which has become synonymous with the lower caste. This oppression of the downtrodden during the course of history has today resulted in a situation where they are treated as untouchables in their own homes, and the plights of their lives or deaths do not garner much attention from the public as they have yet to be accepted as a part of society. In 2014, Human Rights Watch¹⁰ conducted an extensive study on manual scavengers across 'Gujarat, Madhya Pradesh, Maharashtra, Madhya Pradesh and

⁵ B. Sivakumar, Half of India's Dalit Population Lives in 4 States, Times of India (May 2, 2013, 12:28 PM), <https://timesofindia.indiatimes.com/india/half-of-indias-dalit-population-lives-in-4-states/articleshow/19827757.cms>.

⁶ Sonalde Desai & Veena Kulkarni, Changing Educational Inequalities in India in the Context of Affirmative Action, 45 *Demography* 245, 245–70 (2008).

⁷ Poona Pact 1932 (B.R. Ambedkar and M.K. Gandhi), Constitution of India, <https://www.constitutionofindia.net/historical-constitution/poona-pact-1932-b-r-ambedkar-and-m-k-gandhi/> (last visited Apr. 25, 2025).

⁸ Literal meaning Children of God

⁹ Clifford Bob, "Dalit Rights are Human Rights": Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue, 29 *Hum. Rts. Q.* 167 (2007).

¹⁰ Human Rights Watch, Cleaning Human Waste: "Manual Scavenging," Caste, and Discrimination in India (Aug. 25, 2014), <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>.

Rajasthan’ and reported that the job of manual scavenging was given to Dalits and other Scheduled Castes due to the inherent casteism which is prevalent in the society to this day. In December 2021, the Union's ‘Social Justice and Empowerment Ministry’ stated that out of the 43,797 manual scavengers on whom the ministry did a case study, 43,594 belonged to the Scheduled Castes.¹¹

II. INTERNATIONAL LAWS ON MANUAL SCAVENGING

The international community has developed a comprehensive legal framework to combat and eradicate manual scavenging. ‘Manual scavenging’ is a gross violation of human rights, and the international community has set up various organisations and conventions to guarantee basic human dignity and equal sources of livelihood to all, without discrimination. The International Labor Organisation (ILO), founded in October 1919, is dedicated to endorsing social justice and internationally recognised human and labour rights. It has two specific conventions which directly address the situation of manual scavengers. *ILO Convention No. 29*, adopted in 1930, emphasises the necessity of eliminating manual scavenging and defines it as forced labour. This, coupled with the customary rights of heredity, which are created in manual scavenging, leaves the scavengers without a way out of this life. ‘*ILO Convention No. 111* of 1958’ deals with discrimination in employment and occupation. It prohibits discrimination based on social origin, which includes the marginalised communities such as those based on caste that frequently engage in manual scavenging, despite not specifically mentioning it.

In reply to the “barbarous acts which [...] outraged the conscience of mankind” during the ‘Second World War’ on 10th December 1948 in Paris, under ‘Article 1 of the Universal Declaration of Human Rights (UDHR)’, it was declared that “*All human beings are born free and equal in dignity and rights*”¹². The rights to equality, life, freedom from cruel treatment, and an adequate standard of living are specifically addressed in Articles 1, 3, 5, and 25 of the UDHR. Manual scavenging abuses these key standards, as it subjects people to dangerous and dehumanising conditions. This declaration has stood the test of time. In today’s world, the meaning of Article 1 has been expanded to include every inequality & discrimination done in any corner of the globe, including manual scavenging. This article has been adopted in ‘Article 21 of the Indian constitution.’

¹¹ Ramdas Athawale, Minister of State for Social Justice and Empowerment, Response to a Question in the Rajya Sabha, *Rajya Sabha Debates*, <https://rajyasabha.nic.in/rsdebate/> (last visited Apr. 25, 2025).

¹² Universal Declaration of Human Rights, Art. 1, <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/> (last visited Apr. 25, 2025).

Mounting international alarm over racial discrimination led the ‘United Nations General Assembly in 1963’ to take the formal step of adopting the ‘Declaration on the Elimination of All Forms of Racial Discrimination, A/RES/1904’, and in 1965, ‘*The International Convention on Elimination of All Forms of Racial Discrimination (ICERD)*’ was provided to the world community as a legal instrument to fight racial separation.¹³ Even though manual scavenging is not specifically mentioned in ICERD, in practice, it affects the most socially and racially excluded groups (*Shudras & Dalits*). In India, Manual scavenging is a method of racial discrimination that must be eliminated being the state parties to the Convention. *The International Covenant on Civil and Political Rights (ICCPR)*, adopted in 1966, safeguards different human and political rights such as the ‘right to life, the right against torture and equal protection of law.’ These rights have also been directly adopted in ‘Article 21 of the Indian Constitution’ as fundamental rights guaranteed to all citizens.

Apart from this, the *Sustainable Development Goals* of 2015 also provide the member states with certain basic human rights to strive for their citizens. SDG 6 emphasises ensuring access to clean water and sanitation by 2030. The need to provide equitable sanitation and hygiene services and to eradicate open defecation is explicitly addressed in Target 6.2. To achieve this goal, India launched the *Swachha Bharat Mission*, which focuses on making India open defecation-free. Sikkim became the first state in India to achieve this goal. The Sustainable Development Goals (SDGs) provide a global platform for prioritising and allocating resources to combat manual scavenging by prohibiting open defecation, thereby affecting manual scavenging. Nonetheless, the outcome of the SDGs relies upon the responsibility and activities of individual states.

The global legislative structure on manual scavenging acts as the basic fundamental structure to kill this debasing practice. Together, the UDHR, the ILO conventions, the SDGs, the ICERD and the ICCPR stress the significance of safeguarding human rights, eradicating discrimination and providing dignified sanitation services. However, the development of comprehensive legislative measures on the national level, adequate enforcement mechanisms, and social awareness movements are all essential for the effective application of these international laws. To discourse this global problem, international cooperation and the sharing of best practices are also essential. By cooperating, the world community can take huge steps towards eradicating manual scavenging, which is majorly prevalent in underdeveloped and developing countries and treating everyone with equality and dignity.

¹³ Office of the High Commissioner for Human Rights, *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, <https://www.ohchr.org/en/treaty-bodies/cerd/background-convention> (last visited Apr. 25, 2025).

III. CONSTITUTIONAL PERSPECTIVE

The Indian Constitution guarantees human rights in the form of fundamental rights in ‘Part III’ to all its citizens. The framers of the ‘Indian Constitution’ acknowledged the nexus of the lower castes with ‘unclean’ professions, which had resulted in them being deprived of admittance to the equivalent public spaces as the ‘upper castes’ and being termed ‘untouchable’. The lower castes, namely the *Shudras* & *Dalits*, were historically ostracised from society. They were deprived of education, equal opportunities in every aspect of life and fundamental human dignity. Therefore, the Constituent Assembly unanimously adopted the draft version of today’s ‘Article 17’, which explicitly eliminated untouchability & its practice in any form was made a punishable offence. Despite this, it still perpetuates in society, particularly with regard to manual scavengers and other similar jobs, albeit indirectly.

Further, Article 21, the Pandora’s Box for all human rights, reads as follows: ‘*No person shall be deprived of his life or personal liberty except according to procedure established by law.*’ The term ‘life’ has been elaborated by the plethora of judgments by the Hon’ble Supreme Court of India to encompass more than just the act of breathing or simple creature presence or living with drudgery through life. It has a lot more widespread implications, incorporating the ‘right to live with human dignity, the right to livelihood, the right to health, the right to a clean environment’ and so on. Human dignity is an inalienable part of the right to life.¹⁴ Manual scavenging is an antithesis to the very objective mentioned in Article 21. The manual scavenging forces people to work in inhuman environments with little, or no protection and indirectly creates a separate social class which is looked down upon and treated as untouchables, based not only on their caste but also their work. Most of the workers who are manual scavengers belong to the lower caste and are treated as untouchables. Even today; manual scavengers are marginalised in society. The children of manual scavengers are often denied equal opportunities in jobs and education; they are forced to continue in their parents’ line of work due to a lack of monetary resources or discrimination by society at every step of life. This is exemplified by an incident reported in a Documentary¹⁵ that showed manual scavengers are often served tea in disposable cups as vendors do not want to touch the teacups used by them. In another incident reported in Tamil Nadu, female students belonging to tribal communities were made to clean toilets, fetch water and clean school premises.¹⁶

¹⁴ Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746.

¹⁵ Kakkoos (2017) directed by Activist Divya Bharathi.

¹⁶ HT News Desk, *Students Clean Toilets at Govt School in Tamil Nadu, Principal Suspended*, Hindustan Times (Jan. 12, 2025), <https://www.hindustantimes.com/india-news/students-clean-toilets-at-govt-school-in-tamil-nadu-principal-suspended-101736696955962.html>.

In addition to Fundamental Rights provided in Part III, under Part IV, titled '*Directive Principles of State Policy (DPSP)*', socialistic and Gandhian principles were mentioned by the framers with the objective that they will act as a guide for the government in creating a welfare society and eradicating inequality, *Article 38*¹⁷ provides for promoting the wellbeing of the people by safeguarding a social order through 'justice—social, economic and political'—and to reduce 'inequalities in income, status, facilities and opportunities'. '*Article 39*'¹⁸ seeks to secure for every citizen the right to passable means of 'livelihood, equitable distribution of material resources of the community for the common good, prevention of concentration of wealth and means of production, equal pay for equal work for men and women, preservation of the health and strength of workers and children against forcible abuse and prospects for the healthy development of children.' The concept of equality for all, as envisioned in Articles 21 and 39, along with the ideas 'human rights are human dignity' are based on Kant's idea of equality and dignity, which bases itself on the concept that humans are not a means to end but rather an end in themselves and therefore have an inherent dignity which transcends market worth. '*Article 42*'¹⁹ was added to make provision for 'just and humane conditions of work and maternity relief', and '*Article 43*'²⁰ seeks to secure a 'living wage, a decent standard of living and social & cultural opportunities for all workers'. Even though 'Part IV of the Constitution' is non-justiciable, these principles serve as the milestones that the State must strive for to create a just and equal society. Manual scavenging contradicts the idea of human self-esteem and equality as the very premise of it is based on marginalising a particular section of society and treating them lower than others.

¹⁷ '*State to secure a social order for the promotion of welfare of the people*: (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.'

¹⁸ '*Certain Principles of Policy to be Followed by the State*: The State shall, in particular, direct its policy towards securing—(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;(d) that there is equal pay for equal work for both men and women;(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.'

¹⁹ '*Provision for just and humane conditions of work and maternity relief*: The State shall make provision for securing just and humane conditions of work and for maternity relief.'

²⁰ '*Living wage, etc., for workers*: The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.'

IV. COMMITTEES ON MANUAL SCAVENGING

Over time in India, various committees were shaped to eradicate manual scavenging, and it is the fruit of these committees that manual scavenging declined at its own slow pace. Freedom fighter G.S. Lakshman Iyer, in the late 1950s, after becoming Chairman of Gobichettipalayam municipality in Tamil Nadu, banned manual scavenging, and Delhi was the first state (Union Territory) to ban manual Scavenging in 2013.²¹

Scavengers Living Conditions Inquiry Committee (Barve Committee, 1949)

Shri Barve was a human rights activist lawyer and prominent Congress leader from Dhulia who fought for the upliftment of the lower castes in the political and social sphere. In 1949, the 'Government of Bombay' selected him as the chairperson of the committee which enquired into the status and state of the manual scavengers in India. The report, which was acquiesced in 1952, highlighted the social stigma, health hazards and economic conditions of the manual scavengers and recommended strict legislation in addition to community participation and awareness campaigns to eradicate this malpractice, the proposals of the report were circulated to all state administrations by the 'Ministry of Home Affairs' in 1955, urging their implementation.²² The report highlighted that manual scavengers were stigmatised in society and were forced to live on the outskirts of the cities, forced into a life of shadows. In addition to this, scavengers were exposed to inhumanly unhygienic and dangerous working conditions, which adversely affected their health. From rashes to blisters to lung diseases, the scavengers often suffered due to their exposure to the poisonous gases of the sewers, which sometimes even led to their deaths. Women's reproductive health also bore the brunt of this task, and they were often forced to get hysterectomies.

Kaka Kalekar Commission

The first 'Backward Class Commission' was appointed in 1953 under the chairmanship of 'Kaka Kalekar'²³. The committee acquiesced its report in 1955. The committee, in its report, defined the state of manual scavengers as sub-human and emphasized the outmoded methods of night soil removal and sanitation, which comprised manual removal of human waste by scavenging groups. The committee also pulled up the municipal corporations for being the biggest offenders. The committee recommended collecting data on castes and communities

²¹ Anshita Surana, *Manual Scavenging: An Act to Empower Manual Scavengers*, GetLegal India, <https://getlegalindia.com/manual-scavenging/> (last visited Apr. 25, 2025).

²² Ministry of Culture, Government of India, *Unsung Heroes of India's Freedom Struggle*, <https://amritmahotsav.nic.in/unsung-heroes-detail.htm?18555> (last visited Apr. 25, 2025).

²³ Dattatreya Balkrishna Kalelkar, popularly known as Kaka Kalelkar, was an Indian independence activist, social reformer, journalist and an eminent follower of the philosophy and methods of Mahatma Gandhi

during the 1961 Census, 70% reservation for backward classes in higher education institutes and declaring all women as backwards. The report was considered by the Government over the next half-decade but was rejected in 1961.²⁴

Central Harijan Welfare Board (CHWB)

The 'Central Harijan Welfare Board' was recognized by the 'Ministry of Home Affairs' in 1956 under the chairmanship of 'Pandit Govind Ballabh Pant.' The board revised the working and standard of living of sweepers and scavengers in India and suggested the drafting of a centrally funded scheme for manual scavengers.²⁵

The Scavenging Conditions Enquiry Committee (Malkani Committee, 1957)

This national-level committee was set up to make an in-depth study of the scavenging threat in the country. The committee acquiesced its report in 1960 and highlighted the design of the latrines and the being of dry latrines as the cause of the prevalence of manual scavenging. The committee researched how the developed nations deal with their night soil and recommended that the building of dry latrines be prohibited and the government must adopt up-to-date technologies to clean the sewer systems.

The Committee on Customary Rights to Scavenging (Prof. N. R. Malkani Committee, 1965)

The 'Central Department of Social Welfare' selected a committee in 1965 under the chairmanship of 'Prof. N. R. Malkani' to inspect the question of the elimination of customary rights of the scavengers. The committee which acquiesced its report in 1966 found that where scavenging is not municipalized the latrines were cleaned privately and one particular scavenger acquired a hereditary right to clean such latrine as against additional scavengers by an understanding and agreement. A customary association also grows with the homeowner and the scavenger obtains expenses in some form or the other.

Report of the Committee on Conditions of Sweepers and Scavengers (Pandya Committee, 1969)

The Pandya committee was appointed in 1968 as a sub-committee by the National Commission on Labour, Government of India, focused on the eradication of manual scavenging through a three-pronged approach- targeted legislation, rehabilitation programs

²⁴ National Commission for Backward Classes, *Annual Report 2012–2013*, <https://www.ncbc.nic.in/Writereaddata/AR%202012-13%20Pandey635705824205955927.pdf> (last visited Apr. 25, 2025).

²⁵ Sukesh Kumar Maurya, *Law Relating to Manual Scavenging in India: Issues and Challenges*, 68 *Our Heritage* 1 (2020).

and welfare schemes. The recommendations by the committee were largely implemented. The government introduced two legislations which focused on the prohibition of dry latrines and manual scavenging. Various rehabilitation programs were also introduced by the government. Alongside the government, various NGOs actively participated in this approach and rehabilitated many manual scavengers and provided them with alternative skills and means of livelihood. Dr Bindeshwar Pathak's NGO, Sulabh International Social Service Organisation, which is based in Rajasthan, is a leader in this fight against manual scavenging and has rescued and rehabilitated thousands of manual scavengers.

The observations and recommendations made by all the committees highlighted certain problems faced by manual scavengers, such as health hazards, societal marginalization and technology-based solutions to eradicate manual scavenging with an additional focus on the reintegration of manual scavengers, which is imitated in the legislation introduced by the Government in 1993 and 2013. States' willingness to take proactive measures is crucial for the effective implementation of committee recommendations. States must prioritise the eradication of manual scavenging, make investments in alternative infrastructure and technologies, and support the rehabilitation of those affected.

V. INDIAN LEGISLATIONS ON MANUAL SCAVENGING

To win the battle against this oppressive and undignified practice, the government has, over time, introduced specific legislation to address the issue. The foremost legislation which dealt with segregation in India is '*The Protection of Civil Rights Act of 1955*.'²⁶ The Indian Government enacted this legislation on 08th May 1955 & it served as the foundation for a variety of programmes for 'Scheduled Castes, Scheduled Tribes' and particularly susceptible sections of Indian society like 'scavengers, sweepers, bonded labourers and nomadic peoples.' The Act places a strong emphasis on formulating practical plans for improvement and growth in areas such as 'housing, education,' and other areas after thoroughly examining the sole and multifaceted problems that these societies face.

Subsequently, '*The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*'²⁷ came into force on 30th January 1990 to guard the 'Scheduled Castes and Scheduled Tribes' from atrocities. Considering the savage practice of manual scavenging, the ambit of the Act was enhanced by amendment.²⁸ By virtue of the new Act that the Central Government

²⁶ Protection of Civil Rights Act, 1955 (Act No. 22 of 1955)

²⁷ The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No. 33 of 1989)

²⁸ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act No. 1 of 2016) notified on 01.01.2016 and enforced w.e.f. 26.01.2016.

notified on 'January 1, 2016', it is illegal to hire, allow, or otherwise compel any member of the SC/ST community to engage in manual scavenging. The violation of the aforementioned clause results in a minimum six-month sentence and a maximum five-year sentence, as well as a fine. While both above Acts are generic in nature and aimed to protect the lower caste people from exploitation, the Government has taken a targeted approach to eradicate manual scavenging.

The first Act which directly dealt with manual scavenging was '*The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*.' This Act was the first one to forbid manual scavenging across the nation. The preamble of the Act reads: "WHEREAS fraternity assuring the dignity of the individual has been enshrined in the Preamble to the Constitution..... AND WHEREAS the dehumanising practices of manual scavenging of human excreta still continues in many parts of the country AND WHEREAS it is necessary to enact uniform legislation for the whole of India for abolishing manual scavenging by declaring employment of manual scavengers for removal of human excreta an offence and thereby ban the further proliferation of dry latrines in the country; AND WHEREAS it is desirable for eliminating the dehumanising practice of employment of manual scavengers and for protecting and improving the human environment to make it obligatory to convert dry latrines into water-seal latrines or to construct water-seal latrines in new construction".²⁹This was the first specific legislation which criminalised retaining scavengers or building dry (non-flush) latrines were made punishable by up to a year imprisonment and/or a fine of Rs. 2,000. This Act aimed to provide manual scavengers with dignity and respect and prohibited the employ of manual scavengers to clean dry latrines by hand. The washrooms' design and construction, as well as the lack of a flush system, are both mentioned and prohibited and the need for safety measures and tools to be provided to people who are involved in the sanitation work.

The '*National Commission for Safai Karmacharis*' was established on August 12, 1994, in accordance with the '*National Commission for Safai Karmacharis Act*', 1993, for a period of three years to indorse and safeguard the rights and interests of Safai Karmacharis. The target of the Commission was to study, screen and assess the execution of the projects and plans connected with the social and financial restoration of Safai Karmacharis and furthermore make proposals to the Central Administration for improved organisation and execution of plans/programs.

²⁹ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act No. 46 of 1993).

Along with specific legislation for manual scavengers, the '90s also saw an awareness amongst the masses and the need on the part of the government to set up rights and welfare options for manual scavengers to help with their rehabilitation. In pursuance of this, the government established the *National Safai Karmacharis Finance and Development Corporation (NSKFDC)* on January 24, 1997, in accordance with Section 25 of the Companies Act of 1956. Its purpose was to serve as the highest authority for the complete socioeconomic upliftment of *safai karmacharis* and their children, as well as to provide concessional financial assistance for the development of alternative projects that generate income and are financially viable. In addition to offering technical and entrepreneurial skills training and loans to community members pursuing higher education, the corporation's primary goals are the promotion of economic development, self-employment, and the rehabilitation of *safai karmacharis*.

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act (PEMSR), 2013 has a wider reach and, most crucially, recognised the need to attempt to rehabilitate manual scavengers. It carries a maximum punishment of one year in jail and/or fifty thousand fine. The Act defines sanitation workers who are also known as *safai karmacharis* as all kinds of workers engaged in cleaning jobs, including those who handle dry and wet waste, and those who sweep. The Act treats the terms *safai karmachari* and sanitation workers as synonyms.³⁰

However, there is a stark difference between manual scavengers and sanitation workers, foremost, manual scavengers are sanitation workers who, without adequate or any protective gear, deal directly with faeces. The open interpretation of both terms has led to a situation where the safety equipment that is provided to manual scavengers is often sub-par, at best. It has been recorded that manual scavengers are often provided with torn gum boots, if any, and a piece of cardboard in the name of safety equipment. The definition of manual scavenger, as provided in the 2013 Act, has no mention of caste, but statistically, individuals of only the scheduled castes are engaged in this modest work. Further, the absence of a comprehensive definition in the Act reduces the significance of the provision that forbids individuals from being employed for the risky cleaning of septic and sewer tanks. A proper framework for the elimination of manual scavenging can only be developed after the definition, classification and inclusion of sanitation workers like faecal sludge handlers, sewage treatment plant sanitation workers, toilet sanitation workers, sewer and drain sanitation workers, manual

³⁰ The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (Act No. 25 of 2013).

scavengers in different categories. Also, sanitation workers who are associated with the manual handling of hazardous waste, such as biomedical waste, should be added to the definition. It is comparable to scavenging human faeces.

Act specifically stipulates that a person who handles excreta with the assistance of “protective gear” will not be considered a manual scavenger, this is problematic in the sense that, such “protective gear” transforms into a technology that serves as a mediator and aids in maintaining, if not perpetuating, the employment of individuals for hazardous cleaning. The explanation clause provided under clause 2(g)³¹ of the Act states that only ‘regular’ or ‘contract’ employees are included in the definition of manual scavengers, not the daily wagers or informal workers who are working as workers for hire in private and government firms. Before Bio-toilets, indirectly, the Indian Railways was the biggest employer of manual scavengers in India.³² To achieve the true objective of the Act, daily wagers/private workers for hire ought to be included. Another common form of manual scavenging is the removal of dead bodies and animal remains; the definition must identify & include this. The definition excludes sweepers who are presented with unhygienic circumstances. A person is exempt from the provisions if they are engaged in or employed in scavenging with the assistance of tools and protective gear. This condition must also be omitted. The sanitary urinals have also not been included in the Act’s scope because it only addresses dry latrines

*Section 6*³³ of the Act states that any contract or agreement executed before this Act, drawing in or utilising an individual with the end goal of manual scavenging, will stand void and out of commission. However, this has not been completely implemented, as manual scavengers are

³¹ “manual scavenger” means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or 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.—For the purpose of this clause,—

(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’;

³² Prachi Salve, *Though Government Bodies Deny It, Manual Scavenging Is Widespread in India Despite a Ban*, Scroll.in (Aug. 27, 2016), <https://scroll.in/article/814976/though-government-bodies-deny-it-manual-scavenging-is-widespread-in-india-despite-a-ban>.

³³ *Contract, agreement, etc., to be void.*—(1) Any contract, agreement or other instrument entered into or executed before the date of commencement of this Act, engaging or employing a person for the purpose of manual scavenging shall, on the date of commencement of this Act, be terminated and such contract, agreement or other instrument shall be void and inoperative and no compensation shall be payable therefor.

(2) Notwithstanding anything contained in sub-section (1), 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.

still reported to be dying while cleaning septic tanks. Additionally, there is a provision for punishment in cases of contradiction of Sections 5,³⁴ 6 and 7³⁵ of the Act. However, not a single one of them has been applied to anybody despite consistent repudiation and no convictions have taken place. The Act also requires a survey to remove all dry latrines, but this is not done in practice. The expense of changing or dismantling dry latrines falls on the proprietor or client, who ought to assume a sense of ownership. If this is not complied with, the local authority can get the offender to pay for the costs of tearing down the dry toilet and building a new sanitary toilet in its place.

The concerning and frightening number of manual scavengers that exist even today is a testament to the fact that the provisions of the Act are not strictly complied with. Under sections 13³⁶ and 16³⁷, the rehabilitation of recognised manual scavengers is examined. This

³⁴*Prohibition of insanitary latrines and employment and engagement of manual scavenger*

(I) Notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (46 of 1993), no person, local authority or any agency shall, after the date of commencement of this Act,—

(a) construct an insanitary latrine; or

(b) engage or employ, either directly or indirectly, a manual scavenger, and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging.

(2) Every insanitary latrine existing on the date of commencement of this Act, shall either be demolished or be converted into a sanitary latrine, by the occupier at his own cost, before the expiry of the period so specified in clause (b) of sub-section (1) of section 4:

Provided that where there are several occupiers in relation to an insanitary latrine, the liability to demolish or convert it shall lie with,—

(a) the owner of the premises, in case one of the occupiers happens to be the owner; and

(b) all the occupiers, jointly and severally, in all other cases:

Provided that the State Government may give assistance for conversion of insanitary latrines into sanitary latrines to occupiers from such categories of persons and on such scale, as it may, by notification, specify:

Provided further that non-receipt of State assistance shall not be a valid ground to maintain or use an insanitary latrine, beyond the said period of nine months.

(3) If any occupier fails to demolish an insanitary latrine or convert it into a sanitary latrine within the period specified in sub-section (2), the local authority having jurisdiction over the area in which such insanitary latrine is situated, shall, after giving notice of not less than twenty one days to the occupier, either convert such latrine into a sanitary latrine, or demolish such insanitary latrine, and shall be entitled to recover the cost of such conversion or, as the case may be, of demolition, from such occupier in such manner as may be prescribed.

³⁵*Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks.*—No person, local authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the date of commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.

³⁶*Rehabilitation of persons identified as manual scavengers by a Municipality.*—(1) Any person included in the final list of manual scavengers published in pursuance of sub-section (o) of section 11 or added thereto in pursuance of sub-section (3) of section 12, shall be rehabilitated in the following manner, namely:—

(a) he shall be given, within one month,—

(i) a photo identity card, containing, inter alia, details of all members of his family dependent on him, and

(ii) such initial, one time, cash assistance, as may be prescribed;

(b) his children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) he shall be allotted a residential plot and financial assistance for house construction, or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger, and the provisions of the relevant scheme of the Central Government or the State Government or the concerned local authority;

(d) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness,

concept is entirely flawed as it is dependent on the authorities' discretion, and because it is discretionary, they are not liable for it. Moreover, the definition is arbitrary and exclusive in nature, which automatically excludes the already vulnerable group which are suffering from exploitation. The Act also calls for the establishment of a Vigilance Committee. This committee is formed at the Central, State, District, and occasionally Sub-Division Levels. The Chairperson of the committee is the Union Minister for Social Justice and Empowerment at the Central Level, the Chief Minister of State or a Minister nominated by him at the State Level, the District Magistrate at the District Level, and the Sub-Divisional Magistrate at the Sub-Division Level. The Chairperson of the National Commission for Scheduled Castes at the Central Level, three elected members of Parliament from Scheduled Castes, two from the Lok Sabha and one from the Rajya Sabha, the Member of the Planning Commission dealing with the development of Scheduled Castes, and the Joint Secretary focusing on the development of Scheduled Castes are all members of the committee. Both the State-Level Committee and the District-Level Committee are created along the same lines. While outlining the members of the committee which include the chairperson of the National Commission for Scheduled Castes, the government indirectly acknowledged that the inhuman practice of manual scavenging is based on caste and that Scheduled Caste members are the most affected by it. The central and state committees' roles are not specified, but they are described as "monitoring and advising for the implementation of the Act", "coordinating the functions of all concerned agencies", and "investigating any other matter incidental to or connected with the implementation of this Act". The Act, though a step in the right direction, is plagued with insufficient definitions and a lack of accountability. 'District Magistrates' and local authorities are in charge of safeguarding the application of the Act and managing the reintegration procedure for manual scavengers. The Act also encompasses provisions that allow state administrations to designate inspectors to check locations for unhygienic restrooms and

training in a livelihood skill, and shall be paid a monthly stipend of not less than three thousand rupees, during the period of such training;

(e) he, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis, in such manner as may be stipulated in the relevant scheme of the Central Government or the State Government or the concerned local authority;

(f) he shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(2) The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with the provisions of sub-section (1) and the State Government or the District Magistrate concerned may, in addition, assign responsibilities in his behalf to officers subordinate to the District Magistrate and to officers of the concerned Municipality.

³⁷*Rehabilitation of persons identified as manual scavengers by a Panchayat.*-Any person included in the final list of manual scavengers, published in pursuance of section 14 or added thereto in pursuance of sub-section (2) of section 15 shall be rehabilitated, mutatis mutandis, in the manner laid down for urban manual scavengers in section 13.

people working as manual scavengers. Special trials may be held by the state government under the PEMSR Act of 2013 within three months of the offence, the court must be notified of the complaint, however, as has been reported, not a single notice has been sent in this regard. For the provisions of the Act to be efficiently executed, it is essential that adequate resources and training be made available to stimulate these monitoring instruments in conjunction with communities of manual scavengers, rights activists, and civil society organisations.

VI. JUDICIAL APPROACH

The Indian courts have played a proactive role in safeguarding the rights of the manual scavengers and supervising the application of the numerous Acts. In the landmark case of '*Safai Karamchar Andolan v. Union of India*'³⁸, the government's responsibility to locate, rehabilitate, and offer alternative work to manual scavengers was highlighted for the first time. The key issues of the case included the operative application of the Acts and the abolition of manual scavenging. The case also highlighted the need to rehabilitate manual scavengers to protect their livelihoods and dignity while also urging the government to use technology and mechanisation to do away with the need for manual scavenging. The court acknowledged that caste-based discrimination is prohibited under 'Articles 14, 15 and 17' of the Indian Constitution, and that manual scavenging violates these rights.

In the case of '*Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*'³⁹ the Indian Supreme Court observed that, like the political and executive branches of the state, the judicial branch of the state has accountability to safeguard the rights of all citizens and to guarantee that everybody can live their lives in poise. Given the choice, nobody might want to enter the sewer vent of the sewage framework for the end goal of cleaning, yet some individuals are compelled to embrace such dangerous positions with the expectation that by the day's end, they will have to bring in a few cash and feed their loved ones. It also revealed that a significant portion of urban society has lost touch with the dilemma of the poor and disadvantaged, counting those who, out of pure financial necessity, take on jobs or jobs that are integrally hazardous to life. In this situation, the Courts are not only permitted but also required by the Constitution to investigate concerns regarding the lives of individuals who are compelled to perform hazardous and life-threatening tasks.

Manual scavenging is still difficult to completely eradicate despite the court's orders. The

³⁸ *Safai Karmchar iAndolan v. Union of India* (2014) 11 SCC 224 (2014) 11 SCC 224

³⁹ *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers* 2011 8 SCC 568

government, civil society organisations, and activists are continuously working to safeguard that the laws are efficiently applied, that manual scavengers are rehabilitated, and that mechanised cleaning solutions are promoted.

VII. MANUAL SCAVENGING AND SWACHCHA BHARAT MISSION

Manual scavenging remains a blot on India's social fabric, perpetuating caste-based discrimination and violating fundamental rights. Despite legal prohibitions, the practice continues due to inadequate enforcement and societal apathy. On 2nd October 2014, the 150th birth commemoration of Mahatma Gandhi, Prime Minister Narendra Modi rebuilt the current *Nirmal Bharat Abhiyan* and declared another mission called as *Swachh Bharat Mission*. The mission aimed to end open defecation in India by building toilets. This was in line with the 'UN Sustainable Development Goals' to be accomplished by 2030. Ironically, the government made deductions totalling INR 5 crore in the 2017–18 budget estimate compared to the 2016–17 budget estimate under SRMS. Caste liberation has been hampered by Swachh Bharat, which has praised the broom. Construction of toilets took precedence over those cleaning them. While Prime Minister Narendra Modi placed a significant wager on the Swachh Bharat initiative, no one has asked the fundamental question of who will clean these toilets. Nobody inquired about the handling of the faeces and urine from these toilets. Are sewer lines being constructed to handle this urine and excrement? A separate cess was established for Swachh Bharat, generating billions of dollars for the construction of toilets. The public authority cares very little about distinguishing the manual scavengers and their rehabilitation and only cares about how many toilets are built.

VIII. CONCLUSION

Inhumane working conditions, caste-based discernment, and socio-economic marginalization plague manual scavengers, who typically come from underrepresented groups. This practice continues even today, in consistent violation of the scavengers' right to a dignified life. Manual scavenging disables labourers' inherent feeling of worth. It has been noticed that both actual harm and social decay are, for all intents and purposes, contradictory to human dignity. Relabelling the occupation does not change the fact that municipalities hire Dalits specifically for this type of work. This kind of labour must be completely outlawed if Article 1's rights, which are adopted in 'Article 21 of the Indian constitution', for scavengers are to be protected. The prevalence of manual scavenging inadvertently creates a social class which is linked to the *Shudras & Dalits*, ostracising them from society due to the type of their work, along with the social hierarchy of their caste. There are instances where the children of manual

scavengers were denied other jobs despite being aptly qualified due to their parents' jobs and are therefore ultimately forced to become manual scavengers themselves. To eliminate manual scavenging and ensure the well-being of those who are affected, the adoption and effective implementation of these rights to all sections of society is necessary. Even today, they do not form an active and accepted part of mainstream society. The various governments over time and the judicial approach on the subject establish that manual scavenging is not just in violation of Articles 14 and 17 due to its implicit casteist and genderised approach but is also a violation of 'Article 21 of the Indian constitution.'

The practice is not only undignified for those involved but also directly and indirectly affects the other rights enshrined in Article 21, such as the right to health and the right to education. In the 21st century, when the world has made immense technological advancements, it is high time that these practices are done away with and the process is mechanised, as has been observed by the courts. The rehabilitation of these workers and their inclusion in society is also an essential part of providing them with a dignified life.

The Hon'ble Supreme Court has taken proactive measures to curb this evil and asked six metropolitan cities- 'Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad'- to submit a status report on the abolition of manual scavenging in these cities. However, the conditional prohibition of manual scavenging, due to the exclusive definitions, has limited its scope of strict implementation. The implementation of the legislations and the Hon'ble Supreme Court's decisions in the various case laws, including in the landmark case of *Safai Karmchari Andolan v. Union of India*, must be checked by the local authorities in coordination with the State Governments. A public-private effort must be made by the central and state governments in coordination with the various NGOs. The complete rescuing and rehabilitation of manual scavengers is only possible when, along with legislative efforts and strict implementation programs, public awareness is also made the core of this prohibition and rehabilitation process. Currently, manual scavengers are not considered part of the fabric of the main society, and thus, only a few voices are fighting for the rights of manual scavengers, which makes it easy for the authorities to marginalize and quieten those fighting for their rights at the ground level.

While the strict implementation of the laws, along with awareness among the masses, will go a long way to curb this evil menace, mechanization of the entire process of manual scavenging will ensure that the need for manual scavenging does not arise to begin with. The complete eradication of manual scavenging needs a complete systematic overhaul-from legislation to implementation, from manual to automatic and from ignored to included. This

herculean task cannot be placed overnight. However, the government, along with the entire system, needs to step up to defend the rights of its citizens and give them the freedom and opportunities that they were promised back in 1947.
