

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 6

2022

© 2022 *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.

The Law Relating to Manual Scavengers

SOMALATHA B¹

ABSTRACT

As India possess the highest population in the world after China and even after seventy-five years of independence, the development of waste management processes are not up to the mark and still there is practice of manual scavenging at various parts of the country. The people who are called scavengers are economically weak and socially backward. They have highly sophisticated unhealthy lifestyle and highly unhygienic working condition. The lack of government support, poor education, un-developed technologies and religious belief about the scavenger's is highly contradictory. The group of people "Dalits" who perform manual scavenging belongs to a particular community who are assigned for this particular work according to the religious beliefs in India. This article analyzes the different types of wastes that are handled by the scavengers and also it throws light on the working condition and living standards of the people performing scavenging operations.

I. INTRODUCTION

Caste system is still in the roots of our society, despite so many years of freedom and the government's efforts. Till date, people choose professions that were permitted based on the caste of a person in ancient times in our country. Do you think that people choose the occupation of 'manual scavenging' out of choice? Dalits, who were considered at the bottom of the caste hierarchy in India, are still the ones mostly employed in this inhuman and hazardous job. As if this is not bad enough, there are also no basic precautions taken by these people. Although our country has stringent provisions in the law regarding the occupation of 'manual scavenging', it continues unabated.

II. WHAT IS MANUAL SCAVENGING?

Manual scavenging is described as the elimination of human excrement from public streets and dry latrines, septic tanks, gutters, and sewers, manually by humans. It is the act of removing human excreta/night soil manually from 'dry toilets' which are the toilets without the modern flush systems. It was during the British rule that the system of building public toilets and employing people to remove excreta was introduced in India. During colonial rule municipalities were constituted and the municipal system was introduced. That time, containers

¹ Author is an Assistant Professor at Department of Humanities and Social Sciences, Dr. Ambedkar Institute of Technology, Bangalore, India

were often used in such toilets that needed to be emptied daily. After the invention of toilets with a flush system, all other types of toilets disappeared from the western world. However, this inhumane practice continues in many developing countries including India. The exercise is driven by using caste, class, and revenue/income dividers.

III. WHO IS A MANUAL SCAVENGER?

As per Section 2(j) of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 any person who is engaged or employed by an individual or a local authority for manually cleaning, carrying, disposing of, human waste from an insanitary latrine, open drain, pit, or railway track is a manual scavenger. It does not matter if the person was given regular employment or engaged on a contract basis under the law.

Exception- A person will not be considered a manual scavenger under the law if he utilizes appropriate protective clothing and equipment. The Safai Karamcharis employed in the government/private organization and municipalities undertaking the task of cleaning as sweepers should not be considered as manual scavengers.

IV. CAUSES OF MANUAL SCAVENGING IN INDIA

According to Harsh Mander, a renowned Indian author and social activist, failure to eradicate manual scavenging from our country is one of modern India's greatest shames and most degrading practice of untouchability in free India which has survived through ages. Did you know that the majority of manual scavengers in India are girls and women? Some of the reasons for manual scavenging to continue in India are as follows:

1. Social deprivation;

People who have been trapped in this occupation by birth have faced social stigma for generations and despite welfare measures and laws in place to uplift them, they haven't been able to avail the opportunities because they have been shunned and despised. This results in people employed in this menial, inhuman, and degrading occupation to get deeper and deeper in it and carry on the practice for generations.

2. Low self-esteem

Being branded from birth as untouchables, unclean, low or no education level, fear of being unemployed, and exploited results in low esteem.

3. Continuance of unsanitary latrines

It is only lately that the country is awakening to living in hygienic conditions as their right, but

still the country continues to have unsanitary latrines in which human waste is cleaned manually, instead of having a flush or running water to wash/drain from the waste. The cleaning of such latrines is done manually since they are dry toilets, not made properly.

4. Increasing urbanization;

A few years back, India saw a huge movement called ‘Swachh Bharat Mission’ the most of the toilets are built under this drive were single pit toilets that require cleaning manually every year because they become full and need to be emptied manually. The Urban Development Ministry cites the construction of 50 lakh individual household toilets under ‘Swachh Bharat Mission.’ Environmental Activist Vimlendu Jha, says that while the mission has given people many new and additional toilets, it didn’t give them a long-term solution for disposing of the waste from these toilets.

5. Poor enforcement of existing laws;

Laws exist against manual scavenging but the problem is that the people employed have no assistance in reaching the criminal justice system because of the caste bias by government officials, police, and society. Sometimes it appears that manual scavenging related laws are without enforcement. Despite many deaths in the recent past related to manual scavenging, the government is in denial of the problems faced by this community. The most ironic fact in this matter is that the Indian Railways (a government agency) employs the maximum number of manual scavengers in the country although they are not on the government payroll directly.

6. Unorganized group;

Unlike most occupations where the labour workforce has unions, manual scavengers do not have an organized group or union because of which they do not have any noteworthy voice in the political process and hence the government in the country.

7. Lack of empathy

One of the most important factors in this regard is the total lack of empathy towards the plight of the manual scavengers.

8. Lack of other employment opportunities and rehabilitation

People continue this occupation because our society and system haven’t been able to rehabilitate these people or include them in the mainstream of our society.

V. CONSTITUTIONAL PROVISIONS AGAINST MANUAL SCAVENGING IN INDIA

Human dignity is an inalienable right which forms a part of the fundamental right to life (Article

21– Maneka Gandhi vs. Union of India) as per the Constitution of India. ‘Dignity’ has been construed to include equal treatment and protection of the law, and equal respect. It is a unanimously accepted right, validated by Articles 1, 22, and 23 of the Universal Declaration of Human Rights. The following is a list of provisions under the Indian Constitution which is supposed to cater to the rights of equality, respect, and dignity before the law.

- Article 14 is about equality before the law which should not be denied to any individual in India.
- Article 15 provides that no discrimination is permitted based on the place of birth of a person, race, religion, caste, and sex. Manual scavengers, however, face discrimination because of their caste all their lives.
- Article 16 of the Indian Constitution, in matters of public employment guarantees equal opportunity to all its citizens.
- Article 17 has provision for the abolition of untouchability, it is guaranteed under this constitutional provision to all.
- Article 19(1) (g) gives every citizen the right to practice any profession or to carry on any occupation, trade or business of their choosing.
- Article 21 guarantees protection of life and personal liberty to all the citizens living in India.
- Apart from these, some other rights which safeguard the manual scavengers as SC or ST, under the Indian Constitution are Article 46 and Article 338.

VI. SIGNIFICANT LAWS ON MANUAL SCAVENGING IN INDIA

To begin with, manual scavenging is prohibited in India under the law. Over the years several laws have come in place regarding employment of manual scavengers but the problems lie with their implementation. The timeline of the same is as follows:

1. Protection of Civil Rights Act, 1955 (Revised):

Protection of Civil Rights Act, 1955 (Revised) which was applicable in 1977 abolished untouchability and made it a cognizable and non-compoundable offence. To convert poor urban household dry latrines into flush latrines, integrated low-cost sanitation schemes were authorized.

2. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993:

This Act banned the employment of manual scavengers and made it a cognizable offense, making it the responsibility of the State, citizens and the organizations to maintain sanitary toilets.

3. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

The salient features of this Act are as follows:

- The Act has provisions for prohibition and penalty of employing anyone as a manual scavenger.
- Under this Act, the states are now responsible for identifying and rehabilitating manual scavengers.
- The state also has to provide them with training, assistance, loans, and even houses.
- The Act prohibits the existence of dry latrines and other forms of insanitary latrines and to that effect makes the local authority responsible to identify dry latrines in the area and demolish or convert them into sanitary latrines.
- The offenses and penalties under the Act are discussed here.
- Section 5 of the Act deals with the prohibition of insanitary latrines and employment/engagement as manual scavengers. The offences under this Section are the construction or maintenance of insanitary latrine and engagement or employment of a person to work as a manual scavenger.
- Section 6 says that any contract/agreement employing/engaging manual scavengers will be void if made before the implementation of the said Act and no compensation will be provided in place of the same.
- Section 8 of the Act provides for the penalty for violation of Section 5 and Section 6. It states that first-time violation will be punishable with imprisonment for a maximum duration of one year with or without fine up to fifty thousand rupees and for further 7 violations imprisonment for a maximum duration of two years with or without fine which may extend up to one Lakh rupees.
- Section 7 of the Act has provision for the prohibition of a person from engagement/employment for hazardous cleaning of a sewer or a septic tank, by any person, local authority or agency.
- Section 9 provides for the penalty for violation of section 7 and it states that first-time violation will be punishable with imprisonment for a maximum duration of two years

with or without fine which may extend up to two lakh rupees, and for further violations imprisonment for a maximum of five years with or without fine up to five lakh rupees.

VII. CASE LAWS

1. Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others

In this case, the Supreme Court of India passed a landmark judgement emphasizing the quandary of the disadvantaged sections of the society focusing on the manual scavengers and sewage workers. These people risk their lives by manually cleaning the drainage without any safety equipment and putting their health at great risk and also suffer because they have been deprived of the fundamental rights to equality, life, and liberty for a long time.

The Court rightly critiqued the center and state governments calling them insensitive to the safety and wellbeing of these manual scavengers. These people chose this occupation because of sheer poverty and have been compelled to work under most unfavorable conditions exposing themselves to numerous health hazards. The Supreme Court, in this case, directed the civic bodies to ensure that the orders passed by the Delhi High Court regarding safety and security of the sewage workers and manual scavengers were immediately implemented and also paid a higher compensation to the families of the deceased.

2. Safai Karamchari Andolan v. Union of India, WP(C) No.583 of 2002

In this case, a writ petition was filed by the petitioners as a PIL so that a writ of mandamus be issued to the Union of India, Union Territories and State Governments, asking for the strict enforcement and implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. They were also seeking their fundamental rights guaranteed by the Constitution under Articles 14, 17, 21, and 47 of our constitution. The judgement in this case was extremely clear about compensation and rehabilitation of people employed in manual scavenging and the SC ordered the government to award a compensation of Rs. 10 Lakhs each to the family members of the people who lost their lives while on job doing manual scavenging since 1993. The court also gave some guidelines to follow regarding the same if the future generations have to be prevented from such an inhuman practice.

3. Chinnamma and Ors. v. State of Karnataka and Ors.

In this case, the High Court of Karnataka gave a judgement in favour of the family of one Chenchiah, who died of asphyxia while cleaning a drain as a result of drowning. Although compensation of Rs 2 lakhs was given, the family of the victim wanted entitlement for

rehabilitation.

Justice Ashok B. Hinchigeri gave precedents of the Delhi Jal Board and Safai Karamchari Andolan case, said that manual scavengers risk their lives for the comfort of the others. He further said that the court has a duty and constitutional obligation to acquaint itself with the issues concerning the plight of the people who subject themselves to such a hazardous and dangerous life. He said that when courts can spend days/month to hear the elitist class and their advocates, listening about the cases of tax evasion, heinous crimes like murder, rape, kidnapping, etc or people who come forward with their grievances saying that their fundamental rights have been violated then the court can certainly take some time out to hear the grievances of the vast majority of silent sufferers.

VIII. CONCLUSION

The law regarding manual scavenging makes it necessary to use safety equipment before getting into the sewage/drain/septic tank to clean it. And yet, these cleaners are not equipped with the requisite safety and protection kits and are subjected to many health hazards and the risk of drowning. The pity is that if any person wears protective gear and takes the appropriate safety precautions and has the proper equipment, then he/she will not be considered a manual scavenger.

Dr. B.R. Ambedkar has said in this regard that in India, a person need not be a scavenger because of his occupation but he certainly is one because of his birth, whether he does scavenging or not. This raises concerns and questions as to what are we doing as a nation, that we cannot see the plight of these manual scavengers? It has taken many deaths and some social organizations and NGOs to bring their plight out into the open. So many deaths have occurred due to manual scavenging and yet there are hardly any cases registered against the culprits. It is time the government of India apart from making laws, strictly enforces them and ensures that proper equipment and modern technology are used for cleaning the septic tanks, drains and sewages and we have a future generation liberated from this shaming job of manual scavenging and their dignity and rights are restored.

IX. REFERENCES

- <https://www.prsindia.org/uploads/media/Manual%20Scavengers/Manual%20Scavengers%20as%20passed%20by%20LS.pdf>
- <https://theprint.in/opinion/why-manual-scavengers-in-india-havent-got-their-rights-despite-laws-judiciary-intervention/371140/>
- <https://blog.ipleaders.in/manual-scavengers-sweepers-rights/>
- <https://legalthirst.com/manual-scavenging-an-obnoxious-profession/>
- <https://www.downtoearth.org.in/news/waste/manual-scavenging-a-stinking-legacy-of-suffocation-and-stigma-61586>
- Manual Scavenging in India: A Disgrace to the Country by B.N.Srivastava
