PLUNGING INTO THE DEPTH OF HADES

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WHAT IS MANUAL SCAVENGING

Manual scavenging is an act in which a person is directly exposed to human excreta and other wastes to manually remove it from drain pipes, gutters, septic tanks, dry latrines etc.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 defines 'manual scavenger' as "a person engaged in or employed for manually carrying human excreta". The employment of manual scavengers is prohibited as a criminal offence.[1]

Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013[2] describes it as :

"a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or 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 of a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed…"

However all these definitions are not complete in themselves. Another definition by **Asian Human Rights Commission** states that "Manual scavenging in India is officially defined as 'lifting and removal of human excreta manually', at private homes and toilets maintained by municipal authorities. The practice consists of gathering human excreta from individual or community dry latrines with bare hands, brooms or metal scrapers into woven baskets or buckets. This the scavengers then carry on their heads, shoulders or against their hips, (and in wheelbarrows if they can afford it) into dumping sites or water bodies. Apart from this, many scavengers are similarly employed to collect, carry and dispose excreta from sewers, septic tanks, drains and railway tracks".

[1]The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
[2] Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

HISTORY

As per varna system there were 4 castes, Brahmins responsible for education and spiritual activities, Kshatriya the warriors and kings, Vaishya the businessmen and traders and lowest in this hierarchy was Shudras who were assigned all kinds of menial jobs and labour work to farmers. Below them were 'untouchables' or the 'Outcastes', they were separate from varnas or caste. They were known with the name of 'bhangi' which in Sanskrit means 'broken' and in Hindi as 'trash'. Later on this legacy continued and in present times mostly Scheduled Castes and Scheduled Tribes are involved in this activity

As per some very ancient texts and literature in India, scavenging predates the civilisation itself. In 'Naradiya Samhita' out of 15 duties of a Slave one is scavenging. This was continued in whole ancient India. In Mughal period, due to advent of 'Purdah System' enclosed toilet came into existence which was to be cleaned by scavengers manually. . Currently as per government data 97% of Manual Scavengers are Dalits, with mostly domination of Scheduled caste followed by ST and OBC.

EFFECTS OF MANUAL SCAVENGING

The foremost hazard a manual scavenger faces is the risk of health and even life. The scavenger as soon as he enters the gutter is immediately exposed to ammonia, methane and unhealthy amount of co2, these gases in normal course of time can suffocate the healthiest lung within few minutes. Due to inhalation of these gases and for a longer period of time lung issues such as Bronchitis, Tuberculosis, Respiratory tract infection and severe case of asthma may occur, in many cases even the Lung Cancer. Other unique disease that develops is 'Swine Brucellosis' a bacterial disease mostly transmitted through pigs through eyes, nose, mouth etc. Now coming to Human faces and urine, they harbour enormous amount of bacteria, virus and fungi. They may carry Hepatitis A, E. coli, Rotavirus, Norovirus, and pinworms.[3] Psoriasis a skin disease common among manual scavengers that causes skin to look scaly and scalp like. Other than these various gastrointestinal diseases, malnutrition also occurs. Due to manual scavenging the average lifespan of a scavenger is around 40-45 years only. Talking about the social effects, manual scavenging promotes untouchability even more. The people belonging to the so called lower castes are treated

[3]Vikas Chaudhary, '*Manual scavenging: A stinking legacy of suffocation and stigma'*,DOWN TO EARTH (September 11th, 2018), https://www.downtoearth.org.in/news/waste/manual-scavenging-a-stinking-legacy-of-suffocation-and-stigma-61586#:~:text=In%20fact%2C%20repeated%20handling%20of,cent%20of%20them%20being%20women.

way more inhumanly because of the stigma attached to the nature of job. This stigma further deprives the scavengers for better lifestyle and jobs hence looping hem into the vicious circle of poverty, discrimination and alienation from society for generations ahead. Women are further more exploited and harassed for these jobs, in about 1.2 million Indians in this practice 95% to 98% are women; compelled to clean dry latrines, carrying load of faeces in basket, discard placenta post deliveries, clean railway tracks and exhume dead bodies. With all of it in addition they face sexual harassment, abuse and exploitation from others.

THE NUMBERS

As per recent data by the government, out of 43,797 identified manual scavengers, 42,000 belong to the Scheduled Castes (SC) or Dalits. According to a study conducted by Water Aid India in 2018, 1,136 women were engaged in manual cleaning of dry latrines in just 36 settlements across four states.[4] As per the data released by the Ministry of Rural Development in July 2015 there were 1,82,505 manual scavengers in rural areas alone. The leading state in terms of manual scavenging are Uttar Pradesh that is more than 55% of all manual scavengers alone concentrated in this region.

"The Union government on Tuesday told Lok Sabha that no person had died from manual scavenging in the country in the last three years (2019 to 2022). It added that a total of 233 people had died "due to accidents while undertaking hazardous cleaning of sewer and septic tanks" in this time period."[5] This statement clearly states that the government didn't even consider deaths caused due to manual scavenging. However certain NGOs and activists have raised their voice and brought this issue into the daylight from depth of underground. The leading name is Bezwada Wilson who is leading the light with his movement against manual scavenging called SAFAI KARAMCHARI ANDOLAN.

[4]Bhavini Saraf and Siddharth Verma, *Transforming denial into deliberation: The case of manual scavenging*, THE PRINT (15 January, 2022 10:58 am),https://theprint.in/opinion/transforming-denial-into-deliberation-the-case-of-manual-scavenging/803599/

[5] The Hindu Bureau, Parliament proceedings | No manual scavenging deaths in last three years: govt., THE HINDU (December 14, 2022 03:09 am), https://www.thehindu.com/news/national/parliament-proceedings-no-manual-scavenging-deaths-in-last-three-years-govt/article66259860.ece

CONSTITUTIONAL AND LEGISLATIVE PROTECTION

The preamble of our Constitution highlights the essence of JUSTICE and EQUALITY. Justice- social, political and economic; Equality- of status and of opportunities. The preamble is well rightly described by N.A Palkhivala as IDENTITY CARD [6] of Indian constitution, so before going into any technicality of articles, case laws or statues the government at all its levels and branches should understand that these ideals are set up by the founding fathers of of our nations and it should be aspired to reach each and every day in its letter and spirit.

Article 14[7]- enshrines Equality before law and Equal protection of law. There should be no discrimination on application of laws on any individual. Similarly the manual scavengers should not be kept isolated from the basic human rights and various protective laws for them, merely because they are poor , belong to so called lower stratus of society and do a very important work which society considers as Taboo.

Article 15 [8] - This article clearly mentions that no person shall be discriminated on the basis of religion, race, caste, sex, place of birth. This article is not limited to State but also against private persons as well. Despite this the sheer number of scavengers belonging to particular castes depicts harsh and adverse reality.

Article 17 [9] **-** This article clearly mentions that NO FORM OF UNTOUCHABLITY shall be practised by any individual in the state, it is a criminally punishable offence. Despite the constitutional bulwark against untouchability the ground reality and social stigma remains same.

Article 21[10]- Post Maneka Gandhi[11] judgment the ambit of Right to Life and Personal Liberty was expanded beyond black letters by Hon'ble Justice P.N. Bhagwati. The right to life and personal liberty does not mean mere animal existence but living a life of dignity and integrity. Exposing scavengers to such harsh situations, discriminating them on social platforms does not coherent with the judgement.

The Directive Principles of State Policies envisages duties of government to govern in a particular way so that socio-economic justice could be achieved

[6] Aishwarya Sandeep, PREAMBLE – THE IDENTITY CARD OF INDIAN CONSTITUTION, https://aishwaryasandeep.com/2021/12/06/preamble-the-identity-card-of-indian-constitution/
[7] The Constitution of India, Art 14
[8] Ibid, Art 15
[9] Ibid, Art 17

[10] Ibid, Art 21
[11] Maneka Gandhi vs Union of India (AIR 1978 SC 597)

by all. These are guiding lights to government and aspirational political parties who wish to form government.

Article 38[12]**-** It mentions that State shall endeavour to promote welfare of people by securing a social order permeated by justice- social, economic and political and to minimise inequalities in Income and Status[13].

Article 39(e)[14] **–** Focuses on preservation of health and strength of workers and children against forcible abuse. But as discussed, the health conditions of Scavengers are of least concern for any stakeholder right now. Developed countries have technologies that can do this scavenging without putting risk on workers life. Moreover, safety equipment, suits etc are the areas where budget should be allocated so that least health risks are involved for the scavengers.

Article 42[15]**-** Engraves Just and Humane conditions for work. In this case the fair and most basic things to provide to a scavenger must be a good protective gear, healthcare benefits and proper check up by competent medical practitioner before going and after coming from the sewer, septic tanks and cleaning the railway tracks.

Article 46[16]**-**Promotes the educational and economic interests of SCs, STs and insulate them from other social injustice and exploitation. The data suggest that more than 97% of manual scavengers belong to SC and ST community and the worst form of social injustice is practiced against them by all elements of the society.

Article 47[17]**-** It mentions that shall strive to raise the level of nutrition and public health. The scavengers also are Indian citizens and they shall not be deprived from such benefits and they should be kept on priority basis.

[12] The Constitution of India, Art 38
[13] 6th M Laxmikant, INDIAN POLITY pg 8.2
[14] The Constitution of India, Art 39(e)
[15] Ibid, Art 42
[16] Ibid, Art 46
[17] Ibid, Art 47

Statutory Provisions regarding Manual Scavenging

Protection of Civil Rights Act, 1955[18]- This act is passed to give effect to Article 17 which prohibits untouchability. It penalises any form of untouchability practiced by anyone and prohibits compelling anyone to do manual scavenging.

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993[19]- Declared the employment of manual scavengers and construction of dry toilets to be punishable with fines and imprisonment[20]. This act also halted the construction of dry latrines and made it punishable for up to1 year of imprisonment.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013[21] - This act is an upgraded version of 1993 act; it not only focuses on penalisation but also seeks for rehabilitation and reinstatement of dignity of manual scavengers. The High lights of bill are[22]:

- The Bill prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.
- It seeks to rehabilitate manual scavengers and provide for their alternative employment.
- Each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.
- Each occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost. If he fails to do so, the local authority shall convert the latrine and recover the cost from him.
- The District Magistrate and the local authority shall be the implementing authorities.
- Offences under the Bill shall be cognizable and non-bailable, and may be tried summarily.

[18] Protection Of Civil Rights Act, 1955
[19]Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
[20] *Cleaning Human Waste "Manual Scavenging," Caste, and Discrimination in India* , HUMAN RIGHTS WATCH,(August 25, 2014), https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india#_ftnref294
[21]The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013
[22]PRS LEGISLATIVE RESEARCH, The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2013, https://prsindia.org/billtrack/the-prohibition-of-employment-as-manual-scavengers-and-their-rehabilitation-bill-2012

SUPREME COURT JUDGEMENTS

Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others, 2011[23]

Hon'ble Supreme Court of India in this judgement highlighted plight and apathy downtrodden section of society, particularly the manual scavengers. The court criticised the state instrumentalities for being insensitive towards safety and welfare of scavengers who out of compelled poverty are forced to resort to this inhumane and life threatening task.

Court directed to pay higher compensation amount to the family of the deceased and also directed the civic bodies for immediate compliance of Delhi High Court's direction regarding safety and security of sewage workers.

The court in its wisdom emphasised on the atrocities of sewage cleaners. 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[24].

Safai Karamchari Andolan and Ors. v. Union of India and Ors.,2014[25]

- It stated for rehabilitation of manual scavenger as mentioned in section 11 and section 12 of Prohibition of Employment of Manual Scavengers and their Rehabilitation Act, 2013 shall be done in consonance of part IV of the act.
- Their children shall be entitled for scholarship as per relevant scheme of Centre, State or Local government
- Shall be allotted residential plot and financial assistance for construction of house
- At least one member of the family shall be given livelihood skill, so that he/ she be paid a monthly stipend and improve the nature of job or change it completely.

[23]Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers &others, 181 (2011) DLT 77 (SC)
[24] Ashutosh Singh , *The plight of manual scavengers in India : a legal perspective* ,iPleaders, (September 25, 2020), https://blog.ipleaders.in/the-plight-of-manual-scavengers-in-india-a-legal-perspective/#Employment_of_Manual_Scavengers_and_Construction_of_Dry_Latrines_Prohibition_Act_1993
[25]Safai Karamchari Andolan and Ors. v. Union of India and Ors., (2014) 11 S.C.C. 224

- At least one family member must be given concessional loan for taking up an alternative occupation
- Entering Sewer lines without any safety equipment should be mad a crime, for each such sewer death compensation of Rs. 10 Lakh shall be given to the victim's family.

CONCLUSION

The root of this problem not only lies with the society which has a ghostly attitude towards manual scavengers but problem lies with administrative agencies as well and especially those working on grass root level. But now we have paid attention to the problem we must also enhance our vision to provide solution to this evil and as it is rightly said revolution begins at home, the very first step is to prevent any kind of manual scavenging in our washrooms or septic tanks or pipes.

Next we should enhance the community awareness by sensitising them against the degree of this evil and how a whole population of India is looked down upon and hated. Various community groups, NGOs, civic bodies shall come forward for raising the knowledge and issues of manual scavenging. Workshops with organisations such as Sulabh Shauchalya in collaboration with District administration shall make this knowledge easily penetrable in society. Since it is greater of a social evil than political one hence society must be constantly reminded and sensitised.

Rehabilitation and reintegration of sewage cleaners shall be done on priority basis. Creation of alternate employment is one such way, works shall be engaged in other daily wages work and shall not be boycotted from there due to their nature of work (thus comes the role of law and administration). Apart from this skill development courses shall be provided so that they elevated to a better position in social hierarchy. In this digital era a cheap smart phone with access to affordable course will aid the workers a lot. Financial inclusion shall be promoted by easy availability of loan to them under Priority Sector Lending hence changing their financial position and social reputation in return.

Low-cost flush latrine systems shall be introduced in villages, that doesn't involve direct contact with urine and faeces and have a better and less lethal environment for the workers. Small pit latrines can also be constructed in villages with help of manual scavengers, this will also increase demand of manual scavengers for construction of pit latrines and their wages may be increased.

Funds from centre, state and local authorities shall be released for purchase of safety gears of manual scavengers so that their health is not compromised. The government in its policies shall try to gradually extinguish this practice by introduction of machines and tools that may replace the scavengers but keep in mind that such scavengers have shifted and stabilise into alternate work or business. Law enforcing authorities shall be vigilant that all the constitutional and statutory provisions and Supreme Court orders to protect the scavengers are being enforced in letter and spirit. Immediate healthcare service, health cover benefits, regular check-ups, medicines and test of scavengers should be kept on track and at regular intervals. The children of scavengers shall be provided with scholarships for basic and if possible then for higher education so that they do not fall in the same work loop and the chains of this evil shall be broken at last. At last it would be able to appropriate to quote the landmark dialogue of Oskar Schindler in the movie 'The Schindler's List' directed by Steven Spielberg – "Whoever saves one life, saves the world entire'."