
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

MANUAL SCAVENGING –A COMPREHENSIVE STUDY- Abhay Dixit¹

“For ours is a battle not for wealth or for power. It is a battle for freedom. It is the battle of reclamation of human personality.”²-Dr. B.R. Ambedkar

ABSTRACT

In many parts of India, manual scavenging—the detested practice of Cleaning dry home latrines by manual method and hauling excreta from individuals is till now practiced. Historically, this inhumane work has been imposed on certain group of individuals known as manual scavengers. The government's arrogance and willful dereliction of duty in denying the reality of the horrific practice of manual scavenging is even more appalling. Jajmans (patrons), who are quite content with the idea that their fellow humans clean their excrement, are in a similar situation. *“These are also the worst cultural constructions that justify this brutal behavior by changing the moral color from red to green or, at the very least, yellow”* as Johan Galtung described it. The Indian government has enacted a number of laws to address all of the difficulties with manual scavengers. Nonetheless, these people's plight and grief have not abated. The goal of this study is to show how manual scavenging maintains the dominant relationship based on gender, caste, and tradition also In light of the current situation, this study attempts to provide a comprehensive explanation of the laws governing manual scavenging and offers several proposals.

INTRODUCTION

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²<https://tclf.in/2021/05/07/manual-scavenging-dignity-down-the-drain/>

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Every human life is valuable and lovely. Respect for one's human dignity is required. As a result, it is universally acknowledged and serves as the foundation for a society's moral worldview. Following WWII, the global community focused on human dignity as a key component of human rights preservation. Human dignity's conceptual elements were developed as the UDHR's core idea in 1948. "*The Universal Declaration of Human Rights*" preamble states, "Whereas recognition of the inherent value and equal and inalienable rights of all beings is the foundation of freedom, justice, and world peace." The first paragraph of "*Article 1*" of the "*Universal Declaration of Human Rights*", which is considered as an important document in whole world, mentions human dignity. Under diverse constitutional laws around the globe, the "*Universal Declaration of Human Rights*" lays the framework for maintaining & developing the right to a dignified existence. Every individual has the intrinsic right to a dignified existence free of prejudice. They have the right to expect equal respect from both the state and other people.

MANUAL SCAVENGING: AN OVERVIEW

Hand scavenging is an unappealing tendency in modern society. In the realm of Caste discrimination, it's a terrible reality. Cleaning human feces from unclean latrines and dry restrooms (those without a contemporary flush system) with hand tools and tin plates is known as "manual scavenging." Scavengers transport feces in baskets which they carry on their head to such place which are miles away from latrines. Very first public bathrooms were erected in Europe in 1214, and manual scavenging is supposed to have started then. In 1596, John Harrington invented the water closet. First Flush toilet was invented by sir S.S. Helior in 1870 which came into existence and widely known in western civilization. In India, cleaning human feces by human is caste based and compulsory vocation in broader sense it's the act of moving, discarding, and otherwise dealing with feces from dry latrines, railway lines, and drains in any way.

Scavengers enter dry latrines with their bare hands, gather human excreta, and move it as a head-load into a box to be disposed of. The caste system in India is linked to laborious scavenging, with the "lower castes" being expected to do it. Scavengers are one of India's underprivileged groups.

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Scavenging by hand is among the cheapest, filthiest, and most disagreeable vocations available. As a result of discrimination depending on their caste or occupation, Dalit scavengers are rarely able to change jobs, As a result; they are compelled to stay scavengers.³

It demonstrates how some people don't yet have access to basic constitutional protections, such as *Article 14*⁴, *Article 21*⁵, *Article 39(a)*⁶, *Article 42*⁷, and a slew of additional “*privileges & directives in Part-III (Fundamental Rights) and Part-IV (DPSP) of the Indian Constitution*”. Taking a look back at past years, the topic of manual scavenging has gotten varying levels of attention. The Indian government pledged to cease cleaning of human feces by humans by the conclusion of the 85 Year Plan (1992–97), and the nineteen nineties saw a flurry of measures to that goal. In March 1992, the “*National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents*,” a aim-based scheme with central assistance, was set up.

ROLE OF GENDER AND CASTE IN MANUAL SCAVENGING

(Study in reference of one state)

The study takes place in the Badaun area of UP, where the District Magistrate has launched a campaign to convert dry latrines and rehabilitate manual scavengers. As an outcome, in July 2010, an estimated 50K dry toilets (the main cause of human scavenging) and around 2K human scavengers were found. By June 2011, the project had changed 47K dry latrines to pour-flush toilets and emancipated and rehabilitated 2K manual scavengers, who had a significant influence on their 10K family members.

A specific set of people has had manual sweeping of household dry latrines imposed on them as part of their given status. They symbolize the Balmiki community, which goes by a variety of

³ 5 “Manual Scavenging”, International Dalit Solidarity Network, <http://idsn.org/key-key-issues/manualscavenging/> Retrieved on 15 May 2020 at 01:00 A.M.

⁴Equality before the law. (constitution of India)

⁵Protection of life with dignity.(constitution of India)

⁶An adequate means of livelihood (constitution of India)

⁷Just and humane working conditions (constitution of India)

names around the world. As per SKA data, women account for 95% of those who engage in manual scavenging.

From July 2010 to June 2011, we discovered that almost all the workers participating in activity of cleaning human feces were women in the Badaun district of UP, 47K dry toilets were converted to pour-flush toilets, freeing about 2K people from laborious scavenging.⁸

As a consequence, manual scavenging is a barbaric practice that disproportionately impacts women. If we truly think that marginalized communities (such as manual scavenger female) encounter countless restrictions when one form of discriminatory practices crosses another, then manual scavenger women are the excellent illustration of how culture legitimacy is used to oppress, exploit, and marginalize women based on sex, class, and profession (Kumar, 2008: 160; Pal, 2001: 175).

Finally, discussions and single-mindedness group talks in total 3 villages of Badaun district which aided to disclose the stories of females who had been "liberated" from human scavenging, as well as the reactions of extrapeople of the community- the patrons whose dry toilets they had cleaned.

BALMIKI COMMUNITY IN UTTAR PRADESH ITS ROLE IN MANUAL SCAVENGING

Uttar Pradesh ranks 1st in terms of overall SC residents and 4th in terms of SC residents as a percentage of the state's total population (Census, 2001a, 2011). Jatava (56.3%) has the greatest percentage of the SC communities in UP, followed by "*Pasi (15.9%), Dhobi (5.85%), Kori (5.67%), and Balmiki (5.67%)*". In Uttar Pradesh, these five SC communities account for approximately 87.5 percent of the entire Scheduled Caste population.⁹

By way of an old-style heritable class-centered job, manual scavenging has been imposed on a certain set of individuals of Balmiki background, who are known by several names in various

⁸Kattakayam, J. (2010, November 22). Badaun makes progress to end manual scavenging. *The Hindu*, p. 11.

⁹(Census, 2001b; Kapadiya, 2001)

places. Such as “*Bhangi, Chura, Halalkhor, Jamadar, Lal Begi, and Mehtar in northern India, and Chakkiliyan, Madiga, and Thoti in the south*”.¹⁰

Balmiki community has been stereotyped and stigmatized as a result of their economic plight and they have formed a bad self-image as a result of their sweeping and manual scavenging traditions. The Balmikis, who are Hindus by religion and are classified as SC in state of UP, are the subject of these descriptions. It should be noted, however, that sweeping and manual scavenging caste’s (Biradaris) exist among many other religious communities, such as Muslims. For example, “*the Halalkhor community, also known as Shaikha/Sahani, is found in the Uttar Pradesh districts of Jaunpur, Varanasi, Azamgarh, Mirzapur, Gorakhpur, and Deori*”. They follow Islam and are found working in these low-wage vocations.

Sweeping and manual scavenging are practiced by the Lal Begi population in *awadh and eastern UP*, which comprises both Hindus and Muslims. As a symbol of distinction, *Lal Begi Muslims have adopted the moniker Hasnati (Singh, 1992)*. Human decomposers have embraced and tested a wide range of beliefs, groups, and language. Or have been known by ‘sanitized’ designations, but their situation has remained the same.¹¹

INDIAN LAWS TO PROTECT THE RIGHTS OF MANUAL SCAVENGERS

“*The PCR Act of 1976*”¹² It was the first measure to make scavenging illegal, but only in certain circumstances of ‘illegal permanent labor’ when anyone is forced to do so ‘on the grounds of caste discrimination.’

This term eliminates municipal corporation staff and local personnel who participate in manual scavenging; the majority of people who participate in this practice are Dalits because of their caste status as untouchables, as well as livelihood reasons.

¹⁰ (Kailash, 2002: 71; Kalyani, 2005: 1; Srivastava, 2014)

¹¹ Valmiki, O. (2008). Safaidevta (in Hindi). New Delhi: Radhakrishna Prakashan Pvt Ltd

¹² Indian Parliament enacted the Untouchability Offences Act 1955, which underwent amendment and renaming in 1976 to become the Protection of Civil Rights (PCR) Act. Under this Act, ‘untouchability’ as a result of religious and social disabilities was made punishable.

The limitations of this concept derive from the fact that manual scavenging is founded in the evidentiary barrier of "on the basis of casteism," which excludes scavenging from the purview of the act if the fixation was not for the aim of enforcing casteism.

*"The MS 1993 Act"*¹³ it's considered as special law prohibiting the building of dry toilet and hiring humans, for cleaning human feces, with a explanation that defined a individual as a manual scavenger as someone who is "involved in or employed for manually conveying living being excreta." Hand scavenging has been made illegal & excluded the situations-centered method of the federal government by transferring powers to the state government. The hiring of manual scavengers was expressly restricted by *"PCR Act of 1976"*.

"The MS 2013 Act", its objective was to modernize the *"MS 1993 Act"*, and on the other hand distinguishes dangerous cleaning from physically cleaning of toilets. The previous comprises employee's manually cleaning sewer or septic tanks without the use of "protective clothing and other cleaning machines, as well as assuring adherence to safety regulations." A manual/human scavenger is the person on the other hand, who cleans and handles excreta of living beings manually from where the human excreta is disposed of.

As an outcome, *"the MS 2013 Act"* only forbids dangerous cleaning and using humans for cleaning toilets manually if protective wear, equipment, & devices aren't given to municipal employees and manual scavengers. *"The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013"*, outline 44 pieces of protective equipment and safety measures that should must be provided to every person cleaning drains or sewer tanks.

The importance of this oddity in the law & human scavenging acceptability is that the *"MS 2013 Act"* lacks means to accomplish its core goal—"the ban of work as manual scavengers, rehabilitation of manual scavengers, and their families."

Manual scavenging is also a 'atrocities' under the Atrocities Act, which makes it illegal to do so. Statutes of convincing & hiring SC/ST people were made illegal under the *Atrocities Amendment Act of 2016*, sub-clause (j). People of the community for the purpose of manual scavenging *"The*

¹³ THE EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION) ACT, 1993

Atrocities Amendment Act of 2016” adopts the 2013 Act's definition of "manual scavenger" and so receives its boundaries. In varied degrees, manual scavenging is permitted, albeit on a conditional basis.

ROLE OF JUDICIARY

Restriction on cleaning of human toilets/feces by human has acquired judicial grip in current SCI laws, both in hearings & in judgments. It is necessary to analyze crucial obiters of the “*SKA v Union of India*”¹⁴, a watershed moment in India's anti-caste discrimination legislation, before proceeding with astudy of the “*SKA v Union of India*”. The SCI conveyed serious concerns about deaths of manual scavengers throughout the preceding of “*Union of India v the State of Maharashtra*”¹⁵,this was the case that “*included review of Dr. Subhash Kashinath Mahajan v The State of Maharashtra (2018)—the case that diluted the scope of the SC/ST Atrocities Act—the case that diluted the scope of the SC/ST Atrocities Act (The Hindu, 2019)*”.

In spite of the legal banon casteism under “*Article 17*”¹⁶ of the Constitution, the SCI admits the widespread prevalence of untouchability in the law in the final judgment in “*State of Maharashtra*”.¹⁷

The jury struck to the core of a systemic issue of casteism, triggering a discussion about the importance of legal protection in avoiding deeply ingrained social practices driven by preconceptions, unequal treatment, and severe socio-cultural and religious implications.

It's also contended, nevertheless, that it did not address the 'conditioned prohibition' in the 2013 Act of manual scavenging, which has permitted discrimination against manual scavengers to persist by default.

¹⁴(2014) 11 SCC 224, [2].

¹⁵ (2020) 4 SCC 761.

¹⁶Abolition of Untouchability. -"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

¹⁷ (2020) 4 SCC 761.

The PIL filed by Safai Karmachari Andolan, SKA as well as other sibling organizations have been leading a decades-long protest movement for equal opportunity for Dalits, it is not only about ending all types of manual scavenging, it was primarily aimed at emancipating and liberating Dalits from the bonds of Casteism.

The rights structure within the Indian Constitution and International Human Rights Law were institutionalized by large-scale social progressive movements against discriminatory practices for the implementation of safety precautions and constitutional protections as an aspect of fundamental human rights, with individual's self-respect as the central radical egalitarianism problem.

From 2003 onwards, the SC's legal involvement saw the court issue multiple "mandamus"¹⁸ instructions directing domestic administrations to implement the 1993 Act within their authority. In addition, the SCI sought specific info across all federal rehabilitation programs, as well as the number of manual scavengers who were rehabilitated as a result of these programs.

All 21 High Courts in India have been charged with enforcing the Jury's decisions and rulings. The preceding case study sheds light on the liberatory potential of rights in social transformation, when they are accompanied by ongoing social mobilization. SKA not only fought a legal struggle, but also a social one through its socialist movement during the petition's time in court.

These advances in judicial decisions and societal mobilization do not have little discernible effect on India's manual scavenging situation, nor did they result in systemic change in terms of ending casteism faced by manual scavengers in general. "One of the PIL's flaws was that the SCI did not properly analyze concerns in the MS 2013 Act that prolong the practice through condition-based permissibly".¹⁹

SOME RECOMMENDATION/SUGGESTIONS TO GOVERNMENT

¹⁸Writ or order issued by a court directing a lower court or authority to perform official duties and functions as per The order.

¹⁹Asang Wankhede. "The Legal Defect in the Conditional Prohibition of Manual Scavenging in India" Contemporary Voice of Dalit, 2021.

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1. Linking *MNREGA* and other social security schemes to the Scavenging Act of 2013 – *The Prohibition of Employment as Manual Scavengers and their Rehabilitation (PEMSR) Act, 2013*, does not have any explicit provision linking scavenger rehabilitation programs to the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) 2005. As a result, “*the Scavengers Act of 2013*” should be updated, and rehabilitation programs must comply with Mahatma Gandhi National Rural Employment Guarantee Act & various social security regulations, for example “*Unorganized Sector Workers Social Security Act of 2008*”. Scavenging activities that are still prevalent in rural areas can be phased out.
2. To ensure actual cooperation between government and private authorities, “*the Social welfare Department and Empowerment, the Ministry of Drinking Water and Sanitation, the Ministry of Rural Development, the Ministry of Housing and Poverty Alleviation, and the Ministry of Urban Development collaborate. Both the Ministry of Development and the Ministry of Railways have critical roles to play in the disease's elimination. Manual scavenging and the rehabilitation of freed families are both prevalent practices. A joint committee exists between the Ministry of Women and Child Development and the Ministry of Labor*”. Women possess an important role in manual scavenging because there are so many of them. As a result, a coordinating committee comprising representatives from all of these groups should be constituted. In order to collaborate, ministries must work together.
3. Furthermore, a complete and detailed survey for identifying people who are indulge in this inhuman practice in India must be done a.s.a.p. by making a high-level State Committee headed by retired justice or a serving justice of a high court. Representatives from the state bureaucracy, “*the Scheduled Caste/Scheduled Tribes Commission, the State Human Rights Commission, the State Women Commission, and civil society representatives working on behalf of manual scavengers may be included on the Committee*”. Local governments should take special steps to determining true picture of these people and jurisdiction so that appropriate measures can be done.

CONCLUSION

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Manual scavenging is a type of direct, institutional, and social repression of a particular group. To disguise the widespread occurrence of manual scavenging and thwart practical community and government steps to abolish the activity, the culture fostered legendary fabrication. The testimonies abundantly highlighted that those involved practice's suffering, anguish, and disappointment are loud enough as to drown out any further discussion on laborious scavenging as just a job of choice.

Their stories reveal how people are forced to struggle with the worst conceivable vocation due to a lack of alternative economic possibilities and a constrained world perspective due to cultural constructions.

Based on the foregoing debate, it is clear that, in spite of various attempts made by administration, the predicament of human scavenging has not improved remarkably. Though policymakers have begun a number of social welfare reforms aimed at manual scavengers, they have largely failed to assure their implementation on the ground. Basic necessities are actually met. Not only have policymakers overlooked the scavenging community, yet even scheduled caste movements haven't been able to solve the problem of manual scavengers.

Whenever it comes to human rights concerns, manual scavenging is still a major concern. Both legislative and programmatic requirements are included in the 2013 "*Prohibition of Employment as Manual Scavengers and Rehabilitation Act*". "*The Minimum Salaries Act of 1948*" establishes minimum wages for several categories of work. Manual scavengers, on the other hand, are usually always paid so little that they can't even cover their own medical expenditures.

The researcher is confident that if the aforementioned actions and recommendations are carefully studied and implemented, the existing status of manual scavengers will significantly improve.