



Manual Scavenging in India: Issues and Challenges

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Abstract

Manual scavenging, one of the most abominable realities that exist in the country today is a grave social socio-legal problem, in violation of human dignity and all principles of decent work. Manual scavenging represents some of the worst surviving forms of both caste discrimination and dehumanizing forms of work. Even though multiple government schemes have been implemented and, various anti-scavenging legislations exist, the practice continues. Intervention by the legislative and judiciary have not seen much success in eliminating the problem. The manual scavenging communities still suffer due to persistent discrimination, lack of information, improper implementation of laws and lack of alternative way of livelihood. There are a lot of discrepancies around the data on manual scavengers in the country. The numbers provided by independent organizations like the Safai Karmachari Andolan point towards the underestimation of the figures by the government. Even the government

data, provided in response to multiple questions in Parliament at different points of time is contradictory. If the government doesn't know who the manual scavengers are, then their subjective and evaluative rehabilitation also becomes a distant reality. Moreover the government doesn't consider sanitation workers who, everyday, enter sewer lines and septic tanks to clean them, as manual scavengers. How will the country start to solve a problem if they refuse to acknowledge it ? The paper aims to highlight the socio-legal problem of Manual Scavenging in India and the key highlights of the steps taken by legislature and judiciary to address the various problems being witnessed by them.

Key Words: Manual Scavengers, Sanitation Workers, Human Dignity, Rehabilitation

A. Introduction

Even after 75 years of independence, manual scavenging is a blot on our collective conscience that refuses to disappear, despite the legislative and judicial efforts. Manual Scavenging is one of the most inhuman and undignified forms of sanitation work prevalent in India¹, wherein persons who clean insanitary dry latrines, clean or repair sewer lines and empty septic tanks, clean railway tracks, etc., come in direct contact with human faeces, without any protective gear or support measures. In addition to the social stigma and isolation, they are also exposed to unimaginable health hazards. A large number of them die, especially those who are engaged in sewer line repair and cleaning, in the absence of critical safety measures and technologies².

Manual scavenging has been practised in India for several millennia. It has strong origins in India's caste-based occupational structure. The occupation of manual scavenging portrays a prominent form of caste discrimination and inhuman practice of untouchability that continues to thrive in India. Casteism is still in the roots of our

¹ R. Dhivya, "Eradication of Inhuman Practice of Manual Scavenging and in Tamil Nadu: Is it Possible?", *International Journal Of Law Management & Humanities* , Volume 3 | Issue 5 2020,p.756

² <https://blog.ipleaders.in/the-plight-of-manual-scavengers-in-india-a-legal-perspective/> (accessed on 5/10/2021)

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. We don't 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.

Even though multiple government schemes have been implemented and, various anti-scavenging legislations exist, the practice continues. Intervention by the legislative and judiciary have not seen much success in eliminating the problem. The manual scavenging communities still suffer due to persistent discrimination, lack of information, improper implementation of laws and lack of alternative way of livelihood. Apart from the social atrocities, they are exposed to certain health problems by virtue of their occupation. These health hazards include exposure to harmful gases such as methane and hydrogen sulfide, cardiovascular degeneration, musculoskeletal disorders like osteoarthritic changes and intervertebral disc herniation, infections like hepatitis, leptospirosis and helicobacter, skin problems, respiratory system problems and altered pulmonary function parameters.

As per the **2011 Census** of India, there are about 2.6 million insanitary latrines, which are toilets that require human excreta to be manually cleaned, which throws light on the existing sanitation crisis in India.³ There are 13,14,652 toilets where human excreta is flushed in open drains, 7,94,390 dry latrines where the human excreta is cleaned manually. Seventy three percent of these are in rural areas and 27 percent are in urban areas.⁴ According to the **House Listing and Housing Census 2011**, states such as Andhra Pradesh, Assam, Jammu and Kashmir, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal account for more than 72 percent of the insanitary latrines in India. Manual scavenging is not just a caste-based but also a gender-based occupation.

³ Census of India. http://censusindia.gov.in/2011census/hlo/Data_sheet/India/Latrine.pdf (accessed on 15/9/2021)

⁴ <https://in.one.un.org/page/breaking-free-rehabilitating-manual-scavengers/> (accessed on 20/9/2021)

Of the 1.2 million manual scavengers in India, about 95% of them are women⁵, who are forced to clean dry latrines, carry loads of excrement in leaking cane baskets, clear sewage, discard placenta post-deliveries, work on railway tracks, exhume dead bodies while enduring sexual harassment, social exclusion, dismal wages, and a lifetime's worth of trauma.

B. Magnitude of Manual Scavenging Problem

The root of the problem lies not only in the attitude of the society which is still perpetuating archaic notions of caste hierarchy, but also with the administrative agencies which can effectuate change with the power they possess. Therefore, denial of the existence of the practice in the first place, by the Government, is rather unfortunate. To our understanding the first problem lies in the fact that the government refuses to acknowledge the magnitude and gravity of the matter, which is evidenced by blatant denial or underreporting of those involved in manual scavenging on numerous occasions. Census data available in the country on Manual Scavengers is not accurate. Without a systematic survey on manual scavengers in the country how the government will help to bring out the number of people engaged in this occupation.

There is a ban on manual scavenging and so the government considers it non-existent but census data of 2011 reveals that there still exist more than 2.6 million dry toilets in India.⁶ The big question is how are they being maintained, if not manually? That's when there comes another twist. Another issue is the government doesn't consider sanitation workers who, everyday, enter sewer lines and septic tanks to clean them, as manual scavengers. The question to be pondered upon is how will the Government start to solve a problem if they refuse to acknowledge it? The government only recognises latrine cleaners, railway cleaners, sewer cleaners and faecal sludge

⁵ <https://www.epw.in/engage/article/manual-scavenging-women-face-double-discrimination-caste-gender> (accessed on 20/9/2021)

⁶ <https://www.downtoearth.org.in/news/waste/manual-scavenging-non-existent-for-govt-yet-people-die-30-ft-under-ground-61581> (accessed on 15/10/2021)

handlers as manual scavengers, but the data is very poor and almost everyone agrees that these figures are a gross underrepresentation. Estimates made by different organizations have yielded numbers ranging from 182,000 – 2 million for these types of work. Waste treatment plant workers, drain cleaners, community and public toilet cleaning, domestic workers and school toilet cleaners are not recognized under the Act, though they work with human faecal matter and other dangerous waste too.

Despite having legislations and judicial directives banning the act of manual scavenging, the practice continues to exist in India. While there is some general agreement that this practice continues to exist, there are a lot of discrepancies around the data on manual scavengers in the country. The numbers provided by NGO's like the **Safai Karmachari Andolan** point towards the underestimation of the figures by the government. Even the government data, provided in response to multiple questions in Parliament at different points of time is contradictory. Even the National Human Rights Commission in a statement in January 2021, admitted that the claims made by many States that they have zero manual scavengers and zero insanitary latrines are far from the truth.⁷

According to a Parliament response from December 2021, a total of 58,098 manual scavengers have been identified as per the criteria laid down in the 2013 Act. Of these, caste-related data is available for 43,797 manual scavengers, 97.25% of who belonged to Scheduled Castes.

As per the **Socio Economic and Caste Census 2011**, released by the Ministry of Rural Development in July 2015, there were 1,82,505 manual scavengers in only the rural areas of the country. It should be noted that the Socio Economic and Caste Census data is based on respondent input as revealed by the households to the enumerator. To identify the number of exact manual scavengers in India, two surveys have been conducted by the Ministry of Social Justice & Empowerment during the years 2013 and 2018 in which 14,812 and 48,251 manual scavengers were

⁷ <https://factly.in/the-curious-case-of-data-on-manual-scavengers/> (accessed on 15/9/2021)

identified respectively giving a total of more than 63,000 manual scavengers in the country. However, the 2018 survey was conducted only in a total of 18 states & 170 districts. Organizations like the **National Commission for Safai Karmacharis** have held that the real picture may emerge only after a comprehensive nationwide survey on similar lines.

Very recently, in response to a question in the Rajya Sabha in December 2021, the **Ministry of Social Justice and Empowerment** stated that zero deaths have been reported from manual scavenging in the last five years. This statement by Union social justice minister of state Ramdas Athawale came in the Rajya Sabha to a question by Congress MPs Mallikarjun Kharge and L Hanumanthaiah. However, a total of 321 persons lost their lives while cleaning sewers and septic tanks between 2017 and 2021. Data available with the **National Commission for Safai Karmacharis** indicates that 954 sewer deaths took place between 1993 and July 2021.⁸ The National Commission clearly mentions the data is based only on the information received from States/UTs, Print and electronic media reports, complaints received by the Commission, etc. In other words, even this data may not reflect the true picture.

According to the **Safai Karmachari Andolan**, a non-profit organisation working to eliminate this inhuman practice, the actual number of manual scavengers in the country could be much higher than what is being officially reported. SKA website reports that there are an estimated 7.7 lakh sewer cleaners and 1760 deaths of sewer cleaners have been reported since the year 2000. It has also been reported that there are 36,176 railway sewer cleaners.⁹

On the other hand, with respect to the cases filed under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, **National Crime Records Bureau's** data reveals that there have been no cases registered till 2014. In 2015, two cases were registered under the law in Karnataka. In 2016,

⁸ <https://ncsk.nic.in/> (accessed on 10/10/2021)

⁹ <https://www.safaikarmachariandolan.org/> (accessed on 29/10/2021)

NCRB stopped showing the number of cases registered under the Act separately in its main report. However, data of cases registered under the 2013 Act for the year 2016 was provided in the additional tables. In 2016, two cases were registered under the law in Tamil Nadu. From 2017, even this data is not available as a separate head and the number of cases registered under this Act has been merged with cases under the existing ‘Other Special and Local Laws’. In other words, there is no way of knowing how many cases are being booked under the 2013 Act from the NCRB reports.¹⁰

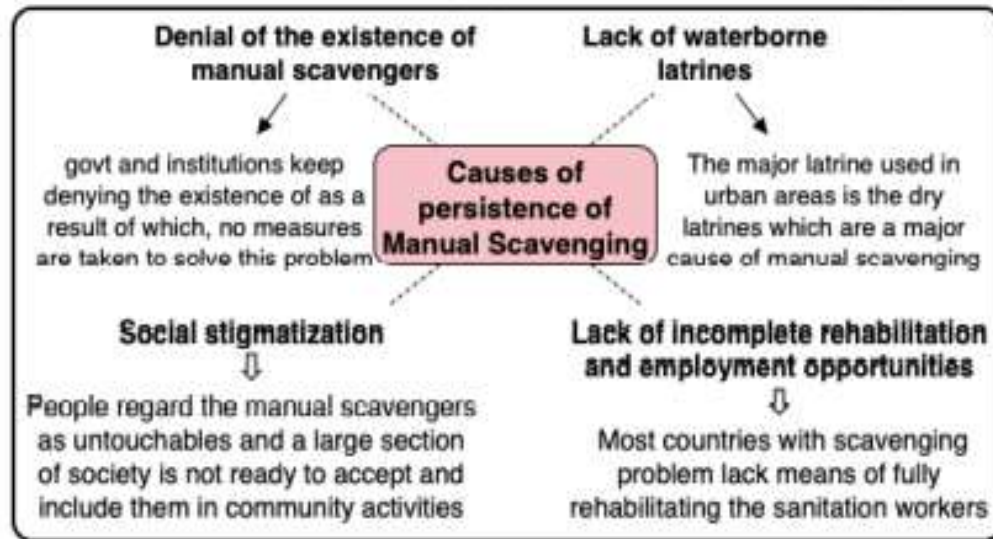
After analysing the available information, one thing is amply clear that there is a huge issue with data related to various aspects of manual scavengers. Such discrepancies in data points result in inefficient enforcement of legislations and schemes formulated for relief & rehabilitation of manual scavengers. If the government doesn’t know who the manual scavengers are, then their subjective and evaluative rehabilitation also becomes a distant reality.

C. Causes of Manual Scavenging in India

From a human rights perspective, manual scavenging constitutes one of the grossest and inhumane abuses that violate India’s domestic laws as well as international treaties and other legal commitments that apply to India. Over half a century ago, Mahatma Gandhi called it “the shame of the nation”, and yet manual scavenging continues to be a widespread practice throughout India. The occupation of manual scavenging is based on the hierarchical caste system continuing for ages in our country. It is an indisputable fact that almost every manual scavenger is a person from the Dalit community who forms the lowest rung of society. Due to this caste, this work is enforced on them without giving them a choice. They live segregated from the mainstream societies, often in places where the fruits of infrastructural development have not percolated down. Some of the reasons for manual scavenging to continue in India are Social deprivation, Low self-esteem, Continuance of unsanitary latrines,

¹⁰ <https://factly.in/the-curious-case-of-data-on-manual-scavengers/> (accessed on 5/9/2021)

Increasing urbanization, Poor enforcement of existing laws, Unorganized group, Lack of empathy, Lack of other employment opportunities and rehabilitation, etc.



D. History of Manual Scavenging in India

The dehumanizing practice of manual scavenging is inextricably linked to the ancient caste-system of India. The traditional ‘lower castes’ historically associated with ‘unclean’ professions like sweeping of human waste and disposing animal carcasses continue to be employed as manual scavengers even today. From the ancient time when the people ended their nomadic life and started to live in small towns, they needed a system for defecation and hired a particular caste group to clean the human excreta¹¹. The *Naradiya Samhita* enumerated one of the 15 duties for slaves was to clean or dispose human excreta; and the *Vajasaneyi Samhita* referred the *Chandals* and *Paulkasa* as slaves to dispose of the night soil. The manual scavenging occupation also has its existence in the Maurya period of India.¹² During this period, Pataliputra, one among the five ancient towns, had the presence of sweepers and scavengers who were assigned to clean and dispose of the night soils of the city; and **Nagrak**, the mayor of the city, was entrusted with the task of looking

¹¹ Bindeshwar Pathak, *Action Sociology and Development*, 128 (Concept Publishing Company, New Delhi, 1992)

¹² *Manual Scavenging in India: Literature review*, Dr. Babasaheb Ambedkar Research and Training Institute, BARTI, Pune, p.10

after the civic affairs of the city¹³. It is also claimed that the manual scavenging work was started after the religious attack in North India. Some scholars established that the *Bhangis* (manual scavengers) were warriors who made captives after they became the prey to the enemy, particularly the Muslim invaders.¹⁴ When the Muslims came to India, they brought with them some women who used the *Burqua* (veils) to cover their faces. Since these women did not want to defecate in an open space, the special indoor toilet facility (bucket privies) were designed and constructed for their defecation.¹⁵ The people who were made captives were forced to clean these indoor latrines and to dispose of the night soil at distance places. When these captives were set free, they were not allowed to live the society, and they thus formed a separate caste of Bhangis and continued the work of scavenging.

However, the manual scavenging occupation¹⁶, was expanded along with the expansion of towns or cities over the last two hundred years. 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 were often used in such toilets that needed to be emptied daily. The British created special positions of manual scavengers to clean army cantonments and municipalities. Instead of abolishing the barbaric manual scavenging, they in fact made it institutionalized as well as spread it across the country. As also noted by some scholars, during the British period, there was a surge in number of manual scavengers during the British period. 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.¹⁷

¹³ Bindeshwar Pathak, *Road to Freedom: A Sociological Study on the Abolition of Scavenging in India*, 37 (Motilal Banarsidass Publisher, 1999, p.37)

¹⁴ N.R. Malkani, *Government of India, Report of Scavenging Conditions Enquiry Committee* (Ministry of Home Affairs, 1980)

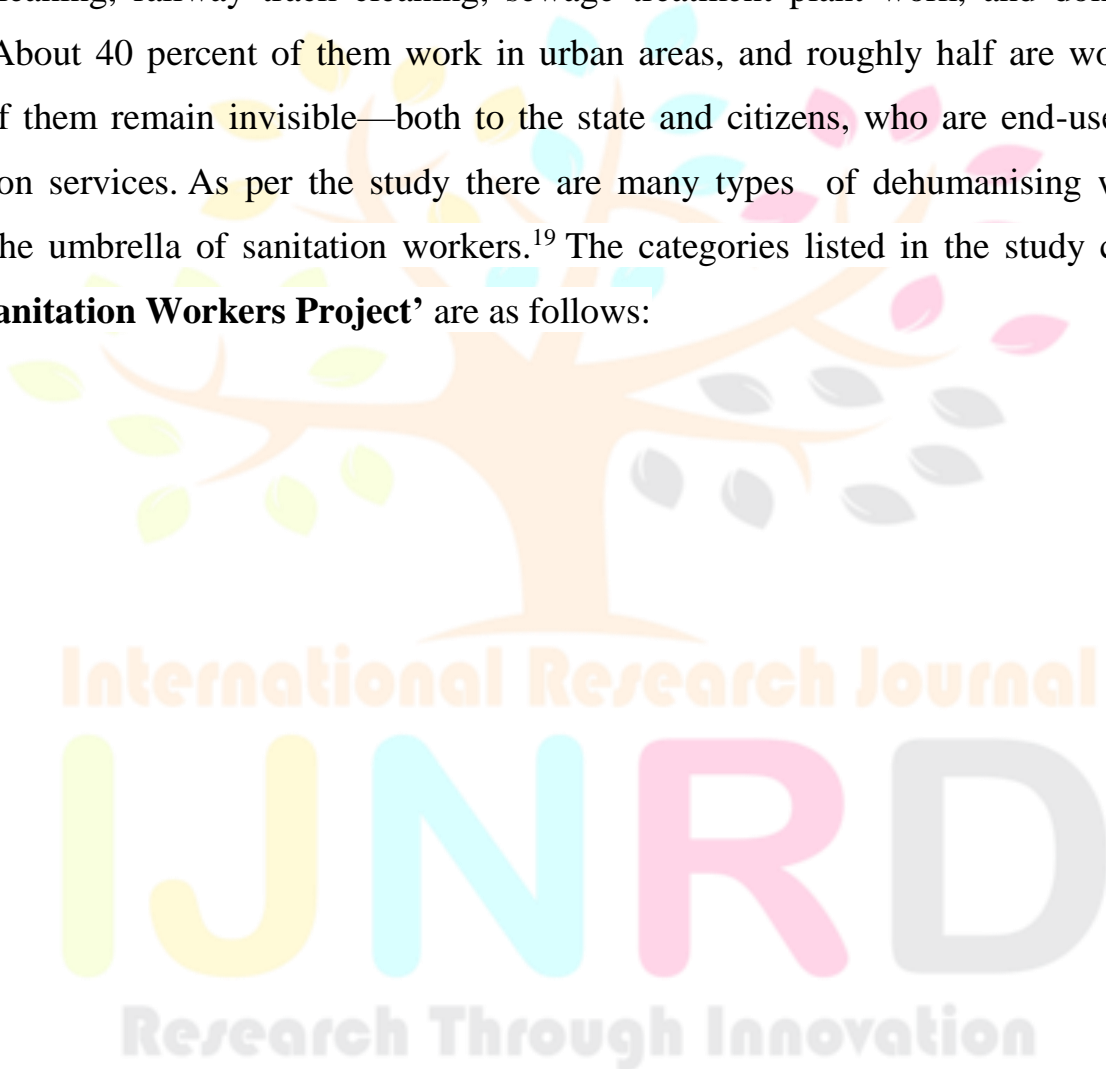
¹⁵ *Id.*, p.38

¹⁶ Bhasha Singh, *Unseen: The Truth about India's Manual Scavengers*, 2014

¹⁷ Srivastva, *Manual Scavenging In India : A Disgrace to the Country*, 1997.

E. Types of Sanitation Work

One of the most inhuman and undignified forms of sanitation work prevalent in India is that of manual scavenging, A 2017 **Dalberg Study**¹⁸ estimated that there are about five million people whose work brings them in contact with human faecal matter and around two million of these sanitation workers work in high-risk jobs. Though they have been clubbed into one amorphous category, their work includes latrine cleaning, sewer cleaning, faecal sludge handling, drain cleaning, school toilet cleaning, public toilet cleaning, railway track cleaning, sewage treatment plant work, and domestic work. About 40 percent of them work in urban areas, and roughly half are women. Most of them remain invisible—both to the state and citizens, who are end-users of sanitation services. As per the study there are many types of dehumanising works under the umbrella of sanitation workers.¹⁹ The categories listed in the study called ‘**The Sanitation Workers Project**’ are as follows:



¹⁸ <https://dalberg.com/our-ideas/understanding-indian-sanitation-workers-and-finding-solutions-their-challenges/> (accessed on 11/10/2021)

¹⁹ <https://dalberg.com/our-ideas/understanding-indian-sanitation-workers-and-finding-solutions-their-challenges/> (accessed on 11/10/2021)



Domestic Work- This involves cleaning toilets in middle-high income household institutions, and offices encountering unsanitary conditions from time to time. Locations are Urban areas.

Individual Insanitary Latrines- This involves the emptying of dry and single-pit latrines primarily in rural areas ,it includes the daily collection and transport and emptying of fecal matter. Location is primarily in a rural area.

School Toilets- This involves running and maintaining school toilets on a day to day basis. Location is schools, rural and urban.

Public and Community Toilets- This involves the maintaining public and community toilets (often insanitary) on a daily basis in rural and urban CTCs, mostly in slums and public convenience shelters.

Railway Stations Cleaning- This involves cleaning fecal matter from railway tracks and platforms, railway toilets, and platform toilets, several times a day. Locations are rail network and railway stations.

Open Defecation – This involves cleaning on the roadside and empty ground on a daily basis. Location is urban and rural area roadsides

Sewer Cleaning- This involves the clearing and cleaning of drains and wastewater on complaints, rainy season, and occasional preventive maintenance .Location is urban areas.

Sewage Treatment Plants- This involves maintaining and operating sewage and fecal sludge treatment plants on a daily basis. The location is in urban areas.

Train Coach Toilet Cleaning- This involves cleaning fecal matter in coach toilets daily several times day and night. Locations are train coaches.

Septic Tanks- This involves the Emptying, collection, and transport of human waste from septic tanks on an on-demand basis. De-sludging frequency varies greatly, ranging from 6 months to 8- 12 years depends upon the tank capacity. Location is primarily in urban and mostly unplanned localities.

Sweeping and Drain Cleaning- This involves cleaning open drains and road sweeping, often encountering fecal matter due to open defecation and insanitary latrines linked to drains. Location is urban- drains along roadsides.²⁰

The data available on these above discussed workers is inconsistent, primarily because a uniform definition of sanitation work is not consistently applied across the country. Only a few categories of sanitation work are counted in the official record and even within these categories, only workers on the government payroll are taken into account. Sanitation work, such as drain cleaning or even the cleaning of toilets by domestic workers, is excluded. This is also a big issue because it renders hundreds of thousands of workers invisible, especially the ones who are employed via subcontractors, and are a layer removed from the government authorities. It denies them access to schemes and aid from the government, nonprofits, and the private

²⁰ A.Shaji George , Dr.V.Saravanan , “A Study On Manual Scavengers -Their Bleak Lives And Harmful, Filthy Work Which Deteriorates Their Life”, Paper presented at *International Award Conference on Multidisciplinary Innovation* 28/12/2019, A.R. Research Publication,p.77.

sector. Without an accurate assessment of the number of workers, the distribution of work and difficulties, and health and mortality, among other things, it is challenging to formulate and implement solutions.

The definition of a manual scavenger is too narrow to include millions of these above-listed sanitation workers in the government's database. This is the reason for their exclusion from the corrective action schemes. Acknowledgement is the first step towards change and hence the government should first acknowledge the existing problems. The government must work with the stakeholders to frame effective policies for the betterment of manual scavengers.

F. International Instruments to Eliminate Manual Scavenging

The inhuman and filthy practice of manual removing of human excreta from the sewers or septic tanks with bare hands, metal scrapers, or brooms and carrying away such excreta to dispose them off in an uninhabited land, is not only demonic but one of the greatest degrees of human rights infringement. Manual scavenging is forbidden by both national and international laws. In the international context, there are plethora of international documents that mandate India to put an end to manual scavenging.

Guiding International Instruments to Eliminate Manual Scavenging

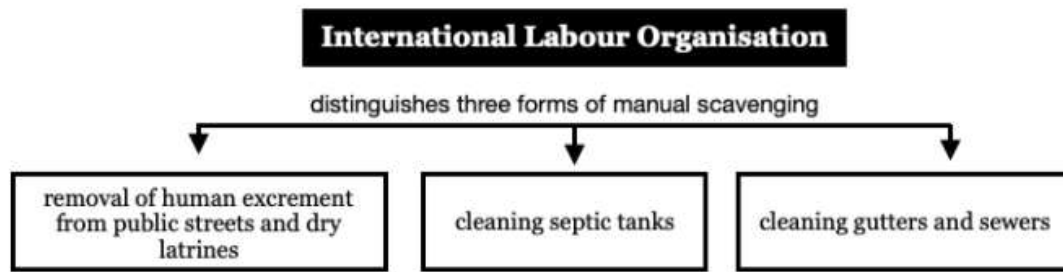
- **Articles 1& 23- Universal Declaration on Human Rights (UDHR):**
mandate dignity and equality, fair remuneration, and social security measures
To eliminate abhorrent practice of manual handling and cleaning of excrement and restore human rights of workers
- **Articles 3, 7, 10, 11 &13- International Convention for Economic, Social and Cultural Rights (ICESCR):**
envisions equality, dignity, decent living standards for women
To ensure dignity, equality and decent standard of living for manual scavenging communities
- **Articles 2, 3, 6 & 26- International Convention on Civil and Political Rights (ICCPR):**
prohibits discrimination to envisage a free, equal society- respect for life and liberty
To end caste-based discrimination and eliminate manual scavenging
- **The Convention on the Elimination of all forms of Discrimination against Women (CEDAW):**
eliminate violence and discrimination against women
To end violence against women who manually clean dry excreta from villages and railway tracks

Accordingly, Articles 1 and 23 of the **Universal Declaration on Human Rights, 1948** mandate dignity and equality, fair remuneration, and social security measures for all human beings. The Preamble, Articles 3, 7, 10, 11 and 13 of the International Convention for Economic, Social and Cultural Rights also envision equality, dignity, decent living standards and maternity relief for women. Further, the Preamble, Articles 2, 3, 6, 26 of the **International Covenant on Civil and Political Rights, 1966** prohibit discrimination to envisage a free, equal and democratic society with respect for life and liberty.

The **International Convention on the Elimination of All Forms of Racial Discrimination** also aims to eliminate gender- and caste-based discrimination, and advocates punitive action against perpetrators. Although India has been one of the initial signatories of the UN **Committee on the Elimination of Discrimination against Women (CEDAW)**, we are yet to deliver equality, quality of life, social security, education, rehabilitation and employment to women manual scavengers.²¹ Also, International organizations like the **United Nations International Children's Emergency Fund (UNICEF)**, the **World Health Organisation**, and **United Nations Development Program (UNDP)** have all vouched for an end to this practice.²² Additionally, the Human Rights Watch and the **International Labour Organization (ILO)** have described the issue of manual scavenging in India in their detailed reports. **ILO** has defined this practice as the “removal of human faeces from streets and dry latrines, and cleaning of septic tanks sewers and gutters”.

²¹ <https://www.epw.in/engage/article/manual-scavenging-women-face-double-discrimination-caste-gender> (accessed on 4/11/2021)

²² The ILO and Manual Scavengers in India: Paving the long way towards the elimination of discrimination based on social origin, available at :https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_159813/lang-en/index.htm (accessed on 20/9/2021)



G. Government Committees and Commissions before the Act of 1993

The problem of manual scavenging and improving the conditions of those employed in the sanitation ecosystem has been an issue the Indian government has been trying to tackle since the country's independence. Government of India appointed several Committees, Commissions to deal with problems of manual scavenging and suggest appropriate practical recommendation, policy measures to abolish its practices and their social inclusion. (See the table)

International Research Journal
IJNRD
 Research Through Innovation

Year	Name of the Committee	Chair	Government Body
1949-1952	The Scavengers' Living Conditions Enquiry Committee	B.N. Barve	Government of Bombay
1953-1955	Backward Classes Commission	Kaka Kalkar	Government of India
1956	Central Advisory Board for Harijan welfare	Gobind Ballabh Pant	Government of India, Ministry of Home Affairs
1958-1960	Scavenging Conditions Enquiry Committee	N. R. Malkani	Government of India, Ministry of Home Affairs
1965-1966	Committee on Customary Rights to Scavengers	N. R. Malkani	Government of India, Department of Social Welfare
1966-1969	National Commission on Labour	P. B. Gajendar Gadkar	Government of India
1968-1969	Committee on Conditions of Sweepers and Scavengers	B. P. Pandya	National Commission on Labour, Government of India
1991	Task Force for Tackling the problem of scavengers and suggesting measures to abolish scavenging with particular emphasis on their rehabilitation	S. K. Basu	Government of India, Planning Commission

The first-ever enquiry Committee to study the living conditions of the manual scavenging community was formed in 1949. In the late 1950s, **G. S. Lakshman Iyer**, a freedom fighter, who became the chairman of Gobichettipalayam Municipality banned manual scavenging becoming the first local body to ban it officially. **Kaka Kalelkar Commission** appointed by the Government also emphasised on the immediate mechanisation for the cleaning of the latrines to eradicate this 'sub-human' level of practice. In 1956, the Ministry of Home Affairs formed a committee under the **Central Advisory Board for Harijan Welfare** which was chaired by **Pandit Govind Ballabh Pant**. The Committee *inter alia* reviewed the working and living conditions of sweepers and scavengers and recommended the introduction of schemes for this purpose. The Committee became functional in January 1958 and submitted its report in December 1960.

The Report contained concrete recommendations for eliminating the practice of carrying night-soil as head loads and also for removing filth and humiliation from all stages of scavenging and for refining their working, living and social status. The Committee observed that *“as long as dry latrines continue; the problem will exist and it is a story of the far distant future to think of all the towns having underground sewers”*.²³ Between the 1960s and 1990s, there were many Committees formed and several reports submitted. There were several deadlines given by the government based on reports and recommendations of various Commissions and Committees to rehabilitate the community and to provide better working conditions. But many times, the amounts sanctioned by state governments were not utilized or were negligible.²⁴

H. Constitutional and Legislative Provisions on Manual Scavenging in India

i) Constitutional Provisions

The First law of the country i.e. the **Constitution of India**, which came into force in 1950, indirectly is the first attempt to address the issue of manual scavenging in India. Inspired by the **Universal Declaration of Human Rights, 1948**, Part III of the Constitution embodied strong human rights protections – and moulded them to suit the Indian context. The framers of the Indian Constitution spearheaded by **Dr. B.R. Ambedkar** acknowledged that the ‘lower castes’, having been associated with ‘unclean’ professions, had historically been ostracised from Indian society. They had been denied access to the same public spaces as the ‘upper castes’ and were considered ‘untouchable’. Due to the stigma attached to their caste-identity, the ‘touch’ of ‘lower caste’ individuals was deemed to be ‘polluting’. This meant that they were and in some cases still are denied entry into temples, denied access to water from public wells and never allowed to eat at the same table as the ‘upper castes’. ‘Lower caste’ children were prohibited from attending the same schools as ‘upper

²³ Report of the *Scavenging Conditions Enquiry Committee*, Ministry of Home Affairs, Central Advisory Board for Harijan Welfare (1960)

²⁴ B.N.Srivastva, *Manual Scavenging in India: A Disgrace to the Country*, 1997, 36-37, New Delhi: Concept Publishing Company, 1997

caste' children. It was also not uncommon for the 'lower castes' to be housed in ghettos situated outside the limits of villages.

Strong protections were therefore placed in Part III to prevent social ostracism emanating from caste-practices. **Article 15**²⁵ ensured that a person's caste-identity did not prevent them from the use of public spaces and resources like wells and tanks; and **Article 17**²⁶ abolished the practice of Untouchability in any form. But while Untouchability and other manifest evils of caste were outlawed by the Constitution, the practice of manual scavenging, which underpinned the social ostracism, escaped explicit mention in the Constitution and was inadvertently allowed to perpetuate.

Since most of the Manual scavengers belong to the backward section of the society, they are entitled to some of the special rights under the Indian Constitution. Firstly under Article 17, the Indian Constitution abolishes the practice of untouchability in any form and Article 15 also forbids discrimination based on caste . The other Constitutional protections available to them are **Article 14, 16(2), 21, 23, 41, 42, 46, 47 and 338**. Of these articles, the most important one corollary to the functioning of human beings is **Article 21** i.e. the right to life . The apex court had widened the ambit of this article in the landmark judgement of *Maneka Gandhi v. Union of India*²⁷ and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. The practice of manual scavenging is the most degrading and inhumane practice in the world and a blot on human dignity. A person handling human feces on a regular basis as a part of his/her profession cannot be said to lead a dignified life in the society we are a part of. This blatantly evil practice is per se against the fundamental rights enshrined in our **Part III** of the Constitution and not in consonance with the broader interpretation of life. The Supreme Court through various case laws has stressed the importance of a dignified life.

²⁵ Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex or Place of birth

²⁶ Abolition 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

²⁷ AIR 1978 SC 597

Apart from the Constitution of India ,the postcolonial legislative interventions have seen four laws prohibiting manual scavenging, of which two are special enactments prohibiting the practice of manual scavenging: **Protection of Civil Rights Act 1976; Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Amendment Act 2016); The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 and The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013** .These legislations provide for a detailed framework for the prohibition of the act of manual scavenging and the protection and rehabilitation of manual scavengers. Manual scavenging is prohibited in India under two specific laws and the Directives of the highest court of Law.



ii) **The Untouchability Offences Act, 1955**

The first Act which sought to abolish this dehumanising practice was The Untouchability Offences Act of 1955 under Section 4.²⁸ However, the punishment under the Act was extremely lenient and it couldn't successfully stop the practice of manual scavenging.

iii) **Protection of Civil Rights Act, 1977**

The Parliament then came up with the Protection of Civil Rights Act of 1977 (by amending the previous Untouchability Offences Act) which identified the practice of 'scavenging' on the ground of untouchability under Section 7A of the Act and made it punishable.²⁹ This Act too failed to provide stringent punishment resulting in no mitigation of the practice.

iv) **The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, came into force on January 31, 1990. The Act, among other things, specifies some types of offences as atrocities, provides for the imposition of stricter penalties for the guilty and setting up of special courts for speedy trial of such cases". This Act of 1989 identifies the atrocities which are answerable to penalties under Act, those are, forcing the eating's of toxic substances, dumping waste matter on land, denudation, wrongful occupation of land, deficiency, bonded labours, threats, intimidation during voting, illbehaved litigation, false information, public disgrace, outraging humility, sexual exploitation, fouling of water source, impediment of entry into a place of public resort,

²⁸ Section 4: Punishment for enforcing social disabilities.- Whoever on the ground of "untouchability" enforces against any person any disability with regard to- (iii) the practice of any profession or the carrying on of any occupation, trade or business; shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

²⁹ Section 7A: Unlawful compulsory labour to be deemed to be a practice of "untouchability" (1) Whoever compels any person, on the ground of "untouchability", to do any scavenging or sweeping or to remove any carcass or to flay any animal or to remove the umbilical cord or to do any other job of a similar nature, shall be deemed to have enforced a disability arising out of "untouchability"; shall be punishable with imprisonment for a term which shall not be less than three months and not more than six months and also with fine which shall not be less than one hundred rupees and not more than five hundred rupees

expulsion from habitation, misbehaviour's with explosives, devastation of buildings and suppression evidence". "These offences under Prevention of Atrocities Act bring heavier penalties than similar offences under the Indian Penal Code"³⁰. "The main objective of the Act is to prevent the commission of offences of atrocities against the members of the scheduled castes and the scheduled tribes, to provide for special courts for the trial of such offences and the relief and rehabilitation of the victims of such offences and matters connected in addition to that or incidental to it. The Act was further strengthened, about manual scavengers, by the recent amendments"³¹. "The Act which was notified by the Central Government on January 1, 2016, makes it a punishable offence to employ, permit or make any person belonging to SC/ST community, to do manual scavenging. The contravention of the said provision attracts imprisonment for a term not less than six months and may exceed five years and fine"³².

v) **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. The Act bars any individual to appoint in or occupy or endorse to be engaged in or working any other person for physically carrying human excreta or building of a dry latrine. **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**, provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water sealed latrines and matters connected therewith³³. The Act provided the power to state government, executive authorities, inspector, officers and other employees to make schemes for conversion of dry latrines, construction and maintenance of water seal latrines, registration and rehabilitation. The major drawback of this Act was that it majorly focused on

³⁰ Act no. 33 of 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

³¹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act no. 1 of 2016)

³² *Id.* s. 4(j) and s.3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

³³ Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Act no. 64 of 1993)

sanitation requirements and not on the issues of rehabilitation and that of human dignity being violated, thus the Parliament enacted the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 to address the issues which were left untouched by the earlier existing legislation.

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

After the failure of the 1993 Act, a new Act was brought in improve the mechanisms, increase accountability and widen the ambit of the definition of scavenging. The focus shifted from not only to end scavenging but also improve their lives and ensure protection of those who are victims of scavenging. 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) **Prohibition of Employment as Manual Scavengers and Their Rehabilitation Rules, 2013**³⁴

Safai Karamcharis means persons who are all engaged or employed for any sanitation work other than domestic work. Under this rule there is an obligation on the part of the employer towards employees engaged for the cleaning of sewer or septic tanks. They are not allowed to clean sewer manually with protective gear and safety devices except in exceptional circumstance where mechanical equipments cannot be put into operation for the removal of concrete or fiber reinforced plastic or damaged manhole doo, for the reconstruction of

³⁴ In exercise of the powers conferred by sub-sections (1) and (2) of Section 36 read with clause (a) of sub-Section (1) of Section 37 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (25 of 2013), the Central Government made these Rules.

manhole or rectification of the sewer main etc. a sewage shall be emptied unless a person cannot be allowed to enter into the sewage. There is a list of protective gear and safety devices listed under this rule for a person engaged to clean a septic sewer or a septic tank and that should be provided by the employer to the employee. These protective gears shall be checked for every six months and employers shall make necessary repair or replacement of the device. It is the responsibility of the employer to ensure the safety precautions before engaging a person for cleaning of a sewer or a septic tank and that safety precautions are also listed in this rule. Under this rule the local government is empowered to conduct survey of insanitary latrines and manual scavengers etc³⁵

viii) **The Prohibition of Employment as Manual Scavengers and their Rehabilitation (Amendment) Bill, 2020**

This Bill was introduced in the Indian Parliament by the Union Government. The main objectives of introducing this Bill are to eradicate manual scavengers all over the country from this shameful practice and also to take out all those workmen who are already involved in this degrading job. The Government will also rehabilitate them and their family members. The Bill, aims to completely modernize existing sewage system and the coverage of non sewer areas; setting up fecal sludge and sewage management system for the mechanized cleaning of the septic tanks, transportation and treatment of the fecal sludge; equipping the municipalities and Setting up of Sanitation Response Units with help lines. It proposes to make the law more stringent by increasing both fine and the term of imprisonment. The Bill, tries to fill the lacuna present in the MS Act, 2013 by rehabilitating people who are identified as manual scavengers under this Act as well as their children will be provided free education from primary to the post doctorate level for one generation as it is an important step to undo the social injustices they have been subjected to.

³⁵ <http://www.bareactslive.com/ACA/ACT2238.HTM> (accessed on 12/9/2021)

I. National Human Rights Commission Advisory, 2021³⁶

The **National Human Rights Commission** on 24th September, 2021 issued an advisory regarding the protection of rights of the workers involved in manual scavenging and hazardous cleaning. The advisory issued to the Centre, States and Union Territories by NHRC has called for fixing responsibility and accountability of concerned authorities in case of death of any sanitary worker while undertaking the task of hazardous cleaning. The NHRC issued the advisory on eleven points i.e. i) **Ensuring proper protective gear/ safety equipment for sanitary workers;** ii) **Leveraging the use of suitable and worker-friendly technology and robotic machines;** iii) **Welfare schemes;** iv) **responsibility and accountability of the hiring agency/employer;** v) **Fixing the responsibility and accountability of the concerned authorities;** vi) **Rehabilitation;** vii) **Access to Justice;** **Strengthening infrastructure for providing sanitary services;** viii) **Awareness/ Sensitization;** ix) **Replicating the best practices;** x) **Ensuring proper identification of persons engaged in manual scavenging and** xi) **Monitoring of Implementation of the PEMSAR Act, 2013.**

The NHRC-issued advisory advocated the states, UTs and Centre to treat sanitary workers as frontline health workers for all purposes and further made recommendations for providing security cover to them and thereafter ensuring the protection of human rights.

In its letter written to the Secretaries of the concerned union ministries/departments and chief secretaries of states and administrators of union territories, NHRC Secretary General Bimbadhar Pradhan has sought for the implementation of the given recommendations further demanded for an Action Taken Report within 3 months.

The recommendations that have been made through the NHRC advisory involve providing proper safety gear to the workers for carrying out sanitation work in septic

³⁶ <https://nhrc.nic.in/sites/default/files/Advisory%20on%20Manual%20Scavenging%2024%20Sept%202021.pdf> (accessed on 25/10/2021)

tanks and sewers. These include helmets, safety jackets, gloves, masks, gumboots, safety glasses, torchlight along oxygen cylinder.

Along with the use of proper gears, it also recommends the use of technology, hiring agencies and employees, strengthening the infrastructure for sanitary services, awareness, sensitization, and many more. It also recommends the use of duly acknowledged and recognised technological equipment which includes Bandicoot, Swere Crocs, KAMJET GR, Mobile Septage Treatment Unit, and many more.

NHRC has also directed all officials in concerned departments at the Centre, State and Local bodies to be sensitized and measures to sensitize public to be taken followed by proper monitoring of the implementation of the PEMSR Act, 2013 and ensuring proper identification of persons engaged in manual scavenging.

J. Governmental Initiatives

Besides the efforts made by several national and international organizations and social reformers, Government of India initiated several steps since Independence to liberate scavengers from manual cleaning of night soil and rehabilitate them in alternative dignified occupations. Following is the list of some of the Schemes launched by the Government to improve the conditions of scavengers:

- Valmiki Ambedkar Malin Basi Awas Yojna , 2001
- Pre-Metric Scholarships for the Children of those Engaged in Unclean Occupations
- Total Sanitation Campaign , 1999
- National Scheme of Liberation and Rehabilitation of Scavengers , 1992
- Integrated Low Cost Sanitation Scheme , 1980-81
- Self-employment scheme for rehabilitation of manual scavenging , 2007
- Nirmal Bharat Abhiyaan and Swachh Bharat Abhiyaan , 2012 & 2014
- National scheme of liberation and rehabilitation of scavengers and their dependents
- Integrated low cost sanitation scheme
- Pay and Use Toilet Scheme:
- National Safai Karamcharis Finance and Development Corporation
- Assistance to State Scheduled Castes Development Corporations
- Mission Garima

K. NGO's Activism to End Manual Scavenging

Over the years, various civil society initiatives, NGO's and organisations have condemned the practice of manual scavenging while making efforts to restore the dignity of the Dalit communities.³⁷ **The Sulabh International Social Service Organisation**³⁸ founded by **Dr. Bindeshwar Pathak** in 1970, critically focusses on transforming India's sanitation systems, with the important innovation of the twin-pit pour flush toilets all over India. Since its inception in 1970, Sulabh International, under the leadership of Dr. Bindeshwar Pathak, launched a nation-wide movement to alleviate the plight of manual scavengers. His interventions have liberated over 200000 women from manual cleaning of toilets. **Navsarjan** is another NGO founded in 1989 by **Martin Macwan**. In Gujarat Navsarjan has set up Dalit Shakti Kendra for providing vocational training along with other skills to Dalits.³⁹ This has become instrumental in ending the exploitation and humiliation caused by this filthy work. They have been successful in mobilising and organising meetings and training programmes for the marginalised and oppressed communities. **Bezwada Wilson**⁴⁰, has been one of the most vocal advocates for complete elimination of manual scavenging. He founded the **Safai Karmachari Andolan** in 1994 with the goal to end manual scavenging and rehabilitate those engaged in the practice into more dignified and decent work. In 2014, the under reporting of numbers of manual scavengers was reiterated by the Supreme Court in the SKA case⁴¹ stating that the government "has shown remarkably little progress and has identified only a miniscule proportion of the number of people engaged in manual scavenging". Similarly, **Jan Sahas**⁴² founded by **Ashif Sheikh** in 2000, started the Rashtriya Garima Abhiyan⁴³ to encourage manual

³⁷ <https://humanity-consultancy.com/wp-content/uploads/2021/05/Report-on-Manual-Scavenging-in-India.pdf> (Accessed on 12/9/2021)

³⁸ The organization has pioneered the construction of the twin-pit, pour-flush compost toilet called Sulabh Shauchalaya, a model that doesn't require manual cleaning

³⁹ Navsarjan, Dalit Shakti Kendra, Available at: <http://navsarjan.org/dalitshaktikendra> (Accessed on 20/10/2021).

⁴⁰ Bezwada Wilson is the national convenor of the SKA. He's a human rights activist working on issues of caste and is a recipient of the Ramon Magsaysay Award

⁴¹ Safai Karmachari Andolan & Ors. v. Union of India & Ors., Supreme Court of India, Writ Petition (Civil) No 583 of 2003, Judgment, March 27, 2014, para. 10

⁴² Jan Sahas is a non-profit that works to eliminate sexual violence and forced labour, focusing on the marginalised social groups through a comprehensive approach of- Prevention, Response, Rehabilitation and Systemic Reform

⁴³ Rashtriya Garima Abhiyan (National Campaign for Dignity) was started by Ashif Sheikh in 2000. Through Jan Sahas, he has launched campaigns to end caste-based discrimination and manual scavenging in India, along with other socially challenging issues

scavengers to voluntarily “liberate” themselves from the iniquitous practice. They started a nation-wide solidarity march to end manual scavenging. Around 10,000 women left scavenging with this campaign and started the ‘National People’s March for Eradication of Manual Scavenging’ march in November 2012, reaching Delhi in January 2013. The march covered 18 Indian states and 200 districts in two months that and significantly contributed to the release of the “Delhi Declaration for Eradication of Manual Scavenging,” which urged the government to pass a new legislation to end manual scavenging.

L. Role of Judiciary

Indian Judiciary has always played an active role in strengthening the cause of socio-economic welfare by translating several directive principles into enforceable rights for the upliftment of poor and weaker section of the society. Since 80s, Indian judiciary expanded the ‘right to life’ guaranteed in **Article 21** of the Constitution into a right to life with dignity, and read several social and economic rights as underlying determinants of the right to life with dignity. In the process, Article 21 was enlarged into an umbrella for all sorts of constitutional protections. It is perhaps for this reason that the rights interventions by Indian courts are most useful in circumstances of egregious suffering, and not for comprehensive management of low-grade deprivations. With regard to judicial response towards the manual scavengers, recently courts have adopted a stern attitude towards the manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

In *Safai Karamchari Andolan v. Union of India*⁴⁴, 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. SKA also asked the court to declare manual scavenging violative of right to equality and right to life, and to declare the practice as a form of untouchability and forced labour, both abolished by the Constitution. For

⁴⁴ WP(C) No.583 of 2002

eleven years, SKA was able to convince the Supreme Court to treat the case as a ‘continuing mandamus’, by which it could call state agencies to account for disregard of the law.

In this case the Hon’ble Supreme Court directed the government to, “Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs 10 lakh for each such death to the family members depending on them”. In its judgment by Supreme Court Bench headed by Chief **Justice P Sathasivam**, the court categorically said that if the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to be carried out. The Hon’ble Supreme Court wants that the following important steps would require to be taken:

- (a) Entering sewer lines without safety gears should be made a crime even in emergency situations. For any death as a result of sending any manual scavenger inside the gutter, compensation of Rs 10 lakh should be given to the family of the deceased.
- (b) Railways should take time bound strategy to end manual scavenging on the tracks.
- (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.
- (d) There should be dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

The Hon’ble Supreme Court also said that rehabilitation must be based on the principles of justice and transformation. The court directed the Indian Railways, which is the largest employer of manual scavengers in the country, to take time bound strategy to end manual scavenging on the tracks. This judgment of the Supreme Court

was seen as a victory of manual scavengers who have been fighting across the country for their liberation against the denial of central and various state governments repeatedly. The Supreme Court acknowledged the significance of the data provided by the petitioner Safai Karmachari Andolan in its 12 years legal battle, demonstrating that the practice of manual scavenging continues unabated. Dry latrines continue to exist notwithstanding the fact that the 1993 Act was in force for nearly two decades. States have acted in denial of the 1993 Act and the constitutional mandate to abolish untouchability.

Similarly Cases were also filed in the *Gujarat High Court*⁴⁵ in 2004, in *Delhi*⁴⁶ *High Court* in 2007, and in *Chennai High Court*⁴⁷ in 2008, in which various petitioners drew the courts' attention to manual scavenging and sewer deaths. Notably, at that time, the 1993 law only covered dry latrines-related manual scavenging, but the courts had no difficulty in extending the logic of prohibiting manual scavenging to sewers. The Gujarat court observed that in the absence of specific law, Article 21 was there to protect civic workers. About the Delhi case, the Supreme Court said it was the constitutional duty of courts to protect the rights of those who for economic compulsion enter manholes for cleaning work. There was no doubt that this was an issue of fundamental rights, and accordingly, the courts could direct state parties to take all measures to eliminate human entry into sewers.

In all of the cases, the courts were strongly influenced by news reports of the deaths of sewage workers. During the period when these cases were running in the courts, Indian activists were also able to mobilise the international human rights community to push for the legal recognition of manual scavenging as a human rights issue. How much these influenced the courts is not always apparent in the judgments, although they helped perhaps in providing legitimacy for the courts' interventions.

⁴⁵ *Praveen Rashtrapal IRS v. Chief Officer, Kadi Municipality* (2006) 3 GLR 1809

⁴⁶ *Ashok Agarwal v, UOI and Others* ,W.P.(c) 84/1998

National Campaign for Dignity and Rights of Scavengers and Allied Workers v M.C.D. and Another ,W.P.(c) 5232/2007

⁴⁷ *A. Narayan v. The Chief Secretary* , W.P.No. 24403 of 2008 ,Decided on 20/11/2008

In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others*⁴⁸, the Supreme Court of India passed a landmark judgement emphasizing the quandary of the disadvantaged sections of the society focussing 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 centre 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 unfavourable 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.

In *Chinnamma and Ors. v. State of Karnataka and Ors.*,⁴⁹ the High Court of Karnataka gave a judgement in favour of the family of one Chenchaiyah, 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 Karamchhari 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

⁴⁸ (2011) 8 SCC 568

⁴⁹ W.P.No. 16365 of 2014 [GM-RES], Decided On, 11 /1/2016

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.

A Division Bench of **S. Muralidhar**, CJ and **B.P Routray**, J., of the Orissa High Court in *Death of sanitation Workers v. State of Odisha*⁵⁰ on 19/4/2021 expressed shock at the shameful practice of making the underprivileged and poor persons undertake hazardous manual cleaning of sewers and septic tanks continuing unabated in India despite the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, since October 1, 2013.

While registering *suo motu* a **PIL** under the title '*Deaths of Sanitation Workers*' in connection with the two recent tragic deaths each in Cuttack city and Bhubaneswar, the Court observed that "*It shocks the judicial conscience, as it should the society's collective conscience.*" Court directed 10 lakh compensation to be paid to the grieving families and made noteworthy observations regarding the sorry plight of manual scavengers

Very recently in *Vimla Govind Chorotiya & Ors. V. State of Maharashtra & Ors.*⁵¹, the Bombay High Court said the Maharashtra government has the responsibility and liability to ensure that the shameful practice of manual scavenging is not carried out anywhere in the state. A division bench of **Justices Ujjal Bhuyan** and **Madhav Jamdar** sought to know from the state government if it had carried out a survey identifying manual scavengers across the state after the enactment of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act in 2013 and what steps it had taken to rehabilitate them.

The court also sought to know how many manual scavengers had died at work since 1993 and if the state government had awarded compensation to their family members. The court was hearing a petition filed by three women, whose husbands were

⁵⁰ 2021 SCC On Line Ori 383, Decided on 19/04/2021

⁵¹ W.P. No.15651 of 2021

employed as manual scavengers and had died while cleaning a septic tank at a private society in suburban Govandi here in December, 2019. The petitioners had sought compensation from the government as per provisions of the Act. The court directed the Mumbai suburban collector to pay each of the petitioners a sum of Rs 10 lakh by way of compensation.

During the hearing of *Union of India v the State of Maharashtra*,⁵² the case involving review of *Dr. Subhash Kashinath Mahajan v The State of Maharashtra* — the case that diluted the scope of SC/ST Atrocities Act, Supreme Court of India expressed serious concerns over deaths of manual scavengers⁵³. A bench headed by **Justice Arun Mishra** questioned Attorney General K K Venugopal, appearing for the Centre:

“Why are you not providing them masks and oxygen cylinders? In no country in the world, people are sent to gas chambers to die. Four to five people are dying due to this every month. It is the most uncivilized and inhuman situation where the people are losing their lives in gas chambers without any masks or oxygen cylinders. This is the most inhuman way to treat a human being. All the human beings are equal and when they are equal you should provide them equal opportunities as mandated under the Constitution. You are not even providing them an equal chance and they are not been given the basic facilities to even clean themselves. Despite the Constitution abolishing untouchability in the country, I am asking all of you, will any of you shake hands with them? The answer is no. That is the way we are going on. The condition must improve. We have moved 70 years since Independence but these things are still happening”.

M. Conclusion and Suggestions

On the basis of foregoing discussion it can be concluded that since independence, our country has made many technological advancements in the way of human

⁵² (2020) 4 SCC 761.

⁵³ <https://www.thehindu.com/news/national/sc-on-manual-scavenging-no-country-sends-its-people-to-gas-chambers-to-die/article29447848.ece> (accessed on 5/9/2021)

development but it failed to eradicate ‘manual scavenging’ from its root. The conditions of the scavengers remain deplorable to date as there are many reasons why India cannot get rid of this practice. According to the India Census 2011, there are more than 2.6 million dry latrines in the country which suggests that human excreta has to be cleaned manually. This dehumanizing practice although outlawed in India but it still prevails and people indulged in it are forced to risk their lives. Statistics reveals that, despite the various legislations, Schemes and Policies and directives of the judiciary the problem still exists. Researchers are of the view that eradication of manual scavenging needs a surgical strike. A mission for total eradication of manual scavenging and rehabilitation of manual scavengers needs to be set up. The Centre must spell out a detailed, time-bound and transparent action plan with a monitoring and accountability framework, even if sanitation is a state subject.

The critical analysis of The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 reveals that there are many loopholes, drawbacks in the Act which needs to be taken care of. Section 5 of the Act of 2013 prohibits manual scavenging but the primary cause of concern is that the manual scavengers are engaged by government officials in railways and municipalities but they are made invisible in official documents since this practice is officially ‘outlawed’. Also, major loophole of the legislation is that Section 2(1)(d) of the Act states that ‘hazardous cleaning’ by an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions. This itself defeats the purpose of the Act as it seeks to legalize manual scavenging under the garb of protective gears. Also, as the exact definition of protective gears is not given in Act and due to the prevailing ambiguity, the cleaners are not provided with proper protective gears which result into their exposure to hazardous health diseases.

Section 4(1) of the Act states “Every local authority shall carry out a survey of insanitary latrines existing within its jurisdiction, and publish a list of insanitary

latrines, in such manner as may be prescribed, within a period of two months from the date of commencement of this Act;” Here, the Act talks identification of only insanitary latrines. But, the Act does not mention of identification of spots where open defecation is done and consequently someone has to clean manually human excreta from the open spaces in urban areas. Local authorities have no willingness, time as well as expertise to conduct survey to identify insanitary latrines. There is also possibility that local authority will not identify actual numbers of insanitary latrines when insanitary latrines are constructed and maintained by the local authorities themselves. The survey may be on paper by local authority. Instead, the task to conduct survey may be given to some professional designated agency.

In order to address this issue there is an immediate need to redefine manual scavenging with an emphasis on the categorisation of sanitation workers. Here, the definition of manual scavenging has to be broadened from manually cleaning of human excreta to the ‘manual collection, source separation, storage, transportation, transfer, processing, treatment and disposal of solid waste and the proper handling, treatment and disposal of liquid waste/wastewater or sewage. The Amendment Bill should take into consideration the composition of the hazardous waste including bio-medical waste which the different categories of sanitation workers are forced to scavenge ‘manually’ and is no less than the task of scavenging of the human excreta. The categorisation of sanitation workers into Faecal Sludge Handlers, Sewage Treatment Plant Sanitation Workers, Toilet Sanitation Workers (community, public, school, domestic household further classified into dry/wet handling), Public Transportation Site Sanitation Workers (railway, roads), Sewer and Drain Sanitation Workers, Septic Tank Sanitation Workers, Waste Recovery Sanitation Workers (household-community-landfill further classified into resource recovery sanitation workers), Operational Sanitation Workers, Sanitation-Waste Intersection Workers and further into manual scavengers from the waste management perspective and not the ‘type of waste scavenged’ will further help the manual scavengers in India. It has to be noted that it is only after categorisation of the sanitation workers that proper framework for the eradication of manual scavenging can be developed.

The foregoing study further reveals that even today manual scavenging remains a serious concern with regard to the issues related to human rights. Researchers believes that in order to tackle the problem, it would be necessary to involve all the major stakeholders of the community to get involved. From district magistrate to local community members, it is important for everyone to participate in the eradication of the practice, removing social stigma and rehabilitate the manual scavengers.

In today's era of advance science, it must be made obligatory that the latest technology should be provided for persons attending sewage disposal and it shall be the responsibility of the union and state governments to provide sufficient funds for the purchase of machines and equipment under different programmes and schemes. Discrimination free, secure and alternate livelihoods by providing skill development and livelihoods training to women, linking them to government employment schemes and entitlements as well as ensuring their land rights, vocational training linked to employment for young people, and support to liberated manual scavengers in building alternate livelihoods could go a long way in ensuring steady, stable livelihoods for the future. This way, the marginalised scavengers can get a second chance at re-integrating with society.

In order to free the scavengers from the shackles of this practice, there is a need for strong enforcement of the law that prohibits scavenging. As such, the practice of Manual scavenging has been prohibited since 1993. However, the Governmental institutions are reluctant to act on this and are going to great lengths in denying the existence of manual scavengers. How will the country start to solve a problem if they refuse to acknowledge it ?. So, first of all the government should honestly acknowledge the existing problem without hiding the exact statistics. The liberation of these workers cannot be conceptualized in isolation because they will lose their only source of income without a meticulous road map for meaningful rehabilitation as proposed for manual scavengers. Technologically, there has been an introduction of machines to clean sewers and drains in India but its reach is limited to wider roads. In

a country with an endless number of alleys and small lanes, cleaning via manual scavenging is deemed as the only option. There is a need to evolve the whole practice of manual scavenging. What is needed is more mechanization and technical innovation to effectively clean sewers. Additionally, we need to encourage more research and evolution of technology so that effective machinery can reach the smallest of lanes. The government should quality protective gears to the sanitation workers. Training the existing workers on hygiene practices and safety measures during their work is very important.

There is a need for people to understand the repercussions of usage of dry latrines. District Nodal Officers, NGOs and health officers should educate the community on devastating effect caused by them. They should also educate the mass on health issues, hygiene practices, and sanitation. Government officials should inform on the legal implications that are related to engaging in scavenging and having dry toilets. Here ,the role of the media is crucial as it can make people aware at the ground level and act as a bridge between the workers and the government for complete reformation.

The researchers are of the firm belief that if the aforesaid measures and recommendations are properly taken into account and are implemented properly, the present scenario of manual scavengers will be improved drastically. Permanent solution requires seriousness at level of policy formulation and policy implementation along with efforts from common people and NGOs.

