

Legislation and Manual Scavengers: An Analysis of the Government of India's Legislation Towards Manual Scavengers and its Upshot

Mohamed Muṣṭhafa KT

Doctoral Fellow

UGC Centre for Study of Indian Diaspora

University of Hyderabad, India

E-mail: mohamedmuṣṭhafakt@gmail.com

Abstract

*It is the fact that manual scavenging is existing across India in the 21st century and strongly connected with the caste system. The human scavengers are the most excluded and isolated community in the mainstream of society. There are different rules and regulation against the practicing of manual scavenging in both, national and International level. But still, the practicing of manual scavenging continues. The Employment of Manual Scavengers and Construction of Dry Latrines (Abolition) Act 1993, defines Manual Scavenger means a person who is engaged in or employed for carrying human excreta, and the expression "manual scavenging" shall, it reads, be constructed accordingly. There was a wide criticism towards this definition because it excluded those people who handle the material like garbage, sewage etc. or engage in any other similar work which is considered belittling of human dignity. This paper mainly talks about the different legislations towards manual scavenging and how did affects among the Manual Scavengers. The main objective of the paper is to understand the various legislations and its impacts on manual scavengers. **Keywords:** Manual Scavengers, Social Exclusion, Legislations, Main stream society, the caste system.*

"In India, a man is not a scavenger because of his work, he is a scavenger because of his birth irrespective of the question whether he does scavenging or not" (Dr B R Ambedkar)

Introduction

It is reality that practice of the human scavenging exists most powerfully in India after passing different legislation regarding the prohibition of manual scavenger. In India, the practice of the scavenging is directly connected with the caste system. There is a wide range notion that scavenging is the ascribed duty of particular community and they have to do it otherwise they have to face the consequences from dominant community. That's why Dr B R Ambedkar said that "In India, a man is not a scavenger

because of his work, he is a scavenger of because of his birth irrespective of the question whether he does scavenging or not". Manual Scavengers are found everywhere in India, There are different caste names for manual scavengers in various parts of India, including Balmiki, Bhangi, Mehatar, Lalbegi, Chuhara, Mira (in Uttar Pradesh, Madhya Pradesh, Bihar, Punjab, Maharashtra), Hadi in West Bengal, Paki in Andhra Pradesh and Thotti Tamil Nadu (Abishek and Farheen, 2017). Manual scavenging is a caste-based occupation wherein certain sub-castes of Dalits are condemned to manually clean, carry, dispose, or handle human excreta from dry latrines and sewers (Deepika and Moushumi, 2016). The important fact is that government of India formulated different legislations and policies to eradicate the inhuman practice of human scavenging from time to time. But it is very unfortunate that legislation and policies on paper only not in practice as usual. The government has no correct statistics on the number of human scavengers which are increasing the seriousness of the problem of human scavenging. The thing is that foresaid number is not representing the real number of human scavengers. According to the Bezwada Wilson, (2016 Magsaysay award winner and founder and National convener of Safai Karanchari Andolan, which works to improve the lives of manual scavengers and to end the practice of manual scavenging), stated that "there has been no survey conducted to find the number of manual scavengers in India in the last ten years (Swagata, 2017). This is one of the major problem faced by Manual Scavengers in India. Often government bodies are the main supporters of the human scavenging practice. Indian railway is the best example of that. The International Labor Organization distinguishes manual scavenging into three forms, first is the removal of human excrement from public streets and dry latrines, and second is that cleaning septic tanks and cleaning gutters and sewers are the third forms (Abishek and Farheen, 2017). From Independence onwards, Government of India passed different legislation toward manual scavengers to eradicate the inhuman practice and to uplift this community. But, these legislations and constitutional acts could not stop the inhuman practice of human scavenging completely. This paper is mainly talking about different legislation formulated by the Government of India to Manual scavengers and how did this legislation effect on manual scavengers. This paper is mainly based on secondary data and Government articles, NGOs reports and newspaper articles.

Definition of Manual Scavenger from Government side

From independence onwards, Government of India opposed the practice of Manual scavenging through different legislation indirectly. Government of India passed " The Employment of Manual Scavengers and

Construction of Dry Latrines (prohibition) 1993, firstly defined Manual Scavenger as “a person who is engaged in or employed for carrying human excreta, and the expression manual scavenging shall, it reads, be construed accordingly (Abishek and Farheen, 2017). It was the first definition of the Government of India on human scavenger. But its definition was very narrow and a lot of people related to human scavenging practice excluded from this definitions. This definition was widely criticized. The National Commission for Safai Karamchari report of 2000 questioned the definition of Manual Scavenger in “The Employment of Manual Scavengers and Construction of Dry Latrines (prohibition) 1993, and report called it as narrow definition and it has to include those who handling material like garbage, sewage etc by hand and engage in any other similar work which is considered obnoxious or derogatory to human dignity (Abishek and Farheen, 2017). The fact is that Government did not make changes in the definition of Manual Scavengers till 2013. So many rehabilitation and welfare programme was based on the 1993 Act. So the number of manual scavengers excluded from the Government Scheme. After twenty years, Government of India passed another legislation or modification in 1993 legislation titled “Prohibition of Employment as a Manual scavenger and Their Rehabilitation Act 2013. An important aspect of this legislation is that it expanded the definition of Manual scavenger from the 1993 definition. It defined manual scavenger as “a person who is employed for manually cleaning, carrying, disposing of or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit or railway track“(Government of India, 2013). It specifically mentioned railway track. Because Indian railway is one of the big violators of the manual scavenger prohibition law widely. One positive aspect of the 2013 legislation is that it tried to elaborate the definition of Manual scavenger in the real sense.

Constitutional Provisions against Manual Scavenging

Before moving to legislation for banning manual scavenging, it is essential to go through the constitutional article, that directly or indirectly against of the inhuman practices like manual scavenging and other practices. Dr Bhimrao Ramji Ambedkar, the chairman of the Drafting Committee of the constitution of India, predicted the consequences of the inhuman practice of human scavenging and indirectly added the provisions in Article of Indian constitution. Article 17, Article 21 and Article 23 (1) are the best examples of it. Article 17 of the Indian Constitution deals with the abolition of the untouchability. Article 17 of the constitution was initially implemented through the enactment of the “Protection of Civil Rights Act 1955. Firstly it was known as Untouchability (Offences Act) 1955. Section

7A of the act indicates that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability which is punishable with imprisonment (Abishek and Farheen, 2017). In India, the practice of human scavenging is closely connected with the caste system and untouchability. The Article 21 of the Indian Constitution deals with the “protection of life and personal liberty”. According to Article 21, no person shall be deprived of his or her life or personal liberty except according to procedure established by law. This article ensures protection against all types of deprivation to its citizens. The practice of human scavenging is the deprivation of the human status. Article 23 (1) of the Indian Constitution ensure to its citizens the right against exploitation. This article prohibits all types of exploitation. The practice of human scavenging is illegal and unconstitutional. And it is the exploitation of the depressed community. So this type of exploitations is strictly prohibited in Constitution of India by Article 23 (1). From the initial stage onwards, the constitution of India takes enough steps to avoid the inhuman practices of human scavenging. Violation of Indian constitution is punishable. But still, constitution violation continues. Often our constitution failed to overcome the caste dominance.

Legislations against Manual Scavenging

The government of India passed different legislation to eradicate the inhuman practices of human scavenging. After independence, India had to wait till 1993 to pass a comprehensive legislation to ban the inhuman practice of manual scavenging. Before 43 years of this act, in 1950 the practice of manual scavenging strictly prohibited the jurisdiction of Gopichettipalayam municipality at the District of Erode in Tamil Nadu by GS LakshmanIyer, the chairman of the Gopichettipalayam municipality. He was a freedom fighter and social worker. He understood the impact of the inhuman practices of manual scavenging and took action initially. But it is very unfortunate that the follow up of this action could not see in any other part of the country. The main reason behind that human scavenging is closely connected with the caste system.

The Untouchability Offences Act of 1955: Under section 4, the Untouchability Offences Act 1955 strictly prohibit all types dehumanizing practices and treats all dehumanizing practices are punishable and unconstitutional. But it could not stop the inhuman practice of scavenging. One important fact behind is that human scavenging is a caste-based occupation. So people thought that it has to exist and not considered it as inhuman practices.

Protection of Civil Rights Acts of 1977: Government of India amended the Untouchability Offences Act of 1955 in the name

of Protection of Civil Rights Act in 1977. It treated the practice of scavenging on the ground of untouchability under section 7A of this act and made it punishable. Unfortunately, this act could not stop the practice of human scavenging. Untouchability was practicing visibly and invisibly after the implementation of this act also.

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993: It was the third attempt of Government of India to eradicate the practice titled Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act. It is the serious issue that after 46 years of Independence, with constitutional provisions and legislation world largest democratic country failed to eradicate the practice. Under section 30 the act, prohibited anyone from employing another to carry human excreta. If it proves, punishment will be up to one-year imprisonment or fine. The important negative side of this act is that it did not include cleaning of gutters, manholes and septic tanks under the act. Unfortunately, this act failed to make any improvements in the case of manual scavenging.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013: The parliament of India passed another legislation to completely eradicate the inhuman practice of human scavenging titled 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013. An important aspect of this act is that it has defined manual scavenger in wider level. The definition of manual scavenger in 1993 Act was widely criticized in its narrow manner. So 2013 Act gave a wide level definition to Human scavenger. It defined manual scavenger as "a person who is employed for manually cleaning, carrying, disposing of or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit or railway track". It is very visible that Indian railway is one of the big violators of the law . The present act specifically mentioned Indian Railway. Another important aspect of the 2013 act is that it talks about the rehabilitation of Manual scavengers. It is clear that human scavenging is inhuman, but often they found a livelihood in human scavenging. So the rehabilitation is the inevitable part. Section 4 (1) of the present act suggests to all local authorities to conduct a survey to find out the number of insanitary latrines within three months since the act came out. But majority local bodies did not give correct information. The important issue of the act is that section 2 (1) (d) allows an employer to use employees in the septic tank and manhole with protection measures. There is a chance to exploit this clause by employers and again it will lead to accidental death. The government has established national commission namely National Commission for Safai

Karmchairs in 1994 and National Safai Karmcharis Finance and Development Corporation in 1997. The main function of both institutions is to evaluate the programme implemented for the eradication of manual scavenging and facilitate economic assistance to find out alternative jobs.

Legislations and Manual Scavengers

It is clear that from Independence onwards, Government of India implemented different legislation and constitutional acts to prohibit the human scavenging and their rehabilitation. The truth is that it did not make that much changes in human scavenging community. One important problem that is a caste-based occupation and dominant caste compelled low caste to do human scavenging. Asif Shaikh, the founder and convener of Rashtriya Garima Abhiyan says “the manual carrying of human feces is not a form of employment, but an injustice akin to slavery. It is one of the most prominent forms of discrimination against Dalits (formerly untouchables) and it is central to the violation of their human rights” (BBC News India, 2014). It is a very shocking report published by Human Right Watch on “Cleaning human waste, Manual Scavenging caste and Discrimination India” in 2016. The report is based on Human Rights Watch Conducted between November 2013 and July 2014 in Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Uttar Pradesh. The report indicates a number of incidents that upper caste community forcefully compels to human scavenging. Despite the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013, and several supreme court orders, there is no end to manual scavenging. The report said in Maharashtra, Panchayats recruited people to manually clean toilets basis of their caste and denying them other jobs for which they are qualified within the panchayat (Meena, 2016). Another important issue is the Government body like Indian railway. The Indian Railways are the largest employer of manual scavengers, with an unknown number on their rolls, India Spend reported in November 2015. Most "sweepers" -- as they are called to mask their identity as scavengers, with the railways are employed through contractors, and they earn around Rs 200 per day (*The Hans India*, 2016). Supreme Court observation on manual scavenging is very relevant now. Supreme court of India observed that ““Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others (Rautary, 2017). This is the fact that different schemes and legislations are existing for the eradication of the inhuman practice of manual scavenging. But could not stop the practice of Manual

Scavenging. One of the reasons behind the existing of manual scavenging is a Government institution. Instead of prohibiting such inhuman practice like manual scavenging, often they are the promoter of the manual scavenging. Another important obstacle to eradicate manual scavenging is highly connected to the caste system. Often upper caste compels lower caste to human scavenging. Often authority did not take enough action against it. Another matter of shame is that since 1993, there has not been a single case prosecuting those hiring people to do the work of manual scavenging, even while many government bodies, the largest of them being the Indian Railways, continue to do so (Deepika and Moushumi, 2016).

Conclusion

There is no doubt that human scavenging is inhuman and has to be eradicated. So Government makes different legislation to eradicate the inhuman practice of human scavenging with rehabilitation. But after 71 years of the Independence, India could not eradicate the manual scavenging completely. The serious issue is that Government has no actual number of Manual scavengers. Government is facing wide level criticism that Government did not take any in-depth study about Manual scavengers. Now Government is declaring different schemes for the rehabilitation of Manual Scavengers. It is sure that never bring any result because of the number of scavenging workers higher than Government statistics. Solution to present problem is that Government has to conduct a large level survey on the number of manual scavengers. And the second solution is that Government has to ensure that its Institutions are completely free from the practice. And the third solution is that Government has to appoint a nodal officer in Local body level to investigate the practice. This is a shame that after different legislation and programme could not stop the inhuman practice of manual scavenging.

References

- BBC News India. 2014. "In pictures: India's untouchable scavengers", *BBC News India*, 25th August. (<http://www.bbc.com/news/world-asia-india-28892321>)
- Menon, Meena. 2016. "If you don't send your women to clean our toilets, we will beat them up", *The Hindu*, 6th May. (<http://www.thehindu.com/news/national/if-you-dont-send-your-women-to-clean-our-toilets-we-will-beat-them-up/article6350683.ece>)
- Rana, Abishek and Khan, Farheen. 2017. "Socio Legal Analysis of the Laws concerning the ban of Manual Scavenging in India", *International Journal of Legal Sciences and Research*. ISSN 2394-7977, p. 23-39.
- Samanwaya, Rautari. 2017. "State must take care of manual scavengers, give

them helmets, gas masks, supreme court ruled by seven years ago”, *The Economic Times*, 15th August. (https://economictimes.indiatimes.com/news/politics-and-nation/state-must-take-care-of-manual-scavengers-give-them-helmets-gas-masks-supreme-court-ruled-7-years-ago/articleshow/60075402.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

Tandon, Deepika and Basdu, Moushumi. 2016. “Manual Scavenging must end”, *Economic and Political Weekly*, 1 (17).

The Hans India. 2016 . “Indian Railway the largest employer of Manual scavengers, floating law’, *The Hans India*, 26th August. (<http://www.thehansindia.com/posts/index/Crime/2016-08-26/Indian-Railways-largest-employer-of-manual-scavengers-floating-law/250605>)

The Prohibition of Employment as Manual scavenger and their rehabilitation Act 2013. 2013. New Delhi: Government of India.

Yadavar, Swagata. 2017. “Number of Manual Scavengers in India, No survey in last 10 years, says Magsaysay awardee”, *NDTV*, 26th June. (<https://everylifecounts.ndtv.com/number-of-manual-scavengers-in-india-no-survey-in-last-10-years-says-magsaysay-awardee-14682>)