

The Status of Manual Scavengers in India: A Legal Perspective Analysis on the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act (PEMSR)

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Abstract

After several decades of Independence, India is still struggling to extinguish the inhumane practice of manual scavenging completely. Many legislations were enacted to ensure an equitable society, but the scavenging communities are looking for change. Ironically, the Government of India took notice of manual scavenging in 1993, and recently, in 2013, state passed a dedicated legislation prohibiting the inhumane practice of manual scavenging. It is a long-awaited expectation of the manual scavengers and it is now imperative to analyse the status and impact of the implementation. This paper aims to study the status of Manual Scavenging in India to investigate the legal perspectives on implementing the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013.

Keywords: Manual Scavenging, Rehabilitation of Manual Scavenging, PEMSAR Act 2013, Inhumane Practice, SRMS Scheme.

Introduction

Manual Scavenging refers to manually cleaning, handling, and disposing of human excreta and other waste materials from dry latrines, open drains, and sewers. Manual scavenging, which is ‘the inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal’ is still wildly exercised in almost all states of India though data shows otherwise (Shahid, 2015; Rathore 2021). Decades later with the ratification of the bill on Prohibition of Employment as Manual Scavengers and their Rehabilitation, 2012 on 7th of September 2013, disregarding this relevant and persistent issue is turning out to be progressively difficult. Till date, as the name suggests, the manual scavengers are required to handle human wastes utilizing customary brushes, brooms and tin plates. As indicated by National Human Rights Commission, India, the waste collected are packed into bins, which are then conveyed on their heads to such areas that are more often a few kilo meters from the collected toilet or sewer. The handled wastes are the reason for some common intestinal illnesses like cholera, diarrhoea, dysentery, typhoid, hepatitis, hookworm and other such lethal infections. Various investigations uncover that greater part of the sicknesses are dreadfully infectious and are accountable for causing almost 80% of the infections in non-industrial developing nations like India (Srivastava, 1997).

According to the 2011 Census of India, there are around 2.6 million insanitary toilets which require human excreta to be physically cleaned, which further illuminate the current sanitary emergency in India. The postcolonial authoritative intercessions have seen four regulations banning manual scavenging, of which two are unique set ups denying the act of manual scavenging: Protection of Civil Rights (PCR) Act 1976; Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (Atrocities Correction Act 2016); The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (MS 1993 Act) and The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (MS 2013 Act). These regulations accommodate a fundamental structure for the prohibition of the practice of manual scavenging and the assurance and rehabilitation of the workers. Despite these unique lawful intercessions, the social and political discrimination, and disgrace encountered by manual scavengers continue (Wankhede, 2021). The research aims to study the implementation status of the act, “Prohibition of Employment as Manual Scavengers and Rehabilitation Act-2013 (PEMSR)”.

Objectives of the Study

1. To understand the Government's role, i.e. legislative measures taken to end manual scavenging.
2. To analyze the current working status of legislative measures against the manual scavenging profession.
3. To explore the existing condition of the Manual Scavenging Act in the society and the
4. To suggest measures to strengthen the legislative measures and end manual scavenging.
5. To analyze the contribution of SRMS scheme for the rehabilitation of Manual Scavengers.

The Status Quo of the Manual Scavengers Act

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (The MS 2013 Act), intended to change the MS 1993 Act, laid out a different qualification between hazardous cleaning and manual scavenging. The first involves manual cleaning of the sewer or septic tanks by representatives *without defensive gear* and other cleaning gadgets and guaranteeing all precautionary security measures. A manual scavenger in the second entails any individual who takes part in physically cleaning and handling of human excreta from an unsanitary toilet or an open sewer or pit where the human excreta is discarded, including the rail line tracks or in such different spaces or premises as recognized by the government. A condition to this definition is tracked down— *‘a person engaged or employed to clean excreta with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be a ‘manual scavenger’*. In this way, both hazardous cleaning and the work as a manual scavenger are precluded by the MS 2013 Act provided that protective wear, gear and gadgets are not given to municipal representatives and manual scavengers. Hence, the Prohibition of Employment as Manual Scavengers and Their Rehabilitation act, 2013, holds a comprehensive rundown of 44 protective gears and gadgets which should be distributed to individuals who take part in cleaning sewer or a septic tank. Thus the core importance of this legal framework against manual scavenging is that the MS 2013 Act needs special devices to accomplish its focal goal which it lacks — *‘the prohibition of employment as manual scavengers, rehabilitation of manual scavengers, and their families’*. It is stated on the grounds that, from one perspective, the act denies the work in unsafe circumstances and manual scavenging, and on the different end licenses practicing this generally restricted occupation assuming such individuals wear the defensive gear, hardware and gadgets. The act’s goal is seen consequently not towards totally precluding any type of work in handling human excreta, or entering sewers or septic tanks by people, yet to proceed

with the act of such hazardous cleaning by distributing safety gears, which further encourages the occupation. It is obvious that such terms and condition based license brings back the conditions-based approach as taken on by the PCR Act, 1976, and as deserted by the 1993 MS Act.

The Atrocities amendment act, 2016 declared manual scavenging an ‘atrocities’ in its sub clause “*makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose*”. Thus this act is seen here to have transposed how MS Act 2013 defined a ‘manual scavenger’. From the above 4 legislative approaches we arrive at the obvious that manual scavenging is not visualized as a violation to human dignity and further denies the fact, that it is rooted from caste-based discrimination against the Dalits. It is therefore safe to state no level of safety gear provided can alleviate the violation of human dignity as a fundamental right, right to life, dishonor and embarrassment stemming from the very act of manual scavenging.

This study would distinguish the gaps existing between the planning and implementation of the legal regulations, the current situation of manual scavenging, and the way forward in the form of narrative suggestions.

Discrepancies seen in the numbers of Manual scavengers recorded across the country

Inclusion and rehabilitation is hampered by the absence of dependable data on the genuine number of manual scavengers and insanitary latrines in the country. (Bhongale, 2023). Three main sources that are accessed for sourcing such information are The House Listing and Housing Census of 2011, The Socio-Economic and Caste Census, and Manual Scavengers 2013 Act. Huge discrepancies were recorded across these three sources, as the census 2011 showed 7,94,390 households being serviced manually due to insanitary latrines and 13,14,562 were being emptied into open drainages; while SECC 2011 identified 1,68,066 rural manual scavenger households, which at least had one manual scavenger. As inconsistencies were obvious between both the sources, Lok Sabha in 2016 recorded 1,67,487 and Rajya Sabha in the same year stated 1,82,505 manual scavenging households (Usama, 2017).

Status of Self Employment Scheme for Rehabilitation of Manual Scavengers (SRMS)

According to the overviews directed under the SRMS command, barely 13,465 manual scavengers were recognized till 26 December 2017. While SECC 2011 gives self-verified information, the SRMS studies are intended to check the source’s data introduced under similar cases. SRMS had discovered just 8% of the manual scavengers’ families recorded in SECC 2011 after observations as on 26 December 2017 across the nation. (Koonan, 2021). Alongside, Since January 2020, half lakh manual scavengers were reported by a survey which included 18 states. There are additionally critical state wise variations seen in the number of manual scavengers existing between each source. SRMS survey distinguished more manual scavengers than recorded in SECC 2011 in Tamil Nadu. According to the SECC 2011, Tamil Nadu had only 334 manual scavengers. However, after the Manual Scavenging (MS) Act took effect in 2013, Tamil Nadu state conducted a census-like survey to recognize manual scavengers once again and the new number was 462 manual scavengers by the year of 2015. After this 2015 survey, the SKA surveyed eight districts in the state to reproduce Tamil Nadu’ numerals. It identified a surprising 3,032 manual scavengers and put forward the same to the government in 2019. Conversely, on the excuse of verifying these names, incidents have been recorded were government officials supposedly harassed and terrorized them to sign on documents stating they were not manual scavengers.

Reasons for continuation of manual scavenging

At present when equity and basic freedoms are undeniably more dominating than in any other era in recent memory, it is only natural for many to believe that exercises like manual scavenging are a custom. Although it stays banned and illegal on paper, the truth on the ground remains extraordinarily different. Hereditary and indefensible custom is the ultimate and ghost reason behind why this form of ‘slavery’ is chosen and carried out. (Kusan, 2022). The unequal societal living within the hierarchy that was formed several era’s ago has been normalized. The individuals who thus belong to the so-called ‘lower caste’ are held hostage to carry out the pre-set occupations by their ancestors. This however has been diluted for the other caste individuals whom have figured out different occupations and ventured into other possibilities. The main hurdle why overcoming the pre-set occupation by the lower caste individuals was the notion of being ‘unclean’ and ‘dirty’ by other individuals in the higher peak of the hierarchical pyramid. Even though they might yearn to renounce their profession, the so called ‘low caste’ tag, which further questions their ‘cleanliness’ and ‘acceptability in the community’ makes it impracticable to acquire another job. For instance, in the field of food manufacturing and restaurants, the employees find them ‘unclean’ to be employed and fear their presence being identified by customers which will lead to uninvited crisis for the institute.

Another vital reason for existence of manual scavenging is the mere necessity of extra income by the scavengers’ inspite holding other jobs. Even though the larger part of the individuals works either on temporary or contract basis by a private contractor as a manual scavenger, the assured flow of income and poverty status of the family drives the women manual scavengers to take up this occupation alongside for sheer sustenance. Though they earn Rs.300- 500 per day as a manual scavenger, it is a well appreciated amount by the otherwise borrowing or starving family members. Also, this sometimes pays higher than their other occupations like working as a sweeper in residents, construction laborer, agriculturist, etc.

The sewer cleaning machines are hardly usable in all circumstances and are widely criticized for its faults. The state governments do not purchase sufficient machines as they don’t meet the sole purpose. Even if available, the contractors do not make use of the facility and end up hiring a manual scavenger to enter into the sewer or to grab feces manually.

A continuing presence of unsanitary latrines and urbanization requires manual removal of the sewer. Thus, the easy availability of such occupations and the bondage of societal hierarchy encourage the scavenger to stick to the opportunity. Poor literacy levels, unaware of their existing rights, laws and rehabilitation schemes, lack of sufficient skills to migrate to other jobs, lack of confidence to try self-employment paths, elder ages of women manual scavengers, low self-esteem and devoid of self-actualization are few of the major reasons why manual scavengers still continue in this job without migrating to other forms of employment. Banks and other financial sectors think twice to sanction any loan towards manual scavengers to venture into finding an alternative employment since the rate of recovery falls way short. Poor enforcement of the laws by the central and the local levels further adds to the wounds and proves to be taken lightly.

The Causes for Deliberation in the full Prohibition of Manual Scavenging Act

Extensively, two reasons can be credited to the disappointment of legal activism in stopping the practice of manual scavenging — (1) constraints of human rights talk in tending to fundamental basic liberties infringement when a conducive socio-cultural plan for standard adherence is deficient in society; (2) conditional restriction of manual scavenging under the 2013 Act went about as a fundamental impulse in

keeping up with the norm — of discrimination, shame, bias, embarrassment — for Dalits working as a manual scavenger.

Regulation and laws for the purpose of starting a social change has been highly discussed and studied in socio-legitimate theory. This has been broadly criticized. As a crucial piece of the way of life of each and every general public, rights' intertwinement with other social establishments, for example, identity, race and standing are dilemmas of strain in the cooperation of regulation with these designs and which of these designs superposes itself over another (Bradshaw, 2007, p. 1337; Borges and Pedro, 2009; Dror, 1958; Scheingold, 1974). Deviation in a genuine social way of behaving and the way of behaving attributed to law prompts tension among laws and social change. This pressure and tension develop into a 'slack' when the law isn't at standard with social changes in the public eye (Berger, 2008; Rosenberg, 2008; Sharma, 2012). On account of rank separation, practically speaking, the social way of behaving is different from legitimately anticipated standards, and, consequently, the awareness of certain expectations in individuals isn't towards following the lawful standards, prompting non-adherence. Hence, 'equal changes' in regulation and society are irreplaceable. This has not been the situation in the bigger enemy of the anti-discrimination regulation structure in India concerning Dalits, as fundamental savagery compared with social and cultural inequality limits the impacts of court-arranged social change because of standard non-adherence socially.

One more justification behind disappointment is that the 2013 Act makes a trap in the conceptualization of the meaning of manual scavengers, one that it expects to ban. Enacted to conquer deceptions of the 1993 Act, the 2013 Manual scavenging prohibition regulation contains a glaring legitimate shortcoming. The lacuna, as recognized above, in the meaning of 'Manual scrounger' is in the Explanation to segment 2(1)(g), where an individual is considered to not fall into the classification of a 'manual scavenger' if such an individual, so utilized to clean excreta and go into 'gas chambers' (drains), does as such with the assistance of protective stuff and gadgets. Regardless of the legitimate arrangements, the enormous number of passings of manual scavengers and the subjective corruption of their life, well-being, and levels of bleakness talk about the gross carelessness of the state legislatures in neglecting to give such defensive gears and protections specified under the law. It further orients us with the deficiency of such 'defensive gears' in defending the existence of manual scavengers. (Byard, 2022). Supreme Court's new obiters are simply one more emphasis on the troubling circumstances of society. No defensive gear is fit for relieving both present-moment and long-haul well-being impacts and related ailments on manual scavengers. The issue here in this manner is not just of their physical wellbeing, yet additionally the essential basic freedom of human dignity.

Conclusion

In the reflection of the study, there are many observations and understanding in the study of the manual scavenging prohibition act. To genuinely wipe out manual scavenging and forestall any additional appalling deaths from the weaker communities, the state should come out with a course of events and timeline for disposal, with a reformatory arrangement against such business. The study has generated several suggestions and recommendations to the government and the stake holders who are implementing the act.

- **Need for technology:** The perilous effect of manual scavenging can be deduced only by investing in machinery that can clean ditches, septic tanks. Improving technologies in sanitary work is the most effective way to eradicate this inhuman practice of manual scavenging like a robotic mechanic to clean

the septic tanks and a well-equipped machine to clean insanitary latrines. With so many known risks, and possibly more unknown ones, drainage work ought to be completely mechanized – as the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act 2013 also insists. In the off chance that a drain must be cleaned manually, the Act also lists no less than 44 pieces of equipment they must carry on their person (Rule 44). In case if the device is not fully available, the administration can take steps to import it and a startup an initiative which has proven to be effective in eradication in other countries. Another effective method is, the housing and residence should be built with proper toilets and drainage facility. This can be made more effective by appointing the private constructors who inculcate the latest drainage and toilet facilities. Usage of technologies that allow recycling of human waste into fuel or fertilizer and up gradation of sewage system without clog and transport waste more effectively can be initiated.

- **Equipping skilled workers:** Manholes are vicious environments that can quickly decode a wrong attitude, deficiency of emergency response protocols and the absence of basic safety equipment to bereavement. Contractors have been known to cut costs and to try to get the ‘job’ of cleaning them done quickly, and not equip workers with ventilators, gas concentration detectors, gloves, face masks and hard hats and not keeping an assistant helper nearby. As a result, the workers are left exposed to three dangerous environments working against together: chemical, biological, and legal. If workers are made to enter drains, they will have to be trained to understand the threats that can arise and equipped in such a way they can respond and be executed as fast as possible. Such environments often have very little space to move around and accidents can quickly lead to death, so having a protocol that optimizes for time is paramount. However, designing and implementing such a protocol for various accident scenarios would be to assist skilled workers such as engineers, hydrologists, etc. Expecting an unskilled worker and unequipped worker to enter a confined and septic environment to clean it is as the same as an unplanned murder.
- **Awareness and knowledge on existing laws, skill training programmes and rehabilitation schemes:** The manual scavengers and sanitation workers should be informed about their rights, laws and rehabilitation services available.
- **Hygiene and health education for public:** we have understood that simple development of latrines will not go far in working on practical improvisation of sanitation, but should be upheld by rudimentary health education for public. The vast majority, especially those from lower financial groups do not know about health and ecological advantages of further progressed sanitation, or of the accessibility of moderate mechanical alternatives or government endeavors and schemes. General mindfulness and community inclusion in implementable and approachable projects empowers the advancement of independence and trust locally, thus bringing about practical and sustainable health benefits. Understanding that the women have by a wide margin the main impact in deciding family cleanliness pursues and in shaping the routines of their youngsters, we should guarantee the investment of women at each phase of execution of the sanitation programmes.
- **Prevention and treatment for health issues if occurred:** Both the contractual and permanent workers should be given proper medical facilities and Tetanus Toxoid injection before they initiate any sanitary related work. They should be taught about the health risk they are exposed to due to the unclean work environment. This can be preceded in form of campaigns or individual enlightening measures.
- **Vaccination for preventable diseases:** At present there have been not many surveys of the sero prevalence of immunization-preventable illnesses in manual scavengers for preventable diseases such

as Hepatitis B, Hepatitis A, etc (Rebecca Tooher, 2005). Without such evidences it is hard to give clear direction to laborers in regards to vaccinations. Given the paces of wounds that occur and which could lead to infection, local surveys need to be carried out with an examination estimating the sero prevalence along with a systematic review on immunization preventable diseases. This proof would help with the improvement of inoculation of vaccine suggestions for the laborers with maximum evidence.

- **Strengthening rehabilitation schemes and measures:** Steps should be taken to implement rehabilitation schemes for transitioning manual scavengers and sanitation workers to other work by providing skill development programs and counseling to the liberated workers. A few of the suggestions mentioned by the sanitation workers when asked on ways to make the scheme more effective were increase in employment opportunities, increase in the number of alternative occupations, setting up of counseling centers at training institutions by government and increase in the amount of loan/grant for startups. Rehabilitation can also focus on training in construction field, cooking, driving, etc., which are common skills they already possessed. Thus, will act as a higher step from the existing than an entirely new commencement which they may rigid towards.
- **Grant and not a loan:** A grant and not as a loan while increasing to a minimum of RS.10,00,000/- is another step which will act as a instant upliftment for the workers to shift to other occupations.
- **Aid towards their family:** The government has provided schemes for education to the children of manual scavengers to finish schooling but it is under poor implementation. Hence, the officials can assist more people to get the benefit of reservation and come up in status as poor family background acts as a driving factor. Providing affordable housing loans to all the scavengers without own house can be a good initiation included in the state government's agenda.
- **Conversion to bio-toilets:** Indian Railways ought to guarantee a quick yet sustainable conversion of latrines in the trains are changed over into a structure that gets rid of need for manual scavenging of excreta. The Railways ought to likewise submit yearly advancement reports to the Parliament on modernizing the latrines.
- **Stringent monitoring of the existing laws and acts implemented:** Appointing Special supervisory officers at district levels to monitor the manual scavenging practice and to check the protective equipment provided to the scavengers. Fines and penalties can be collected from employers and employees if found to be violating the laws.

The upcoming generation at least should develop their humanity and mankind in being sensitivity about societal issues. The changes are possible only when everyone unites to face the truth and justice, such a crowd will lead the society as an equitable society. The damage is not happening to someone, somewhere but it is happening to our fellow human beings. Such realization will make people think about others and also empathize for others. The mindset of the public has to be streamlined in addressing the social issues.

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