

Manual Scavenging - A Bolt on Indian Society

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Abstract: Manual scavenging is a profession which has been in existence since the human civilisation. 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 not only diabolic but perhaps the highest degree of human rights violation. A plethora of legislations were enacted for ensuring an equitable and casteless society, but the conditions of the scavenging communities have remained deplorable. It is an irony that after decades of independence; it was in the year 1993 and latest in 2013, that the Government of India passed a dedicated legislation to ban the inhuman and degrading practice of manual scavenging. This paper deals with the genesis of manual scavenging, and similar practices in the world, if any. Another aspect of this paper deals with the analysis of statutory framework, administrative schemes, and judicial pronouncements, rehabilitative measures (issues and concerns). In a nutshell, this paper seeks to critically examine the right regime of the manual scavengers with reference to failure of the state in ensuring the scavenging community their due rights and the role of the state instrumentalities as a violator. In addition this paper will also suggest remedial measures and progressive steps for bringing the scavenging community into the mainstream of our country and make a contribution to its development significant.

Keywords: Genesis, communities, Disposal, Scavenging and Framework.

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I. Introduction

Manual Scavenger means a person engaged or employed on regular or frequent basis by an individual or a local authority or a public or private agency, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which human excreta from insanitary latrines is disposed of, or on a railway track, before the excreta fully decomposes.

Manual Scavengers are usually self employed or contract employees. "Self employed" means a person who scavenges a group of households" dry latrines or drains etc. in a particular ward, for payment in cash and/or in kind, by the house-owners. Contract employees would normally be those who are hired through contractors, by a municipal body or any other organization or a group of house owners, to scavenge individual or community dry latrines and open drains where night soil is disposed.¹

1.1. Historical Background

On the basis of census data, Risley, the Commissioner for 1901 Census, classified castes into seven main categories according to their social standing and ranked the Jatis in the local hierarchy and varna affiliation of each. The ranking of jatis and castes by the census created an unprecedented situation. Whatever their de facto status, most of the communities at the lower rung of the caste ladder felt that it was a good opportunity for social climbing by laying claims to higher status and registering a higher ranking in the census documents to have an official stamp, indicative of their higher social origin. A number of caste associations were formed.

The scavenging castes which were known by different names in different States like Bhangi, Balmiki, Chuhra, Mehtar, Mazhabi, Lal Begi, Halalkhor etc. in northern India; Har, Hadi, Hela, Dom and Sanei etc. in eastern India; Mukhiyar, Thoti, Chachati, Pakay, Relli etc. in Southern India; and Mehtar, Bhangias, Halalkhor, Ghasi, Olgana, Zadmalli, Barvashia, Metariya, Jamphoda and Mela etc. in Western and Central India, also made an effort to get united and have a common name. In 1911 census some of them started returning as Adi Dharmi, Adi Dravida, Adi Karnataka and Adi Andhra².

1.2 Demographic Profile

As per the Houselisting and Housing Census, 2011, there were 7.94 lakh latrines in the country from which night soil was removed by humans. However, the number of persons still engaged in manual scavenging

¹India. Ministry of Social Justice and Empowerment, Instructions Manual, February, 2013 pp. 19-20

²op.cit., Manual Scavenging in India, p. 20

is not available. The ongoing Socio Economic Caste Census (SECC), 2011, in rural India is, inter alia, capturing the data about the manual scavengers in rural areas, including the non-statutory towns. The process of a fresh survey of the manual scavengers in the statutory towns, has been initiated. During implementation of the National Scheme for Liberation and Rehabilitation of Scavengers, from 1992 to 2005, 7.70 lakh manual scavengers and their dependents were identified by States/UTs. Subsequently, the Self Employment Scheme for Rehabilitation of Manual Scavengers was launched in January, 2007, for covering the remaining manual scavengers and their dependents, under which the States/UTs had identified 1.18 lakh manual scavengers and their dependents, out of which all 79,454 eligible and willing beneficiaries were provided assistance.³

1.3. Objectives

1. To know the various challenges faced by the manual scavengers.
2. To know the legislative framework regarding manual scavengers.
3. To know the various committees organised manual scavengers.
4. To know about the various schemes provided for the manual scavengers.

II. Legal / Legislative Framework And Committees/Commissions For Manual Scavengers

Apart from various existing constitutional provisions, the Government of India has made the following Legislative/Legal provisions for the welfare of Manual Scavengers:

The Protection of Civil Rights Act, 1955: Initially the Untouchability (Offences) Act, 1955, had been enacted to abolish the practice of untouchability and social disabilities arising out of it against members of the Scheduled Castes. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act, the practice of untouchability as made both cognizable and non-compoundable offence and stricter punishment was provided for the offenders.

The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989: The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, came into force on 31 January 1990. The Act, inter alia, specifies some types of offences as atrocities, provides for imposition of stricter penalties for the guilty and setting up of Special Courts for speedy trial of such cases. 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 for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993: 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 therewith.

It has become applicable to Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, West Bengal and the Union Territories (UTs) with effect from 26 January 1997. All the State governments have been requested to frame the rules for enforcing the Act. The Assemblies of Orissa, Punjab, Assam, Haryana, Bihar and Gujarat have also adopted the Act. The Act provides for a penalty of imprisonment up to one year with or without fine which may extend to Rs.2000/- or both in case of failure or contravention of the Act. Further, in case of repeated contraventions, fine to the extent of Rs.100/- per day for the entire period of contravention is also provided⁴.

III. Committees/ Commissions

3.1. Central Advisory Board for Harijan Welfare

The Ministry of Home Affairs constituted a Central Advisory Board of Harijan Welfare in 1956 under the chairmanship of Late Pandit Gobind Ballabh Pant, the then Minister of Home Affairs. This Board inter alia reviewed the working and living condition of the sweepers and scavengers in the country and recommended to the Government to introduce a Centrally Sponsored Scheme for this purpose.⁵

3.1.1. Malkani Committee

The Board in its meeting held on the 12th October, 1957 constituted a committee, known as Scavenging Conditions Inquiry Committee consisting of Prof. N.R. Malkani as Chairman to prepare a scheme to put an end to the degrading practice of scavenging having to carry nightsoil in buckets or baskets. The Committee which submitted its report in December 1960 recommended not merely for eliminating the practice of carrying nightsoil as head loads, but also for removing filth and indignity from all stages of scavenging and for improving the working, living conditions and social status.⁶ Committee on Customary Rights

³Rajya Sabha Unstarred Question no.1831 dated 13.3.2013

⁴<http://nhrc.nic.in>

⁵Ibid, pp. 37-38

⁶ Ibid 38

The Central Department of Social Welfare appointed a committee in 1965 under the chairmanship of Prof. N.R. Malkani, to examine the question of the abolition of customary Rights of the scavengers. The Committee which submitted its report in 1966 found that where scavenging is not municipalized the latrines were cleaned privately and one particular scavenger acquired hereditary right to clean such latrine as against another scavenger by an understanding and agreement. A customary relationship also develops with the householder and the scavenger receives payments in some form or the other.⁷

3.1.2. Pandya Committee

The National Commission on Labour constituted by the Union Ministry of Labour appointed a sub-committee (1968-69) under the chairmanship of Shri Bhanu Prasad Pandya to look into the working and service conditions of sweepers and scavengers. One of the important recommendations of the committee was that “the Central Government should undertake a comprehensive legislation for regulating their working, service and living conditions which should also provide for adequate inspectorate and enforcement machinery”. Similar committees were also constituted at the State level in the States of Uttar Pradesh (1955), Haryana (1969), Kerala (1971) and Karnataka (1976)⁸.

IV. Schemes For Welfare And Rehabilitation Of Manual Scavenger

In view of the existing hereditary obnoxious and inhuman condition of manual scavengers, the Government has formulated various schemes/programmes for their Social and Economic upliftment:

4.1. Valmiki Malin Basti Awas Yojna (VAMBAY):

This scheme was launched by Government of India during 2001 with the aim to provide shelter and upgrade the existing shelter for people living below poverty line in urban slums which helps in making cities slum free. The scheme is shared on 50:50 basis with states. Preference is given to women headed households. The Government releases subsidy on a 1:1 basis with loan.⁹

4.2. Total Sanitation Campaign (TSC):

The Total Sanitation Campaign is a comprehensive programme to ensure sanitation facilities in rural areas with broader goal to eradicate the practice of open defecation. TSC was initiated in 1999 when Central Rural Sanitation Programme was restructured making it demand driven and people centered. It follows a principle of “low to no subsidy” where a nominal subsidy in the form of incentive is given to rural poor households for construction of toilets. TSC gives strong emphasis on Information, Education and Communication (IEC), Capacity Building and Hygiene Education for effective behaviour change with involvement of Panchayati Raj Institutions (PRIs), Community Based Organizations (CBOs), and Non Governmental Organizations (NGOs) etc. The key intervention areas are Individual Household Latrines (IHHL), School Sanitation and Hygiene Education (SSHE), Community Sanitary Complex, Anganwadi toilets supported by Rural Sanitary Marts (RSMs) and Production Centers (PCs).¹⁰

4.3 National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS):

The National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS) were launched by the Government in March, 1992 to provide alternate employment to the scavengers and their dependents. Under the NSLRS the scavengers and their dependents are trained in trades of their aptitude which can provide them alternate employment. During the course of training, the trainees get stipend up to Rs.500/- per month and a tool kit allowance up to Rs.2,000/-. For rehabilitation, there is a prescribed financial package for different trades by which financial assistance up to Rs.50,000/- can be provided. Under NSLRS, the Government of India has formulated and issued guidelines to all States and their Special Central Assistance (SCAs) to form groups of 5 to 25 scavengers and start a production-cum-trading-cum service centre for large-scale conversion of dry latrines through Sanitary Marts in which the loan component would be provided by the National Safai Karamchari Finance and Development Corporation (NSKFDC).¹¹

4.4 Self Employment Scheme for Rehabilitation of Manual Scavengers

This is a very prominent scheme of the Ministry of Social Justice and Empowerment meant for the rehabilitation of Manual Scavengers. The salient features of the scheme are as under:-

⁷Ibid, pp. 39-40

⁸Ibid, p. 40

⁹<http://ncsk.nic.in>

¹⁰<http://nhrc.nic.in>

¹¹Ibid

As per survey reports received from States, there are 7, 70,338 scavengers and their dependents in India. Taking into account manual scavengers numbering 4, 27,870 already assisted under NSLRS and ineligible for assistance the number of Manual Scavengers yet to be rehabilitated is 3, 42,468 as per State wise.

The objective of the scheme is to assist the remaining scavengers for rehabilitation, which are yet to be assisted. Scavengers and their dependents, irrespective of their income, which are yet to be provided assistance for rehabilitation, under any scheme of Government of India/State Governments will be eligible for assistance.

The identified scavengers will be provided training, loan, and subsidy. Credit will be provided by the banks, which will charge interest from the beneficiaries at the rates prescribed under the scheme. NSKFDC or any other identified agency at the apex level, will provide interest subsidy to the banks through its State Channelling Agencies (SCAs) or any other identified agency at the State level, for the difference between the interest chargeable by bank and the interest to be charged from the beneficiaries under the scheme. Both, term loan (upto a maximum cost of Rs. 5 lakhs) and micro financing (upto a maximum of Rs. 25,000) will be admissible under the scheme. Micro financing will also be done through self help groups (SHGs) and reputed Non Governmental Organisations (NGOs)

The existing institutions under the Ministry such as the NSKFDC and its SCAs have the requisite experience to implement the proposed scheme. However, their limited infrastructure capacity would need to be enhanced. The beneficiaries are free to select any viable income generating self employment project which are usually selected by the beneficiaries which are sustainable and have a good potential of regular income. Since the scavengers will be rehabilitated in non-traditional professions, they will require training to acquire new skills and entrepreneurship capabilities. This can be given by government agencies/institutes as well as by reputed specialised training agencies. A comprehensive programme of publicity with a view to awareness generation at all levels will be undertaken so as to ensure that optimum benefit reaches to the beneficiaries in the shortest possible time.

The progress of implementation will be monitored by NSKFDC and other apex level agencies, identified for the purpose. The National Commission for Safai Karamcharis may, in accordance with its terms of reference, review the implementation of programmes and schemes, social and economic rehabilitation of the manual scavengers. The scheme will be concurrently evaluated by an independent agency for which 1% of the total cost of the scheme (i.e. Rs. 7.35 crore) is earmarked under Monitoring and Concurrent Evaluation.

In order to bridge the gap between liberation and rehabilitation of manual scavengers, the scheme will be linked with the programme of conversion of dry latrines in co-ordination with the Ministry of Housing and Urban Poverty Alleviation (MoH&UPA) and municipal bodies at State/local levels. As various Ministries of Government of India and State Governments are implementing different developmental programmes, efforts will be made to converge the benefits with other existing programmes so as to give a meaningful package to the target group. The existing mechanism of Central Monitoring Committee (CMC) to monitor the implementation of the National Action Plan for Total Eradication of Manual Scavenging by 2007, under the chairpersonship of Secretary (MSJ&E) with inter-ministerial representation will be utilised for this purpose¹²

V. Resolution Of National Advisory Council (NAC) And The Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Bill, 2012"

The National Advisory Council in its resolution dated 23.10.2010 on the issue of Manual Scavenging, had urged the Central Government to ensure that the practice of manual scavenging would be fully abolished latest by the end of the 11th Plan Period i.e. 2011-12, in coordination with all the Central Government Departments, including the Railways, and concerned States/local Governments. The resolution stated that this would require:-

- a) New survey in every State and UT, with wide public involvement, of remaining dry latrines and manual scavengers;
- b) Demolition of all dry latrines;
- c) Psycho-social and livelihood rehabilitation in modern marketable skills of all manual scavengers and their families, and formulation of 100% Centrally Sponsored Scheme by the Ministry of Social Justice and Empowerment to support the rehabilitation initiative;
- d) Special programme for education, including higher education and computer education, of all children of manual scavengers; and
- e) To amend the law to ensure sharper definition of manual scavenging, and accountability of public officials who employ, or fail to prevent, manual scavenging. In pursuance of the consensus which emerged in various Consultation Meetings, the Ministry of Social Justice and Empowerment constituted a Task Force on

¹²<http://socialjustice.nic.in>

28.2.2011, to recommend detailed modalities for undertaking a fresh survey of manual scavengers who are yet to be rehabilitated, and their dependents.¹³

5.1. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012"

The "Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012" was introduced in Lok Sabha on 3 September 2012. It was also felt that the existing laws were not stringent enough to eliminate these evil practices. In view of the above, there

was a need to make comprehensive and stringent provisions for the prohibition of insanitary latrines and employment of persons as manual scavengers, rehabilitation of manual scavengers and their families and to discontinue the hazardous manual cleaning of sewers and septic tanks by the use of technology and for matters connected therewith¹⁴.

The Salient features of the Bill are as under:-

- i) prohibition of manual scavenging and rehabilitation of manual scavengers;
- ii) prohibition of insanitary latrines, which include such latrines where human excreta needs to be cleaned or other-wise handled manually;
- iii) the definition of manual scavenger has been widened to include a person engaged or employed, inter alia, for manual cleaning of human excreta in an insanitary latrine or in an open drain or pit, railway tracks etc.;
- iv) express provisions for identification of manual scavengers and insanitary latrines;
- v) prohibition of hazardous manual cleaning of septic tanks and sewers, so as to ensure that health and safety of such workers is not compromised;
- vi) more stringent penal provisions for contravention of the Act; and
- vii) Vigilance and monitoring Committees at the Sub-division, District, State and Central levels.¹⁵

VI. Conclusion

Elimination of dry latrines and manual scavenging and the rehabilitation of manual scavengers in alternate occupations has been an area of high priority for the Government. Despite the concerted efforts made in the past to eliminate the dehumanizing practice of manual scavenging, the practice still persists in various parts of the country. Existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging from the country. These evils are inconsistent with the right to live with dignity which an essence of the Fundamental Rights is guaranteed in Part III of the Constitution. With a view to eliminate manual scavenging and insanitary latrines and to provide for the rehabilitation of manual scavengers, a multi-pronged strategy has been worked out in the provisions of "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012", which consists of legislative as well as programmatic intervention

Reference

Books

- [1]. Ministry of Social Justice and Empowerment, Annual Report, 2010-11, India
- [2]. "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012" Statement of Objects and Reasons
- [3]. Press Information Bureau release, dated 3 September 2012, India
- [4]. Standing Committee on Social Justice & Empowerment, 2012-13, 32nd Report

E-Sources

- [5]. <http://ncsk.nic.in;23/04/2015;04:41pm>.
- [6]. <http://nhrc.nic.in; 25/04/2015; 06:14pm>.
- [7]. <http://socialjustice.nic.in;26/04/2015;06:48pm>.

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¹³India, Ministry of Social Justice and Empowerment, Annual Report, 2010-11 pp.76-77

¹⁴"The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012" Statement of Objects and Reasons, p. 16

¹⁵India. Press Information Bureau release, dated 3 September 2012, p. 1 of 215