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Manual Scavenging in India : Issues & Challenges



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Abstract

All of us see the people doing manual scavenging very often. This situation prevails across the country. Many are doing it for years as their profession. Most of them are from scheduled caste, scheduled tribe and backward classes. They also inherit this to their family members. They are providing a crucial service to our society but they have been neglected in greater sense and many times we see them as untouchable which is prohibited under Article 17 of the Constitution of India. They have also right to live with dignity as guaranteed under our constitution. As per Article 46 of the Indian Constitution, it is the duty of the state to protect the weaker section of the society but it has failed to do so for these manual scavengers and their rehabilitation. Central Government enacted a law on Employment of Manual Scavengers and Constructions of Dry Latrines (Prohibition) Act, 1993 and The National Commission for Safai Karamcharis Act, 1993 but they were not properly implemented rather not at all. Looking at this dehumanizing practice of manual scavenging and failure of existing law, Central Government enacted a new law called The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 on September 18, 2013 which is still not being implemented.

Present paper will critically analyze the past, present and future of manual scavenging in India. It will highlight the legal provisions regarding prohibition of manual scavengers and their rehabilitation in India.

Key Words :- *Manual Scavenging, Prohibition, India*

1. INTRODUCTION

Manual scavenging is the worst surviving symbol of untouchability.

- National Advisory Council resolution, October 23, 2010

All of us see the people doing manual scavenging very often. This situation prevails across the country. Many are doing it for years as their profession. Most of them are from scheduled caste, scheduled tribe and backward classes. They also inherit this to their family members. They are providing a crucial service to our society but they have been neglected in greater sense and many times we see them as untouchable which is prohibited under Article 17 of the Constitution of India. They have also right to live with dignity as guaranteed under our constitution. As per Article 46 of the Indian Constitution, it is the duty of the state to protect the weaker section of the society but it has failed to do so for these manual scavengers and their rehabilitation. Central Government enacted a law on Employment of Manual Scavengers and Constructions of Dry Latrines (Prohibition) Act, 1993 and The National Commission for Safai Karamcharis Act, 1993 but those were not properly implemented rather not at all. Looking at this dehumanizing practice of manual scavenging and failure of existing law, Central Government enacted a new law called The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 on September 18, 2013.

Three aspects are essential to understand and address the plight of manual scavengers. These include, their identification, liberation and rehabilitation. Many initiatives have been taken by civil society organization as well as the Govt. but the issue of manual scavenging has not been tackled effectively. If the past efforts have failed to get the maximum results then there is a need to have new strategies to accelerate the process of change. The percent of women engaged in Manual Scavenging is more than men; around 95% engaged in Manual Scavenging are said to be women. They face social, economic & political discrimination. There is no proper census on number of manual scavengers in in India (Social Inclusion of Manual Scavengers, Report of National Round Table Discussion, New Delhi, December 21, 2012)

Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks viewed as deplorable or deemed too menial by higher caste groups. Manual Scavengers are threatened if they don't carry out the work in

several ways (Report on Cleaning Human Waste, Manual Scavenging, Caste and Discrimination in India, Human Rights Watch, 2014)

2. RESEARCH METHODOLOGY

Present research work is based upon secondary data in form of articles, news clippings, judicial decisions, documentaries on the life of manual scavengers in India.

3. LAW ON MANUAL SCAVENGING IN INDIA

Central Government enacted Employment of Manual Scavengers and Constructions of Dry Latrines (Prohibitions) Act, 1993 but it failed to serve the purpose. On September 18, 2013, Central Government came up with new law on manual scavenging called The Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013. The present act will be having overriding effect as per Section 3 of the act. The act is necessary to correct the historical injustice suffered by the manual scavengers and to rehabilitate them to a life of dignity.

Manual Scavengers (Section 2(1)(g))

...means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, 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 the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression “manual scavenging” shall be construed accordingly.

Figure 1



Local Authority

Local Authority will play crucial role in implementing this act. It will carry out survey of insanitary latrines in their area. They will give notice to occupier to take necessary steps regarding insanitary latrines. It will also construct such numbers of sanitary latrines as it considers necessary (Section 4).

No person, local authority or any agency shall construct an insanitary latrines or engage or employ, either directly or indirectly, a manual scavenger and existing manual scavengers shall stand discharged (Section 5). For contravention of this provision, imprisonment is upto one year or with fine which may extend to fifty thousand rupees or with both (Section 8)

No person, local authority or any agency shall engage or employ either directly or indirectly any person for hazardous cleaning of a sewer or a septic tank (Section 7). For contravention of this provision, imprisonment is upto 2 years or with fine which may extend to two lakh rupees or with both (Section 9)

No court shall take cognizance of any offence punishable under this act except upon a complaint thereof is made by a person in this behalf within 3 months from the date of the occurrence of the alleged commission of the offence (Section 10).

Every municipality shall prepare a list of manual scavengers in his jurisdiction as per Section 11 of the act. All listed manual scavengers shall stand discharged from any obligation to work as manual scavengers. Panchayat will also prepare list under Section 14 for rural areas.

1. All identified manual scavengers shall be rehabilitated in the following manner under Section 13 of the act.
 - a. He shall be given, within one month,
 - i. A photo identity card, containing inter alia, details of all members of his family dependent on him, and
 - ii. Such initial, one time, cash assistance, as may be prescribed;
 - b. His children shall be entitled to scholarship as per the relevant scheme of the Central Govt. or the State Govt. or the local authorities, as the case may be;
 - c. He shall be allotted a residential plot and financial assistance for house construction or a ready-built house, with financial assistance, subject to eligibility and willingness of the manual scavenger and the provisions of the relevant scheme of the Central Govt. or the State Govt. or the concerned local authority.

- d. He, or at least one adult member of his family, shall be given, subject to eligibility and willingness, training in a livelihood skill and shall be paid a monthly stipend of not less than 3000 rupees, during the period of such training;
 - e. He, or at least one adult member of his family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on a sustainable basis.
 - f. He shall be provided such other legal and programmatic assistance, as the Central Govt. or State Govt. may notify in this behalf.
2. The District Magistrate of the district concerned shall be responsible for rehabilitation of each manual scavenger in accordance with act. He will also assign responsibilities on his behalf to officers subordinate to the District Magistrate and to officers of the concerned Municipality.

All offences will be tried by Executive Magistrate under Section 21 of the Act.

Every state govt. shall, by notification, constitute a Vigilance Committee for each district and each sub-division under Section 24 which will be headed by District Magistrate. It will advise District Magistrate/Sub-Divisional Magistrate on the actions which needs to be taken, to oversee the economic and social rehabilitation of manual scavengers, to monitor registration of offences under the act and their investigation and prosecution (Section 25).

Every state govt. shall constitute a State Monitoring Committee which shall meet at least once in six months and shall observe rule regarding meeting (Section 26). It will monitor and advise the State Govt. and local authorities for effective implementation of the act and co-ordinate with all concerned agencies (Section 27). Central Govt. will also constitute Central Monitoring Committee under Section 29 of the act. It will monitor and advise Central Govt. & State Govt. for effective implementation of this act and related laws and programmes and co-ordinate the functions of all concerned agencies (Section 30).

As per Section 31 of the act, The National Commission for Safai Karamcharis, it will monitor the implementation of this act, advise central and state govt. for effective implementation of the act and to take suo-moto notice of matter relating to non-implementation of the act.

4. RECENT SCENARIO OF MANUAL SCAVENGING

It has been observed that even after the enactment of new act of 2013, manual scavenging still prevails as state government, union territories failed to implement the said act. Following literature supports the said arguments.

Safai Karamchari Andolan & Ors. v/s. Union of India (Writ Petition decided on March 27, 2014) is the recent case with regards to prohibition of manual scavenging and rehabilitation of manual scavengers. Following are highlights of the case.

Writ petition filed by the petitioners as a public interest under Article 32 of the constitution of India praying for issuance of a writ of mandamus to the respondent Union of India, State Govt. and union territories to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 seeking for enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India. This act was enacted in June 1993 remained inoperative for about 3.5 years. It was brought into force in the year 1997. In the first instance, the act applied to the State of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal and to the all Union Territories. It was expected that the remaining states would adopt the act subsequently by passing appropriate resolution under Article 252 of the Constitution.

National Commission of Safai Karamcharis reported that act not being implemented.

CAG reported that National Scheme for Liberalization and Rehabilitation of Scavengers and their Dependents has failed to achieve its objectives even after 10 years of implementation involving investment of more than Rs. 600 crore. The funds were unspent and underutilized. This scheme was launched in March 1992 for identification, liberation and rehabilitation of scavengers and their dependents by providing alternative employment after giving the requisite training.

In December, 2003 the Safai Karamchari Andolan along with six other civil society organizations as well as seven individuals belonging to the community of manual scavengers filed the present writ petition.

Petitioners approached the court by way of writ petition in 2003, inter alia, seeking

- i. To ensure complete eradication of dry latrines;

- ii. To declare continuance of the practice of manual scavenging and the operation of dry latrines violative of Article 14, 17, 21 and 23 of the Constitution and the 1993 Act
- iii. To direct the respondents to adopt and implement the act and to formulate detailed plans, on time bound basis, for complete eradication of practice of manual scavenging and rehabilitation of persons engaged in such practice;
- iv. To direct Union of India and State Govt. to issue necessary directives to various Municipal Corporations, Municipalities and Nagar Panchayats (all local bodies) to strictly implement the provisions of the act and initiate prosecution against the violators; and
- v. To provide periodical compliance reports pursuant to various directions issued by this court.

For a decade various court directions and sought for compliance from all states and union territories. Due to effective intervention and directions of SC, the Central Govt. brought an Act called "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" for abolition of this evil and for the welfare of manual scavengers.

SC directed all the state govt. and union territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. In as much as the Act 2013 occupies the entire field, we are of the view that no further monitoring is required by this court. However, we once again reiterate that the duty is cast on all the states and union territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.

The High Court of Gujarat disposed of a suo-motu public interest litigation (PIL) with regard to manual scavenging after directing the state government to strictly implement the law and take "all necessary steps" to abolish the practice. The bench also directed the government to strictly implement the law to abolish the practice (Richard Abraham, 2015).

Emphasizing Centre's commitment to eliminate manual scavenging, Union Social Justice Minister Thawar Chand Gehlot on Wednesday expressed concern over "only few states" furnishing information on manual scavenging. "Only very few states have furnished information about families involved in manual scavenging. It would not be an exaggeration if I say hardly 10 to 11 states have given required information," Gehlot said (Zee News, February 18, 2015)

The Madras High Court on Monday directed the Central and State governments and other agencies concerned to file an affidavit by four weeks to a writ petition seeking the implementation of all the provisions of the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act in Tamil Nadu. The petitioner also said district-level vigilance committees and State-level monitoring panel should be constituted. The committees should function effectively (The Hindu, March 31, 2015)

5. CONCLUDING REMARKS

5.1 CONCLUSION

Looking at above discussion we can conclude that even after the existing laws and newly enacted law on manual scavenging, it is still prevalent in the country. Central Govt. & State Govt. have completely failed to eradicate the manual scavenging and implement the laws. SC and various HCs have directed and are directing state governments to implement the laws on manual scavenging in true letter and spirit.

5.2 RECOMMENDATION

As we seen that government still failing to eradicate manual scavenging in the country. There are many reasons for that. For eradicating manual scavenging, we need high tech equipments so that there would be least manual intervention to clean up the excreta, garbage etc. But biggest challenge will be availability of resources for respective local authorities. There are two aspects in present situation one is to prohibit manual scavenging and other is rehabilitation of manual scavengers. For rehabilitation of these manual scavengers, authorities must have enough funds. Supreme Court clearly stated in **Safai Karamcharis Andolan & Ors. Case (*supra*)** that it is duty of state to implement the act, if not then one can approach High Court of respective state. State Govt. should come up with concrete strategy to implement the law on manual scavengers.

5.3 LIMITATIONS OF THE PRESENT RESEARCH & FUTURE SCOPE OF STUDY

Present study is based on secondary data which is the main limitation of the present research. Present study can be carried forward by doing field survey and collecting primary data which will help in arriving proper findings.

References

Richard Abraham (2015), “HC directs strict implementation of law on manual scavenging”, *New Indian Express*, February 10, 2015.

Social Inclusion of Manual Scavengers, Report of National Round Table Discussion, New Delhi, December 21, 2012.

Cleaning Human Waste, Manual Scavenging, Caste and Discrimination in India report prepared by Human Rights Watch, 2014.

Constitution of India

The Employment of Manual Scavengers and Constructions of Dry Latrines (Prohibition) Act, 1993

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

National Commission for Safai Karamcharis Act, 1993

The Hindu

Zee News

Sewer men of Mumbai, <https://www.youtube.com/watch?v=tWBCsn6pQWc>

Manual Scavenging, <https://www.youtube.com/watch?v=gWuPn4FkIZ4>