



## Legal Cure of Indian Shame

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### Abstract

*The problem of manual scavenging is a curse on our society. Many laws were enacted but failed due to various reasons. But now I hope that with help of the various strict provisions and the efficacy of the monitoring mechanism this new law will prove to be a great piece of social legislation. Though, the society would also have to contribute a lot for the success of this new law. The people should change their attitude towards dalits, untouchables not by the fear of the sanctions of any law but from the core of their heart.*

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## 1. INTRODUCTION

*"To deprive a man of his natural liberty and to deny to him the ordinary amenities of life is worse than starving the body; it is starvation of soul, the dweller in the body."*

**-Mahatma Gandhi**

Even after more than precious six-decades since Independence, it is a matter of national shame that thousands of scavenger families still live a socially degrading and inhuman life in the twenty-first century. Mahatma Gandhi, the father of Nation, struggled throughout his life to ameliorate the working and living conditions of this section of society and to restore to them their lost human dignity. India, the largest democracy in the world, has achieved a remarkable economic growth during the first decade of this century and for millions of people India has become a land of opportunities and destination for foreign investments. However, many are still left behind due to deep rooted caste-based discrimination in all walks of life. These are the people who have been discriminated and subjugated for centuries into manual scavenging –heinous/undignified work; and the society treats them as ‘dirty and only meant for dirty work such as “manual scavenging”’. This perpetual severe discrimination along with the indifferent attitude of law enforcing authorities accompanied by the inadequacies in the existing law to wipe out the practice has been the reason for their continuing as manual scavengers. Manual-scavenging, anywhere in the world is a dehumanizing practice and the most degrading surviving practice of untouchability. In India it is looked as an issue of sanitation rather than human dignity which constitution of India guarantees all citizens. Besides social atrocities that scavengers face, they are exposed to several health problems by virtue of their occupation. Women are the worst victims as they constitute more than eighty percent of work force of manual scavengers. Apart from social stigma, work of scavenging is lowly paid. It causes health problems and many manual scavengers have died during cleaning up the sewage.<sup>1</sup> There are different caste names for manual scavengers in various parts of India including Balmiki, Bhangi, Mehtor, Lalbegi, Churaha, Mira, Hadi, Paki, Thotti etc..Their population is not counted separately under the census as they fall under a single category of ‘schedule caste’. However, their total population won’t be less than 13 lacs<sup>2</sup> but I expect that presently it would be in more than one crore.

## 2. DEFINITION OF MANUAL SCAVENGERS

Manual scavenging is the manual removal of animal or human excreta (night soil) using brooms, tin plates and baskets from dry latrines and carrying it to disposal grounds some distance away. The obnoxious and inhuman occupation of manually removing night soil and filth using their hands is called ‘manual scavenging’. ‘Manual scavenger’ means a person engaged in or employed for manually carrying human excreta and the expression ‘manual scavenging’ shall be construed accordingly<sup>3</sup>.

## 3. FORMS OF MANUAL SCAVENGING

There are different ways and forms in which the people are forced to carry out cleaning of human excreta viz. Wada latrines, Dry latrines, Dabba (jajroo) box collecting, Wadoliya (back yard

<sup>1</sup> www.youthkiawaaz.com-will manual scavengers be liberated and rehabilitated-part-1

<sup>2</sup> Annual report of the Ministry of social justice and empowerment ,Govt. of India 2009

<sup>3</sup> The Employment Of Manual Scavengers And Construction Of Dry Latrines (Prohibition) ACT 1993

defecation), Open defecation, Kharkua (Pit or well), Manhole at the sewer lines, cleaning of septic tanks and flush latrines etc.. the most prevalent method of manual scavenging is sweeping night soil on the streets ( dry latrines), followed by cleaning of water borne toilets .removal of bodies and dead animals is the third most common practice of manual scavenging, followed by sewerage sweeping and getting down into drainage and cleaning. The ideology of pollution-purity, intertwined with urbanisation and the political economy of sanitation has invariably resulted in these castes becoming victims of this inhuman practice. Instead of spending money on technologies that can remove human from direct contact with the excreta of others, the local government relies on human beings from these castes and communities to bear the social costs.

#### **4. ORIGIN OF MANUAL- SCAVENGING**

There is some contention concerning the initiation of manual scavenging and several authors, depending on their different political leanings blame the Manu smritis, the Mughals and /or British for this. Dr. B.R. Ambedkar traces the practice of scavenging and its social abuse to 600 A.D.. The Narada Samhita, a post-Vedic text defines cleaning tasks as unclean and also allocates the disposal of human faeces as one of the fifteen duties for slaves. In the Vajasaneyi Samhita, Chandals or Sudras were referred to as slaves responsible for disposal of night soil or human faeces. Although the early Harappa civilisation had an extensive network of underground drainage and sewerage, subsequently urbanisation made the use of dry latrines most common. The ready availability of a specific group of people, traditionally allocated to the task of filth removal allowed this practice to flourish. There was neither the technical motivation nor the need to innovate for an appropriate sanitation technology. According to some writers the practice of manual scavenging was introduced by the Mughals. The need for female seclusion and privacy was emphasized in Muslim culture and this gave rise to the need to ensure some place private for women to defecate, and hence the need to dispose of this away from the home. The practice of manual scavenging was aggravated in India as a result of the large scale - urbanization, primarily during the period of British colonization. Legitimizing and systematizing the practice of manual scavenging by dalit groups ,the British created official posts of manual scavengers in all the key institutions like municipalities the army ,the railways ,the civil courts and the industries and specifically hired Valmikis or Mehthars for this task. Whatever the reality of their origin, the tasks of cleaning and removing animal and human faeces, sweeping roads and cleaning surface drains, removal of human and cattle corpses and rearing of scavenger pigs continue to be performed by the scavenging community of Indian lower castes .In India it is difficult to determine when this practice was actually started, as it relates to the social order that prevails in India. But an organised manual scavenging had been started in British India.

#### **5. GLOBAL HISTORY OF MANUAL SCAVENGING**

In Europe manual scavenging was said to have started in 1214 A.D. when the first public toilet were appeared. Due to the changes during the years, the water closet was invented by John Harrington in 1596 and in 1870 S.S. Helior invented the flush type toilet, and it became very common in the western world. Thereafter, in the decade of 1950 all surface toilets were abandoned in west world.

## **6. PROBLEMS OF MANUAL SCAVENGERS**

In order to address the situation of manual scavengers, it is important to understand the phenomenon of untouchability. The Hindu version of untouchability has a racial basis, which is based on the premise that one becomes impure based on birth and religion. A complex web of religious, moral and cultural beliefs and attitudes has over centuries created the pervasive view that Dalits are impure or polluted. They are considered so inferior to other castes and so polluting that they are deemed 'untouchable'. As a result, they are subject to various forms of oppression. Some more problems are as follows

- a. Denial of entry into houses, restaurants, temples etc. ;
- b. Inability to perform important religious service because wearing a sacred thread is not permitted;
- c. Access to common resources such as using water from taps or ponds used by upper caste is denied;
- d. Denial of participation in public activities or entry into public places such as religious functions, government functions ;
- e. Forced labour or discriminatory practices of labour ;
- f. Atrocities such as rape/ sexual assault against untouchable women etc. This list is not the exhaustive one.

## **7. LAWS RELATING TO MANUAL- SCAVENGING**

The problem of scavenging and improving the conditions of scavengers has persistently been engaging the attention of the government since independence. Some serious attempts to eradicate this problem are as follows -

**7(a) The Constitution of India** - The preamble to the constitution of India guarantees to all Indians "Justice ....Liberty.....Equality.....and Fraternity "This guarantees in and of itself ,should have outlawed caste based discrimination for practices associated with a social hierarchy are inherently antithetical to notion of "Justice .....". Eradication of this social disability was made the responsibility of the government by incorporating an article in the constitution which stated that "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."<sup>4</sup> This article made untouchability not only antisocial but a crime anathema to the concept of democracy.

**7(b) The Untouchability (Offences) Act, 1955 :-** The effort to restore the dignity of individual and to establish fraternity involved several acts passed by parliament between 1955 and 1993. The first of these act was the Untouchability (offences) Act passed in 1955 which declared that "whoever on the ground of untouchability enforces against any person any disability with regard to.....the practice of any profession or the carrying on of any occupation, trade or business....will be punished with imprisonment which may extend to 6 months or with fine which may extend to Rs.500.00 or with both. The act was failed to make any impact on the eradication of untouchability particularly because the penal provisions of the act were not strong enough.

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<sup>4</sup> Article 17 of Constitution of INDIA

**7(c) The Protection of Civil Rights Acts, 1976:-** This Act ,unlikely its predecessor identified manual scavenging name and made it a crime declaring that ,” 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 any or to any other job of a similar nature ,shall be deemed to have enforced a disability arising out of untouchability.” Thus if a person was caught compelling any person to manual - scavenge that person under this Act could be imprisoned for a term lasting between 3 to 6 months and fined between Rs.100-500.

**7(d) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition)Act, 1993:-**This Act is not only a penal legislation but a social legislation. It intends to protect and restore the dignity of manual scavengers by prohibiting the employment of manual scavengers for constructing or cleaning of dry latrines and regulating the maintenance of water – sealed latrine. It is discernible that the Act places more emphasis on sanitation, the protection of the environment and so on and then on the human dignity of the manual scavengers. It was felt by many that the Act ignore the issue of human dignity mentioned in its own preamble by making the existence of adequate facilities for use of water seal latrine a pre condition. Section 3 makes it virtually impossible to abolish manual scavenging. This entire section appears misconceived and goes contrary to the very objective of the abolition and prohibition of the dehumanizing practice of manual- scavenging.

**7(e) National Commission for Safai Karamcharis Act, 1993:-** This is another piece of legislation that purportedly addressing issues pertaining to manual scavengers or safai karamcharis. Very strangely, a provision for date of demise of the law has been incorporated under section 1(4) of the Act. Thus, the Act has to be amended from time to time to extend its validity and term of office of the commission.

## **8. ATTITUDE OF JUDICIARY TOWARDS MANUAL SCAVENGING**

Upon achieving statehood in 1947, the Indian judiciary adopted the English common law system. In those early years of statehood, the court looked both the British and American judiciaries as models and found a reluctance to intervene in affairs considered to be within the purview of other branches of government. Accordingly, the court believed that governance of social affairs was ‘best left to the discretion of policy makers, attorneys general and others so called guardians of the public interest’. In the mid -1970 s, however, the court’s attitude began to change for two main reasons – **The first** was India’s Emergency Period, which caused the Supreme court to rethink its role in the enforcement of basic rights for Indians. **The second** reason for the courts attitudinal change was the increase in influence of Chief Justice Bhagwati. The combination of the emergency period and Bhagwati’s emergence on the Supreme court set the stage for a more active, human rights-oriented judiciary. The attitude was not pre -ordained; rather it was a conscious outgrowth of a perceived need to protect the dignity and to combat exploitation of the poor and disadvantaged. By the late seventies the conditions had been set for what was to be called Public Interest Litigation (PIL). It emerged because of two legal developments .**The first** is a “comprehensive revision of the law of standing. ”This change grants manual scavengers access to the Supreme court, which in turn gives the court an ability to directly address the problem. The second is the court’s willingness to force the States to comply with existing laws in creative and flexible ways. Some of those ways include expansive fact finding, instructions to the governments

and supervisory mechanisms to enforce compliance. Since the late 1970's the Supreme court has established itself as 'the guardian of human rights, fearlessly activist and integral in ensuring social justice in India. Through PIL, the court has addressed numerous social issues ,including those related to the environment <sup>5</sup>, bonded labour <sup>6</sup>, child labour<sup>7</sup>, the right to food <sup>8</sup> etc.. Through the relaxed barrier to standing and direct involvement in the problem, the court is able to confront manual scavenging head –on and to resolve the problem in flexible and creative ways. In December 2003, the NGO Safai Karamchari Andolan initiated litigation in the Supreme Court in the form of a civil petition requesting that the court help to eradicate manual scavenging<sup>9</sup>. In this case the court has begun the process by issuing orders that directs the national and State govt.'s to determine where manual scavengers work and find other jobs for them. However, the court's approach so far has done little to affect the kind of change necessary to eliminate manual scavenging.

## **9. THE NEW LAW**

The government of India, again has accorded 'National Priority' to the elimination of manual scavenging . As an urgent step, the Parliament has recently enacted the 'Prohibition of Employment as Manual Scavenger And Their Rehabilitation Act, 2013(IN short for this paper NEW LAW). This Act has come into force on Sixth December 2013 in whole of India except Jammu & Kashmir. The Act declared that the construction or maintaining an insanitary latrine or engaging or employing a person to work as manual scavenger is now an offence<sup>10</sup>. The penalty provided for the first contravention is up to imprisonment of one year or with fine up to Rs.2,00,000 or with both.<sup>11</sup> The Act also provided for the prohibition of persons from engagement or employment for hazardous cleaning of a sewer or a septic tank.<sup>12</sup> According to the Act the first contravention is punishable with imprisonment up to two years or with fine up to Rs. 2 lac. or with both and any subsequent contravention is punishable with imprisonment up to five years or with fine up to Rs. 5 lac. or with both .<sup>13</sup> These offences under the Act are made cognizable and non-bailable.<sup>14</sup> The Act also provided for a survey to be conducted within a specified time period regarding the number of manual scavengers in urban and rural areas.<sup>15</sup> The Act also provides for the comprehensive rehabilitation of the manual scavengers within a time bound framework e.g. initial cash assistance, concessional loan with subsidy for taking up alternative occupation, training in livelihood skill etc.<sup>16</sup> The Act also provide for the construction

<sup>5</sup> M.C. Mehta v. Union of India ,(1986)2 s.c.c. 176 (india)

<sup>6</sup> Bandhua Mukti Morcha V. Union of India ,A.I.R. 1984 s.c. 802 (India)

<sup>7</sup> Sheela Barse v. Union of India ,(1983) 2 S.C.C. 96(INDIA)

<sup>8</sup> People's Union for Civil Liberties V. Union of India ,Writ Petition (civil) No. 196 of 2001 (India)

<sup>9</sup> SAFAI Karamchari Andolan v. Union Of India, Writ Petition (civil) No.583 of 2003(INDIA)

<sup>10</sup> Section 5(1)(a) of Prohibition of Employment As Manual Scavenger and Their Rehabilitation Act 2013(new law)

<sup>11</sup> Section 8 of new law

<sup>12</sup> Section 7 of new law

<sup>13</sup> Section 9 of new law

<sup>14</sup> Section 22 of new law

<sup>15</sup> Sections 4(1)(a),11,and 14 of new law

<sup>16</sup> Sections 13 & 16 of new law

of adequate number of sanitary community latrines in urban areas, within three years of the initiation of this Act to eliminate the practice of open defecation.<sup>17</sup>

#### **10. RECOMMENDATIONS AND CONCLUSION**

The provisions of Prohibition of Employment As Manual Scavengers and Their Rehabilitation Act, 2013 must not only be made applicable to all the States and the Union Territories but also the strict execution of the provision of the Act be made ensured. The nomenclature of scavengers should be changed and the people of all the castes should join these jobs. The traditional type of scavenging should be stopped and this work should now be accomplished by using technology of international standard. The change of mindset of Indian people is necessary. They should not hesitate in cleaning their toilets etc.. They should learn how to manage the garbage. The government should try to promote the development of such technologies so that the waste and garbage could be used as the raw material for energy generating purposes. The human dignity should be the foremost agenda of any govt. The problem of manual scavenging is a curse on our society. Many laws were enacted but remained failed due to various reasons. But now I hope that with help of the various strict provisions and the efficacy of the monitoring mechanism this new law will prove to be a great piece of social legislation. Though, the society would also have to contribute a lot for the success of this Act. The people should change their attitude towards dalits, untouchables not by the fear of the sanctions of any law but from the core of their heart.

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<sup>17</sup> Sections 4(1)(c),4(2),4(3) of new law