

MANUAL SCAVENGING: A CASE OF DENIED RIGHTS

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Abstract

Manual scavenging is a profession which has been in existence since the human civilization. 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.

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I Introduction

“I may not be born again but if it happens, I will like to be born into a family of scavengers, so that I may relieve them of the inhuman, unhealthy, and hateful practice of carrying night soil.”

- Mahatma Gandhi

ON 26THJANUARY 1950, the Constitution of India came into force, with this the grundnorm of civil rights protection and the source of caste and class annihilation *i.e.*, article 17 (abolition of untouchability) also came into force. Unfortunately, the spirit of article 17,

Constitution of India, was followed in principle rather than in practice. A plethora of legislations like Protection of Civil Rights Act, 1955, Schedule Castes and Schedule Tribes Act of 1988 *etc.*, were enacted to ensure an equitable and casteless society, but the condition of the weaker sections has failed to show satisfactory signs of amelioration. Even today caste remains a major source of occupational and class division. When the world has made significant progress in human development, in India there exist a community which make its living by carrying human excreta and servicing the community sanitation with a baggage of their caste identity.

Manual scavenging is a profession which has been in existence since the human civilization and its compartmentalisation into varna system in India. Deemed to polluting and filthy occupation, this job is performed exclusively by dalits and that too, to a sub-caste of dalits who are considered even by other dalits sub-castes to be wretched and ‘untouchable’. 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.

Section 2 (g) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (hereinafter the PEMSR Act, 2013) defines manual scavenger as “a person engaged or employed...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...”

Manual scavenging continues to exist in India, despite being unacceptable and hazardous as a method of disposal of human waste, despite scientific and technological advancement on various fronts that saves manual labour, and despite the availability of simple and low-cost alternatives which can eradicate the twin problems of manual scavenging and safe disposal of human excreta. It passes on from generation to generation. Culture of acceptance prevailing among them is also depriving them of their basic rights. Despite several schemes, laws and policy initiatives the state has failed in its endeavors due to lack of reliable number of manual scavengers, poor enforcement of laws, corruption and strict caste hierarchy that exists in rural as well as urban areas of India.

II Prevalence of manual scavenging

Manual scavenging is said to have started in 1214 in Europe when the first public toilets appeared.¹The water closet was invented by John Harrington in 1596.² In 1870, S.S. Helior invented the flush type toilet, and it became common in the western world.³ This caused other types of toilets to disappear in the western world. All surface toilets were abandoned in Western Europe in mid-1950s. Thus, India is the only country in the world where a particular section of the society is traditionally responsible for keeping the habitation clean by removing the waste products of the society including the human excreta.⁴

Manual scavenging still survives in parts of India without proper sewage systems. It is thought to be most prevalent in Gujarat,⁵ Madhya Pradesh, Uttar Pradesh, and Rajasthan. Some municipalities in India still run public dry-toilets. The biggest violator of this law in India is the Indian Railways which has toilets dropping all the excreta from trains on the tracks and they employ scavengers to clean it manually.⁶According to socio-economic caste census report (2011), Maharashtra has 63,713; Madhya Pradesh has 23,093; Uttar Pradesh has 17,619; Tripura has 17,332; Karnataka has 15,375 manual scavengers. However, the exact number of manual scavengers living in India is still an open ended question.

III Manual scavenging in India: Historical background and scavenging communities

The practice of manual scavenging in India dates back to ancient time. According to contents of sacred scriptures and other literature, scavenging by some specific caste of India exist since the beginning of civilization.⁷One of the 15 duties of slaves enumerated in Naradiya Samhita was of manual scavenging. This continued during the Buddhist and Mauraya period also.⁸ In India, Jahangir built a public toilet at Alwar, 120 km away from

¹The paper presented by Dr. Bindeswar Pathak, Founder, Sulabh Movement at International Symposium on Public Toilets held in Hong Kong on May 25-27, 1995, available at: <http://www.sulabhtoiletmuseum.org/history-of-toilets/> (last visited on Aug. 13, 2015).

² "The Throne of Sir John Harrington" available at: <http://www.historic-uk.com/CultureUK/The-Throne-of-Sir-John-Harrington/> (last visited on Aug. 13, 2015).

³*Supra* note 1.

⁴ Bindeswar Pathak, *Action Sociology and Development*, 128 (Concept Publishing Company, New Delhi, 1992).

⁵See, Editorial "Manual scavenging still practiced in developed Gujarat" *The Times of India*, Nov. 1, 2014.

⁶ Manual Scavengers: Indian Railways in denial, available at: <http://southasia.oneworld.net/features/manual-scavengers-indian-railways-in-denial#.VHA8ovmUeTd> (last visited on Nov. 15, 2014).

⁷ Bindeswar Pathak, *Road to Freedom: A Sociological Study on the Abolition of Scavenging in India*, 37 (Motilal Banarsidass Publisher, 1999).

⁸*Id.* at 38.

Delhi for 100 families in 1556 AD.⁹ Not much documentary evidence exists about its maintenance. Scholars have suggested that the Mughal women with purdah required enclosed toilets that needed to be scavenged.¹⁰ It is pointed out that the bhangis share some of the clan names with Rajputs, and propose that the bhangis are descendants of those captured in wars. There are many legends about the origin of bhangis, who have traditionally served as manual scavengers. One of them, associated with Lal Beg bhangis describes the origin of bhangis from Mehtar.¹¹

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 Andhra.¹²

IV International covenants, protocols and instruments

The issues and concerns of manual scavengers have also been raised and reflected on and by the international forums, especially the United Nations (UN), in recent times. In 2009, the special rapporteurs constituted by the sub-commission on the promotion and protection of human rights studied the issue of discrimination based on work and descent at a global level. The report of the special rapporteurs, which contains draft principles and guidelines for the Effective Elimination of Discrimination Based on Work and Descent, is one of the major developments in evolving norms and standards regarding discrimination based on work and descent or caste. Discrimination (Employment and Occupation) Convention, 1958 which deals with issue of work-related discrimination and promotes the equality in employment and occupation and also this convention states that government needs to adopt the laws for combating discrimination through creation of educational programmes for equal opportunity, adoption of national policy on equal opportunity, full cooperation with employers and workers organisation. This convention also states government to establish a national agency

⁹ Bindeshwar Pathak, "Waste Toilet History", 18 *The Vacuum*, available at: <http://www.thevacuum.org.uk/issues/issues0120/issue18/is18arttoihis.html> (last visited on Oct. 10, 2014).

¹⁰ *Supra* note 8.

¹¹ Shyamlal, *The Bhangi: A Sweeper Caste, Its Socio-economic Portraits: with Special Reference to Jodhpur City* 21 (Popular Prakashan, 1992).

¹² B.N. Srivastava, *Manual Scavenging in India: A Disgrace to the country*, 20 (Concept Publishing Company, New Delhi, 1997).

on equal opportunity along with repeal of inconsistent laws and practices. Social origin is one of the grounds of prohibited discrimination and ratified by India on June 3, 1960. Regarding forced labour, International Labour Organisation (ILO) has adopted Forced Labour Convention, 1930 to suppress the use of forced or compulsory labour in all its forms. In 2007, the annual report of the Committee on the Elimination of Racial Discrimination of the UN expressed serious concern about the deplorable conditions of manual scavengers in India. It stated, “The Committee notes with concern that very large numbers of dalits are forced to work as manual scavengers.”¹³

V Constitutional provisions

Since manual scavengers belong to the backward section of society, they are entitled to some special rights apart from rights under the Indian constitution. Some of the important and relevant constitutional provisions are as follows:

- **Article 14:** Equality before law (Right to Equality);
- **Article 16(2):** Equality of opportunity in matters of public employment;
- **Article 17:** Abolition of Untouchability;
- **Article 19(1)(a):** Right to practice any profession, or to carry on any occupation, trade or business;
- **Article 21:** Protection of life and personal liberty;
- **Article 23:** Prohibition of traffic in human beings and forced labour etc;
- **Article 41:** Right to work, to education and public assistance in certain circumstances;
- **Article 42:** Just and humane conditions of work;
- **Article 46:** Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections;
- **Article 47:** Duty of the State to raise the level of nutrition and the standard of living and to improve public health.
- **Article 338:** Constitution of a National Commission for Schedule Caste.

VI Legislative framework

¹³ United Nations Organization, Report Committee on the Elimination of Racial Discrimination (General Assembly, 2007).

Apart from plethora of constitutional provisions the legislature has enacted several enactments for the upliftment of the schedule class including manual scavengers. Some of the major enactments are as follows:

The Protection of Civil Rights Act, 1955¹⁴

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 was made both cognizable and non-compoundable offence and stricter punishment was provided for the offenders.

The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989¹⁵

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, came into force on January 31, 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. The Act was further strengthened, in relation to manual scavengers, by the recent amendments.¹⁶ The Act which was notified by the Central Government on January 1, 2016 makes it a punishable offence to employ, permit or make any person belonging to SC/ST community, to do manual scavenging.¹⁷ The contravention of the said provision attracts an imprisonment for a term not less than six months and may exceed to five years and fine.

Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993¹⁸

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (hereinafter EMSCDL Act, 1993), provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the

¹⁴ Act no. 22 of 1955 and the Protection of Civil Rights (PCR) Rules, 1977.

¹⁵ Act no. 33 of 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

¹⁶ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act no. 1 of 2016).

¹⁷ *Id.* s. 4(j) and s.3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

¹⁸ Act No. 46 of 1993.

regulation of construction and maintenance of water sealed latrines and matters connected therewith. It was replaced by the PEMSAR Act, 2013.

National Commission for Safai Karamcharis Act, 1993¹⁹

The Act established the National Commission for Safai Karamcharis to study, evaluate and monitor the implementation of various schemes for *safai karamcharis* as an autonomous organization and also to redress their grievances. The Act is a welfare legislation enacted for the welfare of persons engaged in cleaning and plumbing jobs in various state departments. Section 31 of the PEMSAR Act bestows statutory responsibility on the National Commission for Safai Karamchari to monitor the implementation, enquire into the contraventions and non-implementation of the PEMSAR Act, 2014.

National commission for schedule caste (NCSC) ²⁰

The commission is constituted with a mandate to safeguard the interest of schedule castes in India. Article 338 (5) of the constitution of India lays down certain duties of the NCSC²¹

- (i) to investigate and monitor all matters relating to the safeguards provided for the scheduled castes and evaluate the working of such safeguards;
- (ii) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the scheduled castes;
- (iii) to participate and advise on the planning process of socio-economic development of the scheduled castes and to evaluate the progress of their development;
- (iv) to make recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes
- (v) to discharge such other functions in relation to the protection, welfare and development and advancement of the scheduled castes;

¹⁹ Act no. 64 of 1993.

²⁰Constitution (Eighty-Ninth Amendment) Act, 2003.

²¹Constitution of India, art. 338 (5) a-h.

(vi) to make in such reports recommendations as to the measures that should be taken by the Union or any state for the implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes.

VII Government appointed committees and commissions

Since manual scavenging involves undignified and degrading occupation carried out by the most backward class of the Indian society it has received considerable attention since independence. Government of India from time to time has appointed several committees and commissions suggesting practical recommendation for scavenging communities' rehabilitation and social inclusion.

Barve committee²²

The erstwhile Government of Bombay, appointed a committee known as the Scavengers' Living Conditions Enquiry Committee in 1949 with V.N. Barve as chairman to study and enquire into the living conditions of the scavengers in the State of Bombay and to suggest ways and means to improve their conditions of work and to fix their minimum wages. The Committee submitted its report to the Government of Bombay in 1952.

Kaka kalekar commission

Appointed in 1953 as the first backward class commission under the chairmanship of Kaka Kalekar. The committee submitted its report in 1955. Committee in its report described the condition of manual scavengers as sub-humans and highlighted the outdated techniques of night soil removal and sanitation which included manual removal of human waste by scavenging communities. The committee also pulled up the municipal corporations for being the biggest sinners.²³

Central harijan welfare board (CHWB)

Was established by the Ministry of Home Affairs in 1956 under the chairmanship of Pandit Govind Ballabh Pant. The board reviewed the working and standard of living of

²² State of Bombay, Report of the Scavengers Living Condition Enquiry Committee (Government of Maharashtra, 1949).

²³ *Supra* note 7 at 37-38.

sweepers and scavengers in India and recommended the enactment of centrally sponsored schemes for manual scavengers.

Malkani committee²⁴

CHWB in its October 12, 1957 meeting resolved to constitute a high level committee to make an in-depth study of scavenging menace in the country. Subsequently, the scavenging conditions enquiry committee was set up under the chairmanship of Professor N.R. Malkani. The committee submitted its report in 1960. The committee in its report blamed the existence of dry latrines as a major impediment to the abolition of manual scavenging in India.

Committee on customary rights²⁵

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.²⁶ A customary relationship also develops with the householder and the scavenger receives payments in some form or the other.²⁷

Pandya committee²⁸

Was appointed as a sub-committee by National Labour Commission under the chairmanship of Bhanu Prasad Pandya in 1968-69 to examine the working conditions of sweepers and scavengers. But it failed to receive much attention from the central or the state governments. However, it recommended the enactment of a central legislation to regulate the working condition, living condition of the sweeper and scavenging communities and also recommended creation of adequate and efficient enforcement mechanism.

²⁴ Government of India, Report of Scavenging Conditions Enquiry Committee (Ministry of Home Affairs, 1980).

²⁵ Government of India, Report of the Committee on Customary Right to Scavenging (Ministry of Home Affairs, 1966).

²⁶ *Supra* note 7 at 40.

²⁷ *Ibid.*

²⁸ Government of India, Report of the Committee on conditions of sweepers and scavengers (National Commission on Labour, 1969).

VIII Government/administrative schemes

Indian Government has allocated resources to modernize sanitation. National sanitation schemes aimed at modernizing human waste management. Sulabh Shauchalaya Scheme (1974), Integrated Low Cost Sanitation Scheme (1981), Nirmal Bharat Abhiyan (2009) and recently the Swacch Bharat Abhiyaan (2014) are some of the examples. Some schemes for the welfare of scavenging communities are:

Self-employment scheme for rehabilitation of manual scavenging (SRMS)

In April 2007, the government initiated this scheme to liberate the manual scavengers and to rehabilitate them. Central Government has revised the SRMS for rehabilitation of all the manual scavengers identified under the provisions of the Manual Scavengers Act, 2013.²⁹ The main features of the Scheme include one-time cash assistance, training with stipend and concessional loans with subsidy for taking up alternative occupation.³⁰

National scheme of liberation and rehabilitation of scavengers and their dependents (NSLRSD)

Initiated in 1989, the main objective of the NSLRSD is to liberate manual scavengers from their existing hereditary inhuman occupation of manually removing night soil and filth and to provide for and engage them in alternative and dignified occupations. In 2003, a CAG report concluded that scheme failed to achieve its objective involving investment of Rupees 600 crores. CAG report also pointed that there was “lack of correspondence between ‘liberation’ and ‘rehabilitation’ and there was no evidence to suggest if those liberated were in fact rehabilitated.”³¹

Integrated low cost sanitation scheme

The Government of India, Ministry of Urban Employment and Poverty Alleviation along with HUDCO have joined hands in taking up a very major programme for Integrated Low Cost Sanitation for conversion of dry latrine system into water borne low cost sanitation

²⁹ Act no. 35 of 2014.

³⁰ *Ibid.*

³¹ See, *Safai Karamchari Andolan v. Union of India* (2014) 11 SCC 224.

system and at the same time liberating the manual scavengers. In addition, HUDCO has also been extending assistance to basic sanitation schemes.³²

Nirmal Bharat Abhiyaan (NBA) (2009-14) and Swach Bharat Abhiyaan (SBA) (2014-19): Since the root cause of manual scavenging is the insanitary waste disposal practices (dry latrines, open defecation *etc.*). Total Sanitation Campaign (TSC) was conceived in 1999 which was renamed as Nirmal Bharat Abhiyan in 2012 to ensure 100% sanitation in rural and urban areas by 2017. The NBA was replaced by SBA in 2014. SBA has been conceived with following objectives:³³

- i. Elimination of open defecation.
- ii. Eradication of Manual Scavenging.
- iii. Modern and Scientific Municipal Solid Waste Management.
- iv. To effect behavioural change regarding healthy sanitation practices.

It is ironical to see that despite several constitutional, statutory and administrative safeguards and framework the plight of manual scavengers and has been deplorable. Identification of manual scavengers has so far progressed at snail's pace and the rehabilitation schemes for the welfare of manual scavengers has failed to achieve much result.

IX Judicial intervention in manual scavenging

Judiciary on the other hand has always played an active role in strengthening the cause of socio-economic welfare by translating several directive principles into enforceable rights for the upliftment of poor and weaker section of the society. A liberal interpretation of article 21 of the constitution has created numerous rights and has given a new direction to social welfare jurisprudence in India. With regard to judicial response towards the manual scavengers, recently courts have adopted a stern attitude towards the manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

Safai Karamchari Andolan v. Union of India³⁴

³² Under 'Pay and Use Toilet Scheme', Central assistance through Housing and Urban Development Corporation (HUDCO) was available to Urban Local Bodies (ULBs) for construction of toilets for footpath and slum dwellers who were unable to construct their own toilets.

³³ "Swachh Bharat Abhiyan Urban", *available at*: https://swachhbharaturban.gov.in/writereaddata/Mission_objective.pdf (last visited on July 10, 2015).

³⁴ 2014 (4) SCALE 165.

In the present case the Supreme Court acknowledged the menace of manual scavenging in India as an inhuman, degrading and undignified profession. The Supreme Court observed that PEMSAR Act, 2013 and the EMSCDL Act, 1993 neither dilutes constitutional mandate of article 17 of the constitution nor does it condone inaction on part of union and state governments under EMSCDL Act, 1993. The Supreme Court held that the PEMSAR Act, 2013 expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in sewage cleaning and cleaning tanks as well persons cleaning human excretion on railway tracks.

P. Sathasivam CJ, said that “the official statistics of the Ministry of Social Justice and Empowerment for the year 2002-2003 put the figure of identified manual scavengers at 6, 76,009. Of these, over 95 percent are *dalits*, compelled to undertake this denigrating task.”³⁵The Supreme Court also referred to several international covenants and instruments, to which India is a signatory, that seeks to guarantee a dignified human life in respect of his profession and other walks of life *e.g.*, Universal Declaration of Human Rights (UDHR), Convention on Elimination of Racial Discrimination (CERD) and the Convention for Elimination of all Forms of Discrimination Against Women (CEDAW). Supreme Court laid down following propositions with regards to rehabilitation of manual scavengers:³⁶

If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:

- (a) *Sewer deaths* – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.
- (b) *Railways* – should take time bound strategy to end manual scavenging on the tracks.
- (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.
- (d) Provide support for dignified livelihood to *safai karamchari* women in accordance with their choice of livelihood schemes.

³⁵*Id.* para. 2.

³⁶*Id.* para 14.

- i. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.
- ii. Rehabilitation must be based on the principles of justice and transformation.

Supreme Court stressed on the rehabilitation of manual scavengers in accordance with part IV of the PEMSAR Act, 2013. The Supreme Court directed the state governments and union territories to fully implement various provisions of PEMSAR Act, 2013 and take appropriate action for non-implementation as well as violation of provisions contained in PEMSAR Act, 2013.

Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers³⁷

In the present case, the Supreme Court passed a landmark judgement identifying and highlighting the apathy and plight of the disadvantaged sections of the society, particularly the scavengers and sewage workers, who risk their lives by going down the drainage without any safety equipment and security and have been deprived of fundamental rights to equality, life and liberty for last more than six decades. The Supreme Court referred to a report,³⁸ and stated that³⁹

The workers are suffering from high mortality and morbidity due to exposure at workplace. 33 workers had died in last 2 years due to accidents while working on the blocked sewer lines...59% of the workers enter underground sewer manholes more than 10 times a month and half of them have to work more than 8 hours a day... 41 workers have reported syncope, and other 24 reported temporary loss of consciousness. A little over 1/3 of the workers had been immunized against tetanus while none of them had been vaccinated against hepatitis B. Approximately 46 % of workers across all age group were found to be under weight according to Body Mass Index (BMI) calculation....All daily wagers were getting a wage of approximately 2950 rupees per month without any other benefit irrespective of service period.

³⁷2011 (8) SCC 568.

³⁸ Centre for Education and Communication in collaboration with Occupational Health & Safety Management Consultancy Services on "Health & Safety Status of Sewage Workers in Delhi".

³⁹*Supra* note 34, para.8.

On the issue of judicial activism and overreach by the court, as contended by Delhi Jal Board the Supreme Court observed:⁴⁰

Whenever one of the three constituents of the State i.e., judiciary, has issued directions for ensuring that the right to equality, life and liberty no longer remains illusory for those who suffer from the handicaps of poverty, illiteracy and ignorance and directions are given for implementation of the laws enacted by the legislature for the benefit of the have-nots, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach and the orders issued for benefit of the weaker sections of the society are invariably subjected to challenge in the higher courts. In large number of cases, the sole object of this litigative exercise is to tire out those who genuinely espouse the cause of the weak and poor.

The Supreme Court also criticised the government and the state apparatus on being insensitive to the safety and wellbeing of those who are, on account of sheer poverty, compelled to work under most unfavourable conditions and regularly face the threat of being deprived of their life. Supreme Court also snubbed the elitist mindset of the wealthy class with regard to public interest litigation / *Pro Bono* litigation.⁴¹ The Supreme Court not only directed to pay higher compensation to the families of the deceased, but also directed the civic bodies to ensure immediate compliance of the directions and orders passed by the Delhi High Court for ensuring safety and security of the sewage workers.

X Issues and challenges of abolition and rehabilitation

Millions of people in India are still not privileged enough to wake up in the dawn of freedom. Their days start with cruel practice of manual scavenging and end with the same scare of next morning. Women among them are in majority who carrying the vicious practice of scavenging. Indian society, which itself divides into caste, has inhuman face. A face, in

⁴⁰*Supra* note 34, para.15.

⁴¹ *Supra* note 37, Supreme Court emphasized the importance of the petitions filed *pro bono publico* for protection of the rights of less fortunate and vulnerable sections of the society, observed:

There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the down-trodden, the have-nots and the handicapped and the half-hungry millions of our countrymen.

which certain communities are imposed with work designated according to caste, and among them manual scavenging is worst.

- i. State’s failure to stop illegal employment of manual scavengers by local households:** The Indian government’s track record of imposing penalties upon those who perpetuate manual scavenging under the EMSCDL Act, 1993 is extremely poor. In fact, according to the National Advisory Council, “almost no one has been punished under this law.”⁴² The administrative lethargy in eliminating insanitary latrines, the root cause of manual scavenging in India, can be seen from the fact that according to 2011 census of India, there are 13,14,652 latrines where night soil is disposed into open drain; 7,94,390 latrines are manually serviced and 4,97,236 latrines are serviced by animals. Not only are laws abolishing manual scavenging routinely ignored in practice, people who try to leave can suffer retribution, including community threats of physical violence and displacement.
- ii. Difficulties in accessing the criminal justice system:** Due to prevalent discrimination, *dalits* require significant assistance in accessing the criminal justice system when they are victims of crime. While people throughout India face police inaction and outright refusals to investigate their complaints,⁴³ these problems are intensified for socially and economically backward people. People from manual scavenging communities are susceptible to this type of treatment due to the caste bias by police and local government officials. Activists and rights groups told Human Rights Watch that police routinely fail to register and investigate complaints of crimes against *dalits* when the perpetrators are of a dominant caste.⁴⁴ In particular, police will not register cases under the Schedule Castes /Schedule Tribes Act, 1988—a law crucial to protect people who work as manual scavengers.⁴⁵
- iii. Threats and harassment from community employers:** According to Human Rights Watch Report of 2014, women who practice manual scavenging confessed that since dry toilets are cleaned daily, they face pressure from the community if they miss even a

⁴² Standing Committee on Social Justice and Empowerment, 32nd Report on The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill 2012, (March 2013).

⁴³ Human Rights Watch, India—“Broken System: Dysfunction, Abuse, and Impunity in the Indian Police”, at 41, August 2009, <http://www.hrw.org/sites/default/files/reports/india0809web.pdf> (last visited on Oct. 15, 2014).

⁴⁴*Id.* at 49.

⁴⁵*Id.* at 50.

day.⁴⁶ When people refuse to perform caste-based tasks, dominant caste groups may deny them access to community property and property belonging to upper caste landholders. This access is crucial: most people engaged as manual scavengers do not own land and require entry to community and privately owned land to graze livestock, collect firewood, or even defecate in the fields.⁴⁷

- iv. Lack of accountability for failing to end manual scavenging:** Under the PEMSR Act, 2013, district magistrates and local authorities are responsible for ensuring the implementation of PEMSR Act, 2013 and oversee rehabilitation process of manual scavengers. In addition, the act contains provisions for state governments to appoint inspectors to examine premises for insanitary latrines and persons employed as manual scavengers. Finally, the act calls for central and state monitoring committees, and vigilance committees in each district.

The PEMSR Act, 2013 permits the state government to conduct special trials. Complaints have to be made before the court within three months of the offense. However, since the same district authority responsible for adjudicating offenses under the act may also be the authority responsible for implementing the law, in some cases, there is a potential conflict of interest. For these provisions in the new law to be effectively implemented, it is crucial that sufficient resources and training are provided to activate these monitoring mechanisms in collaboration with manual scavenging communities, rights activists, and civil society organizations.

- v. Lack of alternative employment opportunities:** People engaged in manual scavenging rely upon the daily food donations they receive for subsistence. In order to leave manual scavenging they must have immediate access to alternate employment. These communities, however, face significant barriers to entering the labour market, including social boycotts and economic boycotts⁴⁸ in retaliation for refusing to clean

⁴⁶ Cleaning Human Waste “Manual Scavenging,” Caste, and Discrimination in India, Report by Human Rights Watch (HRW) at 42, Aug. 2014.

⁴⁷ *Ibid.*

⁴⁸ The Scheduled Castes and Scheduled Tribes, (Prevention of Atrocities) Amendment Act, 2015 was passed by both the houses of the Parliament and received Presidential assent on December 31, 2015, defines economic boycott as “ (i) refusal to deal with, work for hire or do business with another person; or (ii) to deny opportunities including access to services or contractual opportunities for rendering service for consideration; or (iii) to refuse to do anything on the terms on which things would be commonly done in the ordinary course of business; or (iv) to abstain from the professional or business relations that one would maintain with another person.” The amendment Act defines social boycott as “a refusal to permit a person to render to other person or

toilets in the village, gender- and caste-based discrimination in access to employment, and corruption, such as being asked to pay bribes in order to be appointed to reserved government positions.

- vi. **Inadequate surveys and failure to identify people still engaged in manual scavenging:** According to the SC, government surveys have been ineffective. In particular, the court notes, the 2013 central government survey “has shown remarkably little progress” and has identified “only a miniscule proportion of the number of people engaged in manual scavenging.”⁴⁹ There are different figures with regard to the no. of manual scavengers in India. For instance, according to National Safai Karamchhari Commission 3rd and 4th Report there are 5,77,228 manual scavengers; according to 2002-03 report of Ministry of Social Justice and Empowerment there are 6,76,009 manual scavengers; whereas *safaikaramchhari andolan* (NGO working for manual scavengers) has estimated around 1.2 million manual scavengers. Whereas Socio-Economic Caste Census report of 2011 puts the figure to 1, 80, 657 manual scavengers, with Maharashtra having the highest number of scavengers *i.e.*, 63,713. Therefore, periodic comprehensive survey, at least once in three years, should be conducted by the government either independently or in collaboration with credible non-governmental organizations (NGOs).

XI PEMSAR Act, 2013 – salient features

It was passed by both the Houses of Parliament on September 7, 2013. The PEMSAR Act, 2013⁵⁰ received assent of the President on September 18, 2013 and subsequently published in the Gazette of India on September 19, 2013.

- The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.⁵¹

receive from him any customary service or to abstain from social relations that one would maintain with [the] other person or to isolate him from others.

⁴⁹ *Supra* note 31, para. 10.

⁵⁰ Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (Act 25 of 2013) and the draft rules *available at*: <http://socialjustice.nic.in/pdf/Draft%20Rules.pdf> (last visited on Aug. 13, 2015).

⁵¹ Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, s. 5.

- Its main objectives are: -
 - i. Prohibition of employment as manual scavengers;
 - ii. Rehabilitation of manual scavengers.⁵²
- The Act recognizes the link between manual scavengers and weaker sections of the society. It therefore, views manual scavenging as being violative of their right to dignity.
- Under the Act, each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.
- Each occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost.⁵³ If he fails to do so, the local authority shall convert the latrine and recover the cost from him.⁵⁴
- The district magistrate⁵⁵ and the local authority shall be the implementing authorities.⁵⁶
- Offences under the Bill shall be cognizable and non-bailable,⁵⁷ and may be tried summarily.⁵⁸
- It provides for detailed vigilance mechanism and monitoring committee at district, state and central level.
- The Act specifically provides for carrying out surveys for identifying persons employed as manual scavengers.

XI EMSCDL Act of 1993 and PEMSR Act of 2013 – A comparison

Some of the major differences between two scavenging Acts of 1993 and of 2013 are as follows:

	EMSCDL Act, 1993	PEMSR Act, 2013
Perspective of Act	Sanitation perspective	Right to dignity perspective
Coverage	Only covers dry latrines	Dry latrines; the sewage system, railway tracks, septic tanks and insanitary Latrines.
		a person employed for “manually cleaning,

⁵² Preamble of the Act.

⁵³ *Id.* s. 5(2).

⁵⁴ *Id.* s. 5(3).

⁵⁵ *Id.* s. 18.

⁵⁶ *Id.* s. 17.

⁵⁷ *Id.* s. 22.

⁵⁸ *Id.* s. 21(2).

Definition of Manual scavenger	person employed for “manually carrying human excreta”	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...” S.2 (g).
Enacted under	State List	Concurrent List
Focal points	Prohibition of dry latrines	Labour welfare and rehabilitation
Classification of offence	Cognizable	Cognizable and Non-Bailable
Identification and rehabilitation of Manual Scavengers	No provision	Chapter IV section 11
Penal Provisions	Upto 1 year of imprisonment and fine upto Rs. 2000/-.	<p>For violation of provisions of prohibition of insanitary:</p> <ul style="list-style-type: none"> • 1stcontravention- upto 1 year imprisonment and fine upto Rs. 50,000/- or both. • Double in case of 2nd and subsequent offences. <p>For violation of provisions of prohibition of hazardous cleaning of septic tanks and sewers</p> <ul style="list-style-type: none"> • 1st contravention- upto 2 years imprisonment and fine upto Rs.2 lakh. • 2nd/ subsequent contravention - 5 years and fine upto Rs. 5 lakh, or both.
Responsibility of Local Authorities to provide sanitary latrines	No such obligation.	Mandatory obligation under section 4(1).

XII Conclusion and suggestions

On the basis of foregoing discussion it can be concluded that despite several governmental initiatives the plight of manual has not shown much improvement. Though policy makers have initiated several social welfare reforms directed towards manual scavengers, but have considerably failed to ensure their success on ground. Actual satisfaction of basic needs and amelioration of the scavenging community has not only been ignored by the policy makers but even the organized schedule caste movements have failed to address the cause of manual scavengers.

Manual scavenging remains a serious concern with regard to the issues related to human rights. Even though legislations, considerable budgetary allocation, and economic assistance programmes for the scavenging communities has been put in place.⁵⁹ But the most vital prerequisites which is required is the rigorous enforcement and scrutiny measures required to ensure proper implementation of laws and effective use of budgetary allocation. Lastly, awareness among the public to discourage degrading occupations like that of manual scavenging is inevitable. Some of the constructive recommendations in this regard can be adopted:

i. Linking MNREGA and other social security schemes with the Scavenging Act of 2013:

Since PEMSAR Act, 2013 doesn't have any express provision of linking rehabilitation programmes for scavengers with the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) 2005⁶⁰. Thus, an amendment must be brought to the Scavengers Act of 2013 and the rehabilitation programmes must be linked with MNREGA and other social security laws like Unorganized Sector workers' Social Security Act, 2008.⁶¹ In this way scavenging activities can be eliminated in rural areas where it is still practiced. Moreover, such an entitlement will facilitate the scavenging communities to get jobs under MNREGA and other social security laws, which are often deprived to them due to the stigma attached to their profession and lack of express provisions in the law.

ii. Effective coordination among public and private authorities: The Ministry of Social Justice and Empowerment, the Ministry of Drinking Water and Sanitation, the Ministry of Rural Development, the Ministry of Housing and Poverty Alleviation, the Ministry of Urban Development, the Ministry of Railways have key roles to play in the eradication of the practice of manual scavenging and the rehabilitation of freed families. Moreover, the Ministry of Women and Child Development and the Ministry of Labour also have an important role because a substantial number of women are engaged in manual scavenging. Thus, a coordination committee should be formed with representation from all eight ministries so as to work together. With regard to private authorities, role of NGOs, bhaagidari and RWAs should be enhanced by making them an extension of the public authorities for the

⁵⁹A perusal of legislative history and other programmes shows that despite several measures the plight of manual scavengers has failed to show much improvement. Official apathy, corruption, lack of enforcement and rigid caste hierarchy are the primary reasons for the continuation of such degrading occupation.

⁶⁰ Mahatma Gandhi National Rural Employment Guarantee Act (no. 42 of 2005).

⁶¹ Act no. 33 of 2008.

purpose of enforcing the Act because in cities manual scavenging usually takes place in the residential colonies and industrial areas.

- iii. **Community initiatives:** Since community initiative is important for abolishing manual scavenging. Therefore, communities should discourage and stop subletting the service like sewer cleaning within the scavenging community. Moreover, individuals should also pledge to adopt sanitary practices and vow to not encourage or employ manual scavengers for such menial tasks.
- iv. **Responsibility of railways:** The Indian railway is the largest institution in the country that uses dry latrines. The railway ministry must immediately prohibit this practice and for the next three years present progress reports in every session of Parliament. This, so that the Government of India can ensure total abolishment of scavenging in Indian railway in stipulated time. This can be achieved by speeding up construction of bio-toilets in railway stations and trains. In this regard technical assistance of DRDO and other technical research think tank could be taken.
- v. **Sanitation programmes and awareness:** Since poor sanitation or lack of sanitation i.e., toilets, in rural and urban areas is the most fundamental cause and impediment to the abolition of manual scavenging. Thus, speeding up sanitation programmes and awareness regarding proper toilets is necessary. In 2009, UPA government created a new dedicated Ministry of Sanitation and Drinking Water for administering laws and schemes directed towards sanitation programmes, which involved construction of modern toilets, discouraging the practice of open defecation and creating awareness in rural and urban areas. In 2014, *Swacch Bharat Abhiyaan* has been launched on similar lines.
- vi. **National level monitoring system and social audit:** The Government of India should form a national level monitoring committee which regularly monitors the practice of manual scavenging. This committee may consist of representatives from ministries, public representatives, state representatives, community representatives as well as representatives from civil society organisations. Since implementation of Acts is of vital importance, therefore, a high level social audit of PEMSAR Act, 2013 and all allied schemes should be conducted by Comptroller and Auditor General of India. Such audit will enable the executive and lawmakers to acquaint themselves with the loopholes in the system and ensure effective

implementation of the law. Moreover, for the identification of manual scavengers in different states a comprehensive and detailed survey for identifying manual scavengers in India must be expeditiously conducted by constituting a high level state committee under the chairmanship of a retired judge or a serving judge of a high court. The committee may include representatives from state bureaucracy, schedule castes/ schedule tribes commission, state human rights commission, state women commission and the civil society representatives working for the cause of manual scavengers

- vii. Role of local authorities:** The municipal and panchayats bye laws of the states should have provisions not to allow the construction of any new house with dry latrine or without a water sealed latrine or sanitary latrines with appropriate technology and measures should be taken so that dry latrines made in the past can be demolished and new water sealed latrines or sanitary latrines with appropriate technology be constructed. There should be a time bound limit for conversion of dry latrines into wet latrines and construction of new latrines. It should be one of the criteria for deciding grants to municipal bodies and there should be some measures to take penal action against municipalities not fulfilling their obligations in this regard. In every gram panchayats, there are generally three- four sub committees. One of the committees looks after 'social justice'. On a mandatory basis, there must be a discussion on the status of manual scavenging and it must be the duty of the president and/or secretary to record the same under the gram panchayats proceedings.
- viii. Legislative and executive will:** Though a constitutional amendment for improving the plight of manual scavenger is not recommended but amendments in different statutes can be made so as to ensure stringency and consistency among different laws on scavenging and social welfare. Passing of the recent Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act 1 of 2016) is a welcome step.