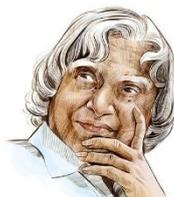


# Manual Scavenging: A Blot to Indian Society



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# **Manual Scavenging: A Blot to Indian Society**

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## **INTRODUCTION**

Manual scavenging is the inhuman practise of removing human excreta from dry latrines with bare hands or basic tools like brooms, metal scraps, which is then carried to disposal sites by carrying basket full of it on their head. This practise is more inhuman than it is sounding by its definition. It is characterized by the dramatically unhealthy and unsafe working conditions, which continue to exacerbate the practice of untouchability and marginalization of Dalit<sup>1</sup>. But now it is not only limited to the removal of human excreta from dry latrines or railway tracks but it also involves cleaning of sewers, septic tanks which are filled up by human waste, industrial waste.<sup>2</sup> Those who dirty their hands and the whole body lead a wretched life full of massive social discrimination apart from huge risk to their health.

Many attempts have been taken up till date against this practise but it still exists in India after 2 decades of passing of legislation<sup>3</sup> for banning this practice and main cause for the prevalence of this practice i.e. dry latrines. Government and Judiciary have taken step to remove this inhuman practise but there is not enough action taken to implement these legislations. There were enough budget allocation for the rehabilitation of manual scavengers but hardly any money has been spent on them for their rehabilitation or for providing safety gears for their protection. Even after 20 years of passing of The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 which explicitly banned the practice of manual scavenging and continuance of dry latrines, there are a total of 7,94,390 dry latrines in the country and total of 11,635 manual scavengers. So, there must be some failure on the part of execution which leads to the continuity of this practise even in 21<sup>st</sup> century when there are enough technologies with India to opt for some other practices of

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<sup>1</sup> The ILO and Manual Scavengers in India: Paving the long way towards the elimination of discrimination based on social origin, available at [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_159813/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_159813/lang--en/index.htm) (last seen 15/10/2017)

<sup>2</sup> *Manual Scavenging Must End*, available at <http://pudr.org/content/manual-scavenging-must-end> (7:52 pm, 15-10-2017)

<sup>3</sup> The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

removing garbage waste. It is a very hazardous practice for manual scavengers but also a very shameful for the country because when all countries are seeking for human right protection to citizen of their countries but India is still fighting with basic rights of manual scavengers.

It is a caste based occupation where lower castes are generally forced into this practice of cleaning dry latrines. It will also attract gender discrimination as 98% of Dalit are women.<sup>4</sup>

India may be the world's largest democracy and has recorded impressive growth economically, but disposal of waste still remains a massive problem. India struggles to cleanly dispose of its waste, its drinking water contaminated by garbage that has entered the waterways. And we talk about infrastructure, technology and modern India when truth is that manual scavenging still persists in India.

Here I will suggest some changes in *The prohibition of Employment as Manual Scavenging and their Rehabilitation Act, 2013* which are needed for proper implementation of the act and also for changing the current scenario.

## **MANUAL SCAVENGING**

Manual scavenging refers to the removal of human waste/excreta (night soil) from unsanitary, dry toilets (toilets without the modern flush system). Manual scavenging involves the removal of human excreta using bare hands, brooms and tin plates. The ministry of social justice and empowerment defines scavengers as the one who is partially or wholly engaged in the obnoxious and inhuman occupation of manually removing night soil and filth. The definition doesn't necessarily capture the horrific nature of this work.<sup>5</sup> Manual scavenging exists primarily because of absence of water borne latrines. Using a broom, a tin plate and a drum, they clear and carry human excreta from toilets, more often on their heads, to dumping grounds and disposal sites.<sup>6</sup> Dry Latrines are the main cause behind this practice.

Earlier manual scavenging includes only removal of human excreta by bare hand or tin plate and disposing them with the basket on head but The prohibition of Manual Scavenging and their rehabilitation Act, 2013 extended the scope of manual scavenging by including

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<sup>4</sup> The ILO and Manual Scavengers in India: Paving the long way towards the elimination of discrimination based

<sup>5</sup> Manual scavenging in India: 86% of all the Manual Scavengers in the country are in Uttar Pradesh, available at <https://factly.in/manual-scavenging-in-india-8-pc-manual-scavengers-are-in-uttar-pradesh/>

<sup>6</sup> Freedom from Manual Scavenging available at <http://pib.nic.in/newsite/mbErel.aspx?reid=126057>

manually cleaning of septic or sewer tanks and some railway tracks without employer fulfilling his obligation to provide protective gears and safety. This extended scope of manual scavenging is provided under the definition of “hazardous cleaning”<sup>7</sup> in the ACT, 2013.

On March 27, 2014 a landmark decision of Supreme Court<sup>8</sup> came which said sewer workers should also be included in this laws, as they also have to handle human excreta in very difficult conditions while cleaning sewer lines, often without any protected gear.<sup>9</sup> They also faced untouchability because of nature of their work and the nature of their work makes them vulnerable to safety issues.

Manual Scavengers need not to be employed by government. Even if a person engaged or employed (on regular or contractual basis) by an individual or a local authority or an agency or a contractor, it would definitely come under the definition of manual scavenging.

If a person is provided sufficient protection, protective gears and other cleaning devices then that employment or engagement would not come under the definition of manual scavenging.<sup>10</sup> This has definitely increases the number and scope of those engaged in manual scavenging but the exact number are still unknown. It put more pressure on the Government to remove this form of practise and provide protection to large number of individuals. As per latest data available with the Government, there are a total of 11,635 manual scavengers across the country. Not all states have Manual Scavengers.

### **CASTE-BASED AND GENDER DISCRIMINATION**

Manual scavenging is a caste-based and hereditary occupation for Dalits that is predominantly linked with forced labour.<sup>11</sup> Scavenging has been an occupation imposed upon certain citizens of the country by the society, which later on continued as a traditional occupation where a section of people among Scheduled Castes was ordained to clean the night soil and carry it manually on their heads. Since centuries, one particular community is performing this job and they are amongst the poorest and most disadvantaged communities in our country. This occupation goes to pass on to same class of people or in the same family

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<sup>7</sup> Section 2 (d) of The prohibition of Employment as Manual Scavenging and their Rehabilitation Act, 2013.

<sup>8</sup> *Safai Karamchari Aandolan & others vs Union of India & Others*

<sup>9</sup> Bharat Dogra & Reena Mehta, To End All Forms of Manual Scavenging, Laws Must Be Better Implemented available at <https://thewire.in/157637/manual-scavenging-rehabilitation-laws/> (last seen at 16/10/2017)

<sup>10</sup> Section 2(g) of 2013 Act

<sup>11</sup> Violations of the right to water and sanitation (submission to UN by RGA, NCDHR AND IDSN)

as a tradition. People belonging to the same caste has been categorised as manual scavengers and they experience discrimination as untouchables. Manual Scavenging is historically linked to the practice of untouchability and the continuation such practices is forbidden under Article 17 of the constitution of India. Though Untouchability has been categorised as violation of fundamental rights under article 17 but still we can it is prevailing. Even though, in modern times these people desire to leave the profession, their social, economic, educational and cultural aspects have made it difficult for them to find an alternate profession. The social stigma of untouchability continues to stick, in one form or the other largely because of the unclean nature of their occupation.<sup>12</sup> The manual scavengers are considered as untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation.

*“Bimal’s husband, Kailash, has a college education, but began manually cleaning toilets in Nhavi in 1989 when he was unable to find alternate employment. He said, “I studied commerce and banking, but I couldn’t find work. Even though I am educated, the panchayat hired me to clean toilets because I am from this community.”*

### **LEGISLATIONS PASSED BY GOVERNMENT TO CURB THIS INHUMAN PRACTISE**

Till date two legislations have been passed by the government for curbing this dangerous and inhuman manual scavenging. In 1993, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, (thereafter called as Act 1993) and again in 2013 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (thereafter called as Act 2013).

#### **The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**

The 1993 Act was passed by parliament after 6 states passed resolutions under Article 252(1) of the constitution, requesting the centre to frame a law. Subsequently, all but five states have adopted the Act.<sup>13</sup> This act was passed to prohibit engagement or employment as manual

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<sup>12</sup> Freedom from Manual Scavenging available at <http://pib.nic.in/newsite/mbErel.aspx?relid=126057>

<sup>13</sup> <http://www.prsindia.org/uploads/media/Manual%20Scavengers/Brief--manual%20scavenging,%202013.pdf>

scavengers and to stop construction of dry latrines which was the main cause of this problem.<sup>14</sup>

The main features of this law are:

1. Prohibition of employment of manual scavenging;
2. Prohibition of construction or continuance of dry latrines;
3. Regulation of construction and maintenance of water-seal latrines;
4. Envisages government schemes for conversion of dry latrines into water-seal latrines, technical or financial assistance for low cost sanitation to local bodies and construction and maintenance of community latrines.<sup>15</sup>

Since sanitation being part of state subject<sup>16</sup>, therefore, originally it came into force in six states<sup>17</sup> and all the Union Territories under clause (1) of Article 252 of the Constitution of India.<sup>18</sup>

This act provided for the punishment with imprisonment for a term which may extend to one year or with fine which may extend to 2000 rupees or with both.<sup>19</sup>

This act fails to take into account sanitation areas. There is a fear that the focus on sanitation and public health dimensions would make the dignity of manual scavenging secondary to the sanitation facilities of the general public and environmental quality.<sup>20</sup>

There were reports of existence of Manual Scavenging. The House listing and Housing Census, 2011 reported that there are about 26 lakh insanitary latrines in the country. Accordingly, the Parliament passed the **‘Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.’**<sup>21</sup>

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<sup>14</sup> Preamble of the Act, 1993

<sup>15</sup> Sujith Koonan, Background Note on Prohibition of Manual Scavenging and protection of the right of sanitation workers in India, IELRC Briefing Paper

<sup>16</sup> Item 6, List II of seventh schedule.

<sup>17</sup> Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal

<sup>18</sup> N.Meenakshisundaram, *Manual Scavenging Act and Municipal Waste Water Workers in India - Policy and Practice*

<sup>19</sup> Section 14 of 1993 Act

<sup>20</sup> Sujith Koonan, Background Note on Prohibition of Manual Scavenging and protection of the right of sanitation workers in India, IELRC Briefing Paper

<sup>21</sup> Supra 7

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

This legislation was passed in 2013 by Ministry of Law and Justice. This Act was passed for the prohibition of employment as manual scavengers and their rehabilitation. aftermath the 1993 Act as dehumanising practice of manual scavenging arising from the continuing existence of insanitary latrines and a highly iniquitous caste system, still persists in various parts of the country and the existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging.<sup>22</sup>

This act extended the scope of definition of Manual Scavenging as it also includes cleaning of septic, sewer tank and railway tracks if employer does not provide protective gear and other cleaning devices apart from removal of human excreta man-handily.

Inclusion of rights of sanitation workers is very significant point in this regard. Like manual scavenging, sewage work is also undertaken by lower caste people and closely linked to the practice of untouchability. Sanitation workers carryout their work mostly in unsafe working conditions without protective gears or other safety devices. Death or serious injury to sanitation workers while cleaning sewerage with no or inadequate safeguards are not rare incidents.<sup>23</sup> They are exposed to dangerous toxic and harmful substances.

This Act provided for the local authority to carry out a survey of insanitary latrines within its jurisdiction and publish a list of such with a period of two month from the date of commencement of this act. Local Authority must give a notice of such to the occupier and give him 6 month time period to either demolish or convert it into sanitary latrines. This act also imposes duty on local authority to construct sanitary latrines within 9 month from the date of commencement of the act where insanitary latrines have been found.

Section 5(3) of this act said that if any occupier fails to demolish an insanitary latrine or convert it into a sanitary latrine within the specified period, the local authority shall have power, after given notice of not less than 21 days, to either convert or demolish and shall be entitled to recover the cost of such.

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<sup>22</sup> 2013 Act

<sup>23</sup> Sujith Koonan, Background Note on Prohibition of Manual Scavenging and protection of the right of sanitation workers in India, IELRC Briefing Paper

Under this act duty shall be imposed on every local authority and other agency to use appropriate technological appliances for cleaning of sewer tanks, septic tanks.<sup>24</sup>

This act provided for the rehabilitation of manual scavengers and alternative employment.

### **OTHER STEPS BY THE GOVERNMENT**

The central government implemented two schemes, namely, the Integrated Low Cost Sanitation Scheme (ILCS) in 1981, and the Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS) in 2007. ILCS seeks to provide funds to poor urban households to convert dry latrines to water flush latrines<sup>25</sup>. With a view to eliminate manual scavenging, a scheme known as ‘National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents’ was launched in March 1992 for identification, liberation and rehabilitation of scavengers and their dependent by providing alternative employment after giving the requisite training.<sup>26</sup> SRMS was launched to provide manual scavengers with skill training, a loan and subsidy for undertaking alternative occupations<sup>27</sup>. In 2011, the National Advisory Council recommended steps to eradicate manual scavenging and prohibit the employment of manual scavengers.

### **CHALLENGES FACED IN ELIMINATION OF THIS PRACTICE**

- **Dry Latrines**

Even after passing of 1993 Act and 2013 Act which talks about the prohibition of dry latrines and conversion of dry latrines into water- seal latrines. The presence of dry latrines is one of the primary reasons why manual scavenging exists till date despite being banned under the constitution via various legislations. As per the 2011 census data, latrines from which night soil is manually removed exist in all states except for the states of Goa, Sikkim and the UTs of Chandigarh and Lakshadweep. There are a total of 7,94,390 dry latrines in the country with Uttar Pradesh having as high as 3,26,082 and Andaman islands as low as 11. 73% of the dry latrines are in rural areas whereas 27% are in Urban areas. Uttar Pradesh, Jammu Kashmir & West Bengal together account for 80% of all the dry latrines in the country. Nine states have more than 10000 dry latrines each and Ten States/UTs have less than 1000 dry

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<sup>24</sup> Section 33 of Act, 2013.

<sup>25</sup> Integrated Low Cost Sanitation Scheme, Ministry of Housing and Urban Poverty Alleviation

<sup>26</sup> Case???

<sup>27</sup> Self-Employment Scheme for Rehabilitation of Manual Scavengers, Ministry of Social Justice and Empowerment

latrines each. Apart from that there are 1,314,652 toilets where the human excreta is flushed into open drains.

States/UTs are slow in identification of insanitary latrines and manual scavengers. Many States/UTs gave affidavit that there are no insanitary latrines in their jurisdiction because of the fear of contempt of court.<sup>28</sup>

- **Forced Labour**

It is almost impossible to eradicate this practice of manual scavenging until dry latrines remains in existence. If there are dry latrines then someone must be needed to clean them. As manual scavengers come from lower caste, they are economically weak and mostly in need of some occupation to earn live hood, they would ultimately agree to do job of cleaning dry latrines. 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.

*“In Kasela village in Uttar Pradesh state’s Etah district, women from 12 families manually clean toilets with the full knowledge of village authorities. After spending the morning manually removing excrement from the toilets, the women return to the houses they cleaned to collect leftover food as payment. They are given grain donations at the harvest and old clothes at festival times, but receive no cash wages. Munnidevi told Human Rights Watch she stopped going to homes where she was not given any food, but says she returned to work after her employers warned that she would not be able to enter community land to collect firewood or graze her livestock. “I have to go. If I miss a single day, I am threatened,” she said.”*

Some women told to Human Right Watch: “Some women said they faced threats of violence when they refused to practice manual scavenging. In November 2012, when Gangashri along with 12 other women in Parigama village in Uttar Pradesh’s Mainpuri district voluntarily stopped cleaning dry toilets, men from the dominant Thakur caste came to their homes and threatened to deny them grazing rights and expel them from the village. Despite these threats, the women refused to return to manual scavenging. Soon after, some 20 to 30 upper caste men from Parigama confronted the community.”

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<sup>28</sup> <http://pib.nic.in/newsite/mbErel.aspx?relid=126057>

So this practice is forced labour imposed by upper caste or dominant class. For the elimination of manual scavenging, firstly it is needed to eliminate dry latrines.

- **Failure on the part of authorities/ Not proper implementation**

Even after Acts has been passed by Government, no action has been taken for its proper implementation. Many states have highlighted the failures of previous government attempts to end manual scavenging and eliminate the entrenched attitudes and discriminatory practices. Several women who try to leave this faced threats from the households they served and local authorities failed to intervene in this matter. Sometimes dominant household denied access to community land and resources or threatened with eviction, frequently with the backing of village councils and other officials.<sup>29</sup>

Even men and women are engaged by urban municipal corporations, both directly by government and through contractors to manually clean excrement. The Prime Minister's lauded National Skill Development Mission listed manual scavenging as a possible 'employment opportunity' for people. While one of the most publicized programmes of the NDA led Modi government is the Swachh Bharat Abhiyan, the sanitation workers who form the central part of this issue have been ignored. In fact, the budgetary allocation for the rehabilitation of manual scavengers has been reduced drastically from 4,656 crores in 2013 to a mere 10 crores in the present budget.<sup>30</sup>

There is reduction of budget for the rehabilitation of manual scavengers with the coming years. During financial year 2016-17, there was an allocation of Rs 10 crore in the Union Budget. But even this was cut to Rs 1 crore in the revised estimate. The Budget allocation for financial year 2017-18 is only Rs 5 crore.

- **Alternative Occupation**

In course of eliminating this practice, alternative occupation and rehabilitation become biggest challenge. If they are leaving one job they must do some other for their livelihood. But problem with this rehabilitation framework is that untouchability is the reality in present day framework because of which it is difficult for them to get any alternate employment. 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

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<sup>29</sup> <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>

<sup>30</sup> <http://pudr.org/content/manual-scavenging-must-end>

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.

Recognizing the need to facilitate access to alternate employment, the 2013 Act contains provisions aimed at securing income—namely, training in livelihood skills and access to loans to take up other occupations on a sustainable basis.

Manual Scavengers are mostly illiterate and have no exposure to any work, other than sanitation related. Many of them are old. They lack confidence for running self-employment projects. Many of them are not willing even to avail any skill development training.

Banks are hesitant about providing loan to manual scavengers. Even many state channelizing agencies, due to low rate of recovery of loan from safai karamcharis, are not willing to extend loan to manual scavengers.

Due to confidence level the identified manual scavengers demand that they may be provided job of safai karamchari in local authorities.

### **IMPACT ON HEALTH OF MANUAL SCAVENGERS**

Apart from the social atrocities that these workers face, they are exposed to certain health problems by virtue of their occupation. These health hazards include exposure to harmful gases such as methane and hydrogen sulphide, cardiovascular degeneration, musculoskeletal disorders like osteoarthritis changes and intervertebral disc herniation, infections like TB, hepatitis, leptospirosis and helicobacter, skin problems, respiratory system problems and altered pulmonary function parameters. They also faced health consequences including constant nausea and headaches, respiratory and skin diseases, anaemia, diarrhoea, vomiting, jaundice, trachoma, and carbon monoxide poisoning. These conditions are exacerbated by widespread malnutrition and inability to access health services. There is lack of safety equipment provided to sewerage cleaners which had an adverse impact on the health of sanitation workers.

“Baby, from Jharda, in Ujjain district, Madhya Pradesh, thought these health consequences were exacerbated by the heat and rain in the monsoon seasons: Beginning when I was 15 or 16, my sister-in-law and I cleaned toilets in 100 houses. I carried the basket on my head and

during the rains it would leak all over my body. My hair fell out in patches. No one helped me. They ridiculed me.”<sup>31</sup>

### **Manual Scavenger in Indian Railways**

Institutions like the Indian Railways, the Municipal corporations and Gram Panchayats employ manual scavengers on contract bases. The Indian Railways is the major employer of manual scavengers, and manages some of the longest rows of open latrines in the world. The open-hole lavatories in every railway compartment/coach that is in service in the country turns the largest rail network of the world into big lavatory that drops raw human excreta and other waste on rail track and over people and vehicles- where the rail line runs above roads. It is a common scene in every railway station in the country, railway employees cleaning with a broom, railway sleepers coaches covered with human excreta waiting to be cleaned. With the Indian railways running a total of 50,000 coaches on date, of which 43,000 coaches are engaged in the passengers service, this means that there are total of 1, 72,000 toilets which are functioning today using no modern technology but improper mode of service which requires the use of manual scavengers to clean the human excreta which is directly discharged on to the railway track.

Though railways deny presence of manual scavengers, Indian railways are the major employer of manual scavengers. Human excreta from the running trains makes railway tracks dirty and railway authorities employ workers to clean it. These workers are not employed as manual scavengers but they are appointed by private contracts on contractual basis as safai karamchari. Kind of work they do while cleaning railway tracks is not less hazardous. Cleaning of human excreta from the railway tracks with the use of only water jets, pipe, broom, stick or ply board is violation of right to dignity. In this way railways are also practising manual scavenging. Just given them different tag of safai karamchari won't stop them from being manual scavenging when kind of work they do falls under the ambit of manual scavenging. Railways always deny presence of manual scavengers but it is not truth. We can check the reality by going to a railway station where we can surely find some workers cleaning human excreta manually from the tracks with the use of pipe, broom etc.

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<sup>31</sup> <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>

Railways have turned some railway toilets into bio-toilets but this has very long way to go. Absence of acknowledgment for manual scavengers would only worsen the situation. Rather railway should focus on other techniques to stop these practices.

### **SAFETY MEASURES**

The Scavenger and sewage workers suffer mainly from chemical and biological hazards. This can be prevented through engineering, medical and legislative measures. The engineering measure should focus on making the process more mechanistic. Safety measures must be provided by the Government for the safety of workers who engaged in inhumane practise of cleaning sewage holes.

Safety Gears which Government needs to provide are Rubber boots, Oxygen tanks, Gloves, Safety suites, extendable sieves, jets and bucket machines etc. According to a July 12, 2011, SC directives states cannot absolve themselves of the responsibility of an effective mechanism for ensuring the safety of workers who clean the sewage system.

If we can hand over some gadget to the people engaged in toilet cleaning it could help them in making them comfortable. Not only people watching them will feel better about them but this would also raise their self-esteem. This way they can be part of new breed of social engineers.<sup>32</sup>

Technologies should be implemented for cleaning sewer, septic tanks, railways tracks or other spaces. Rather than engaging manual scavengers to clean it manually by entering into manhole, machines should be used. India can take example from other countries like Mexico, America. Mexico uses sustainable methods of sewage disposal which uses waste material for agricultural resources by treating them. On the other hand, America uses machinery to clean septic tanks. It is a matter of political will to invest in technologies in order to eliminate manual scavenging. Malaysia is also one of the biggest examples of elimination of manual scavenging. Malaysian government has proved that shift from manual system to mechanical system is not the impossible task. Political will is required to install machineries and government or other authorities should not ignore their duty to eliminate practise of manual scavenging.

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<sup>32</sup> Mr. Rajesh Pant, Mr. Mayank Uniyal, Mr. Prashant Ratodi (Asst Professors), Bhawesh Mehta Tarun kumar, Zaki-ur-Rehman, Gurpreet Singh (Students) *Manual Scavenging and Technological Solution to Eradicate It. (Turning Scavengers to Engineers)*

## CHANGES/AMENDMENTS IN THE EXISTING LAWS FOR ELIMINATING MANUAL SCAVENGING

Here are some of the lacunas of the existing legislation i.e. *The prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013*.

These lacunas must be done away with from the legislation for its effective implementation to curb the practise of manual scavengers. Those are:

1. **Absence of Penal Provision:** Biggest lacuna in the *Prohibition of Manual Scavenging and its Rehabilitation Act, 2013* is that it does not talk about any kind of penal provision for the authority if they failed to full-fill their obligation under the act. No inquiry or punishment in case authority failed to full-fill its duty assigned under the act. Various committees were formed under the act for proper implementation and monitoring the assigned work of the authority but till date no action has been taken against them.

Absence of penal provision gives leverage to the authority to avoid their liabilities as they are somewhere aware that no legal action can be taken against them. This is one of the biggest drawbacks of the legislation for its effective implementation as we have already seen that nothing much has been done for prohibiting manual scavenging.

Provision like “*There are some duties provided under the act for the authorities in order to eliminate the practise of manual scavenging and their rehabilitation. Every authority is bound to perform these duties with due honesty and truthfulness and any authority found in non-compliance with these duties must be inquired and if found non-adherence of duties, must be punished in accordance with the prescribed rules*” Should be added in the legislation.

2. Limited definition of ‘**hazardous cleaning**’: The definition of hazardous cleaning<sup>33</sup> in itself is flawed because it include under its ambit only those activities as *hazardous* where employees have to clean septic tank and sewer tank manually **without any protective gear and other cleaning devices**. Also explanation (b) of section 2(g) stated that those clean excreta with the help of such devices and using protective gear shall not be deemed to be manual scavengers. Firstly, this act does not defined what

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<sup>33</sup> Section 2 (d): “*hazardous cleaning*” by an employee in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder.

kind of protective gear and safety devices it talked about. Kind of protective gears and cleaning devices generally provided for cleaning septic or sewer tank are gloves torches, boots, mask, stick etc. Recently I witness some workers cleaning septic tank outside a railway station with the use of only two instruments and those were: a long wooden stick and a spade (fawda) without any gloves, mask, boots or any modern technology to clean septic/sewer tanks. It looked very difficult to get cleaned by mere use of that stick and spade.

Secondly, the major problem with this definition is that it allows further continuance of manual scavenging with the use of protective gear and cleaning devices. Only the use of protective gear or cleaning device without any change in cleaning process would not change its inhuman character. In the time when we are talking about nuclear weapons, artificial intelligences and other technologies like these, it is very difficult to believe that there could not be any technology to clean septic or sewer tanks.

Aim of legislation should be to completely done away with the manual scavenging and not to continue it further with the use of protective gear etc. Technologies should be used to clean septic or sewer tanks without human entry into tanks. It is a very positive step on the part of the government that it launched a technological challenge for prohibiting the entry of human in septic or sewer tanks to clean it in June 2018. Now let's hope that technology must be implemented fully in order to prohibit the entry of human.

Also this definition does not take into account cleaning of human excreta manually from insanitary latrine. As the dictionary meaning suggests that anything which is risky and dangerous is hazardous. Cleaning of insanitary latrines manually is also hazardous as many people (especially women) who are engaged in this work have suffered from various kinds of skin diseases. This process is also clear violation of right of dignity. Legalising manual scavenging with the use of protective gear and other devices is a blot on the exercise of eliminating manual scavenging completely.

Section 2(d) needs to be amended to "*hazardous cleaning*" by an employee, in relation to a sewer and septic tank means its manual cleaning by such employee by entering into the hole. Cleaning of any septic or sewer tank or railway line or any open pit manually by hand or with the use of any equipment where employee have to indulge themselves manually is hazardous."

3. Under article 10 of this act, court cannot take cognizance of any offence punishable under the act except upon filing of complain in this regard that too within three month of the occurrence of the alleged offence. People working as manual scavengers are already marginalized and belong to the lower strata of the society and it is very difficult for them to raise voice against such inequalities and inhuman behaviour. Most people who employ them are powerful it is difficult for them to raise voice against them. Court must take *suo motu* cognizance of the matter and try to remove this practise from the society as soon as possible.

*Section 10 of the Act “Court can take self-cognizance of any offence punishable under this Act and also cognizance of a complaint made by a person of the alleged commission of the offence.”*

4. Provision like *“Government should ensure that technological equipment to be used for cleaning the sewer or septic tanks as provided in the specified central or state rules without much delay. Avoidance of this requirement is punishable offence.”*
5. These employees working as manual scavengers do not get protection under labour laws which are generally applicable to organized sector. They are part of unorganised sector. Manual scavengers must be given recognition as labourer and induce all kind of protection available to other labours. They should be make entitled to all welfare measures like education, health, food, minimum wages etc.

## **CONCLUSION**

At least now after many reported incidents of manual scavenging in print media as well as in online media we all have become aware of the practise of manual scavenging and its inhuman nature. Manual scavenging is the practise of cleaning human excreta and other waste products manually by bare hands from insanitary latrines, open pits, sewer tanks, septic tanks etc. This inhuman practise is still prevalent in India even after getting banned in the year 1993 with the passing of a law *“The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993”*. When existing legislation was not sufficient to stop this practise and open defecation was continuing, again in 2013 after much agitation by group of safai kamarchari, a new legislation was passed in the year 2013 i.e. *The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013*. The attractive feature of this act

was rehabilitation of manual scavengers but sadly this obligation of government is also left unfilled.

In developing country like India, which is making its position in world power, practise of manual scavenging is very shameful. We all as a society should hang our head in shame that we are making some person among us to clean septic or sewer tanks or human excreta manually without any regard to their safety and letting them die. Whereas we, on the other hand, turn our face away to avoid such disgusting sight without even realising that some people are cleaning it for us to make us live in a safe and healthy environment.

It is not the responsibility of one individual but a collective responsibility of the government as well as each individual of the society to curb the practise of manual scavenging and make this world a better place for them also. Legislature should make an effective and reasonable legislation; executive should implement these laws made by legislation without any undue delay. Also each individual should understand their responsibilities to not discriminate against them and treat them as one among themselves. Efforts by legislature and executive would not be enough if individuals do not understand the plight of manual scavengers and need of support they need from all of us. This act is lying as a dead-end legislation from a long time and manual scavenging is still prevalent. Executives are not full—filling their duties. As an elected government they must take the responsibility on their shoulder to give right to this section of the society and make them live with dignity. Executive must work toward their rehabilitation.

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