



ILE

LABOUR LAW REVIEW

VOLUME 2 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



ILE LABOUR LAW REVIEW

APIS – 3920 – 0009 | ISSN – 2583-6161

(Free Publication and Open Access Journal)

Journal's Home Page – <https://llr.iledu.in/>

Journal's Editorial Page – <https://llr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://llr.iledu.in/category/volume-2-and-issue-1-of-2023/>)

Publisher

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PREVALENCE OF MANUAL SCAVENGING IN INDIA: THREAT TO HUMAN RIGHTS

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BEST CITATION – DEVA DHARSHINI K & SAI SHRUTHI A, PREVALENCE OF MANUAL SCAVENGING IN INDIA: THREAT TO HUMAN RIGHTS, *ILE LABOUR LAW REVIEW*, 2 (1) of 2023, Pg. 04-08, APIS – 3920 – 0009 | ISSN – 2583-6161.

ABSTRACT

Despite so many years of freedom and the efforts of the government, casteism is still deeply ingrained in our society. Members of specific scheduled castes are frequently referred to as "scavengers" in India. The Narada Samhita describes scavenging as a slave's duty. Despite the ban on manual scavenging in India the unsafe practice of manually cleaning dry toilets, open drains, sewers, or septic tanks still exists as an open secret. They are unaware of the health hazards that they are exposed to, such hazards include hepatitis, cholera, jaundice, typhoid, skin disease, and other cardiovascular diseases. And it is seen that most of the manual scavengers are scheduled castes and females who are engaged in the practice are paid less compared to men. Some people even face threats of violence if they refuse to take up the job. For manual scavengers, it is difficult to find another job due to discrimination and stigma which they cannot escape from. To eradicate and put an end to the caste-based cruel practice in India several policies were introduced to empower and rehabilitate manual scavenges in India. Indian law and international treaties both forbid manual scavenging. International organizations have demanded an end to the practice but still this menace continue in our society. Expressing serious concern over the hardships and deaths of manual scavengers while engaging in sewer cleaning and other scavenging activities the courts of India have repeatedly directed the civic bodies on proper implementation of the provisions stated in the law. Also, several cases have been intervened by the courts and issued directions to the governments. Also, several schemes such as Swachh Bharat Abhiyan insisted on a proper sanitation system and structural maintenance of the toilets. Our Research Paper would further venture into the legal protections available to the Manual Scavengers and the measures taken by the central and state government.

KEY WORDS: Manual Scavenging, Untouchability, Scheduled Caste, Sewer Death, Protections.

INTRODUCTION:

"Judged in the light of criterion, scavenging is a legal obligation imposed upon the untouchables which they cannot escape".

- Dr.B.R.Ambedkar

Despite so many years of freedom and the efforts of the government, casteism is still deeply ingrained in our society. People still today in our nation pursue careers that were

sanctioned depending on a person's caste in earlier times. Members of specific scheduled castes are frequently referred to as "scavengers" in India. Before India's Constitution was adopted in 1950, members of scheduled castes were referred to as "untouchables." Due to their membership in a scheduled caste, the scavengers were given the moniker "untouchables".



The definition of "scavenge" is "to clean away dirt or refuse." People that remove trash or debris from public areas, such as streets, are referred to as scavengers. The Narada Samhita is one piece of literature that provides evidence of the age of this system. The Narada Samhita describes scavenging as a slave's duty. It was believed that scavengers may inherit their rank. Our research paper would also venture into the social stigmas that Manual Scavengers experience in our society, as well as their legal rights and the legal protection that is accessible to them on a national and international level, with particular reference to the Human Rights Conventions.

THE MENACE OF MANUAL SCAVENGING IN INDIA:

Despite the ban on manual scavenging in India the unsafe practice of manually cleaning dry toilets, open drains, sewers, or septic tanks still exists as an open secret.³ The central government of India has adopted various policies to put an end to the hazardous practice of manual scavenging but due to the lack of proper execution of these policies and laws people remain ignorant of their rights and take up the job desperately to make a living or under social pressure. Generally, the people from Dalit – Valmiki or Hela communities engage in this lowly practice and they often lack proper safety equipment which risks infections and may carry pinworms, Rotavirus, Norovirus, and E.coli. They are unaware of the health hazards that they are exposed to, such hazards include hepatitis, cholera, jaundice, typhoid, skin disease, and other cardiovascular diseases⁴.

For manual scavengers, it is difficult to find another job due to discrimination and stigma which they cannot escape from. Even in metropolitan cities this practice still prevails and contractors prefer hiring manual scavengers illegally even though there are

numerous machines available to carry out the job. Also, several constraints of machines to approach sewers, septic tanks, dry toilets, etc contribute to manual scavenging in India. The poor economic status and lack of educational conditions forced many people to opt for jobs as scavengers. And it is seen that most of the manual scavengers are scheduled castes and females who are engaged in the practice are paid less compared to men. Some people even face threats of violence if they refuse to take up the job⁵. It is important that people should have access to dignified and safe jobs and work for livelihood. Recent surveys on manual scavengers after the prohibition of the filthy job in India:

1. A government survey identified 54,130 manual scavengers as of July 2019.
2. 814 deaths of manual scavengers have been recorded from 1993 to 2019.

LEGAL PROTECTIONS AND REHABILITATION IN INDIA:

To eradicate and put an end to the caste-based cruel practice in India several policies were introduced to empower and rehabilitate manual scavengers in India. Their rights and dignity are protected with two major pieces of legislation as follows:

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

This Act prohibits the employment of manual scavengers and doesn't permit people to engage in such practice. Conversion of dry latrines into water-seal latrines with proper construction and maintenance. The state government may appoint inspectors to ensure the purpose of the Act is being served.⁶ The offenses under this Act are cognizable and non-bailable. If not complied with the provisions of

³ *Tracing the Progress of Government Schemes Towards Eradication of Manual Scavenging*, CENTRE FOR LAW AND POLICY RESEARCH (Mar. 27, 2009, 9:29 PM), <https://clpr.org.in/blog/tracing-the-progress-of-government-schemes-towards-eradication-of-manual-scavenging/>.

⁴ Asad Ashraf, *The Truth About Manual Scavenging In India*, OUTLOOK, <https://www.outlookindia.com/magazine/story/india-news-the-truth-about-manual-scavenging-in-india/305414>

⁵ Menace of Manual Scavenging, DHRISTHIAS, <https://www.drishthias.com/daily-updates/daily-news-editorials/menace-of-manual-scavenging-3>

⁶ Ashutosh Singh, *The plight of manual scavengers in India : a legal perspective*, Blogpleaders, <https://blog.ipleaders.in/the-plight-of-manual-scavengers-in-india-a-legal-perspective/>.



the Act, they shall be subjected to imprisonment or fine.

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

Restoration of insanitary latrines or construction of sanitary latrines. The term 'manual scavenging' has widened and included not only dry latrine cleaners but also other insanitary latrine cleaners. It called for a vigilance committee at the sub-division, state, and central levels. Rehabilitation of manual scavengers and rules regarding it are provided. No one should be engaged in cleaning septic tanks or sewers without proper protective gear.⁷

3) Self Employment Scheme for Rehabilitation of Manual Scavengers, 2001

They are provided with one-time cash assistance of ₹ 40,000. They are assisted with grants loans and subsidies. The beneficiaries are entitled to select any income-generating self-employment project from a given list of indicative projects. They are provided with training to acquire new skills and entrepreneurship capabilities.

Apart from these legislative protections, their rights have been safeguarded by Article 46 and Article 339 of the Constitution of India. Also, several schemes such as Swachh Bharat Abhiyan insisted on a proper sanitation system and structural maintenance of the toilets. "The central Government should make comprehensive legislation for regulating the living and working conditions of them along with supervisory and also the mechanization of the practice."-Pandya Committee. The kaka kalelkar commission 1956 emphasized mechanization to eradicate this practice. The Malkani committee identified that the prohibition of manual scavenging starts with proper sanitation⁸.

⁷Sumedha Bhat, A detailed study of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, Blogpleaders, <https://blog.ipleaders.in/detailed-study-prohibition-employment-manual-scavengers-rehabilitation-act/>

⁸Ruchi Singh, Manual Scavenging in India: An Un-abating Problem, Indian Law Portal, <https://indianlawportal-co>

The National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS, 1992) has provided assistance to people engaged in manual scavenging. The National Safai Karamcharis finance and development corporation was established for the upliftment and benefit of the scavengers and their families. Despite the abundant laws and protections provided the evil practice of manual scavenging still prevails due to the improper implementation and lack of awareness among those engaged in this inhumane practice.⁹

INTERNATIONAL PROTECTION IN THE LENS OF HUMAN RIGHTS

Indian law and international treaties both forbid manual scavenging. International organizations have demanded an end to the practice, including the United Nations Development Program, the International Labour Organization, the World Health Organization, the United Nations International Children's Emergency Fund, and others. Apart from the protections in the constitution, the rights of manual scavengers are further protected in international instruments such as international conventions and covenants to which India is a member.¹⁰ Which include the Universal Declaration of Human Rights (UDHR), The Convention for Elimination of all Forms of Discrimination against Women (CEDAW), and the Convention on Elimination of Racial Discrimination (CERD).¹¹

a) Article 1 (UDHR)

All human beings are free and should be treated equally with dignity in the same way as others.

[in.cdn.ampproject.org/v/s/indianlawportal.co.in/manual-scavenging-in-india-an-un-abating-problem](https://indianlawportal.co.in/cdn.ampproject.org/v/s/indianlawportal.co.in/manual-scavenging-in-india-an-un-abating-problem)

⁹ Saloni Jain, Dark Side Of The Country: Manual Scavenging, Legalserviceindia, <https://www.legalserviceindia.com/legal/article-5255-dark-side-of-the-country-manual-scavenging.html>

¹⁰Heidi Elfriede El-Megrissi, Right to Dignity, not for Manual Scavengers: The neglected state of rights of scavengers in India, LSE, <https://blogs.lse.ac.uk/humanrights/2017/12/04/right-to-dignity-not-for-manual-scavengers-the-neglected-state-of-rights-of-scavengers-in-india/>.

¹¹ Manual scavenging: outlawed, yet persisting, Volkerrechtsblog, <https://voelkerrechtsblog.org/manual-scavenging-outlawed-yet-persisting/>

**b) Article 2(1) (UDHR)**

Everyone is entitled to claim their rights regardless of their sex, religion, colour, social origin, international status of their country and so on.

c) Article 23 (UDHR)

Everyone who works has the right to work in favourable conditions and is free to choose their work and receive equal pay without any discrimination.

d) Article 5 (CEDAW)

It requires state parties to take measures to get rid of prejudices and customs based on discrimination of one sex and gender inequality.

e) Article 2 (CERD)

State parties shall, when needed should take social, cultural, and economic measures to ensure the growth and protection of certain racial groups.

f) International covenant on civil and political rights (ICCPR)

It is a treaty on human rights that was ratified by India in 1979. The ICCPR forbids inequality and discrimination. It also ensures the right of people to freedom, life, dignity, and equality. The practice of manual scavenging which prevails in India violates these rights and is therefore contrary to ICCPR.¹²

g) International Labour Organisation (ILO) initiatives

ILO discrimination convention (no. 111). The ILO presented a resource handbook for ending manual scavenging. It is a guide that aims to eliminate the practice of manual scavenging in India, which is discriminative and violates human rights as well as the fundamental rights of people. This guide helps to unfold ways to use The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013,

and addresses the problem from the point of view of the stakeholders.

JUDICIAL RESPONSE TO THE PRACTICE OF MANUAL SCAVENGING IN INDIA

“Manual scavenging is a dehumanizing practice which violates the fundamental rights of people.”

–The Supreme Court of India

Expressing serious concern over the hardships and deaths of manual scavengers while engaging in sewer cleaning and other scavenging activities the courts of India have repeatedly directed the civic bodies on proper implementation of the provisions stated in the law. Also, several cases have been intervened by the courts and issued directions to the governments. The landmark judicial response is briefed below:¹³

1) Safai Karamchhari Andolan & Ors. v. Union of India & Ors. (2002)

This was a public interest litigation case filed by the petitioner Safai Karamchhari Andolan, a non-profit organization¹⁴ working for the eradication of manual scavenging, seeking proper enforcement of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Supreme Court directed the government to pay a compensation of ₹10 lakh to the dependants of the manual scavengers who died in case of sewer death and the court also insisted on other rehabilitation measures.¹⁵

2) National Campaign for Dignity and Rights of Sewerage and Allied Workers & others v. Union of India & others. (2007)

In this public interest litigation case, the Supreme Court of India identified the plight of manual scavengers, they are deprived of their

¹² Shaileshwar Yadav, The Indignity of Human Scavenging in India, LSE, <https://blogs.lse.ac.uk/humanrights/2021/03/17/the-indignity-of-human-scavenging-in-india/>

¹³ Pragya Akhilesh, Banning manual scavenging in India: A long, complex passage, <https://www.downtoearth-org.in.cdn.ampproject.org/v/s/www.downtoearth.org.in>.

¹⁴ Safai Karamchhari Andolan & Ors. v. Union of India & Ors, (2014) 11 SCC 224

¹⁵ The Link between Caste and Manual Scavenging, DHRISTIIS, <https://www.drishitiias.com/daily-news-editorials/the-link-between-caste-and-manual-scavenging>



right to equality, life, and liberty. This case was filed by the National Campaign for Dignity and Rights of Sewerage and allied workers, an organization¹⁶ that was formed to work for the welfare of these workers. In the judgment of this case, the court directed the government to provide safety equipment, insurance, health benefits, gas cylinders, and so on to those engaged in this job.

3) Change India v. Government of Tamil Nadu (2017)

This public interest litigation was filed by Change India a social welfare organization¹⁷ seeking interest for the delayed payments of compensation by the state government. The case was decided in favour of the petitioner by the court directing the state government to pay an interest at 8% per annum. The state has to protect manual scavengers and it cannot abandon its liability to compensate the families of the deceased scavenger who died in the course of manual scavenging.

CONCLUSION:

The elimination of manual scavenging is an urgent necessity. The state and society must take an active interest and play a significant part in addressing this issue and investigating all viable options for accurately assessing and eventually eliminating this behaviour. It also necessitates the involvement of all stakeholders in order to implement complete mechanization and ensure that it is made available to all individuals who are forced to participate in this despicable behaviour. Manual scavenging has been described as the most enduring sign of untouchability. It is defined by the International Labour Organization as the removal of human excreta from public streets and dry latrines, as well as the cleaning of septic tanks, sewers, and gutters. Despite its prevalence in other regions of the world, the practice is predominant in India. Therefore, the existing legal protections should be properly implemented and strict

action should be taken against the violators of the said Act. Engaging manual scavengers is against the fundamental rights upheld by the Indian Constitution, against various legal protections, and against the principles of human rights upheld by numerous United Nations resolutions. In conclusion, the status of manual scavengers in the present era of technology in every area paves the way for a drastic development, and the discrimination they experience is still a problem in society.

¹⁶ National Campaign for Dignity and Rights of Sewerage and Allied Workers & others v. Union of India & others, *AIR SCW 4916*

¹⁷ Change India v. Government of Tamil Nadu W.P.No.25726 of 2017