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THE PROHIBITION OF EMPLOYMENT AS MANUAL SCAVENGERS AND THEIR REHABILITATION ACT, 2013: ANALYSIS

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ABSTRACT

Manual Scavenging is an age old archaic practice in India. It originates from the times of Ancient India and had been imbedded as a part of our culture. Even though, the Indian Constitution imbedded the abolition of untouchability as a Fundamental Right, the practice did not come to an end. The work of Manual Scavengers always fell to the lowest caste in the Indian social-strata leading to multiple deaths and exploitation. Therefore, legislative measures were taken by successive governments to tackle the issue of Manual Scavenging and uphold the right to life and personal liberty. Even today, with legislations in place we see that the issue of manual scavenging has not ceased to exist and till now we have instances of health hazards and deaths due to the exploitative practice.

The Author in this paper studies the current legislative effort in the form of a comment i.e. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. The study deals with the problem of manual scavenging and the history of the legislative actions taken by the government. The paper concludes by talking about the effectiveness of the act and the loopholes that the act must fill for proper implementation.

Keywords: Manual Scavenging, Untouchability, Prohibition, Rehabilitation

INTRODUCTION

The dictionary meaning of 'scavenge' is to clean streets.² 'Manual Scavenging' is distinguished from the dictionary meaning and has been defined in the act 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...”³

Need for the Legislation

Manual Scavenging in India is associated with caste. The practice can be traced back to ancient India at the inception of the caste-hierarchy where lower caste groups were employed for the task of manual scavenging.⁴ Within Dalits there exists various sub-castes such as of 'Valmiki' or 'Hela' who have been placed at the bottommost of the social hierarchy are given this job with no knowledge the health impacts that follow from the job.⁵ The community becomes prone to diseases such as "Hepatitis A, E.

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² Cambridge Dictionary, 'Scavenge', CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/dictionary/english/scavenge>

³ Sec. 2 (g), The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

⁴ Abhishek Gupta, *Manual Scavenging: A Case of Denied Rights* ,ILI Law Review, (2016), <http://ili.ac.in/pdf/paper3.pdf>.

⁵ Subhajit Goswami, *Manual scavenging: A stinking legacy of suffocation and stigma* , DownToEarth, (September 11, 2018), <https://www.downtoearth.org.in/news/waste/manual-scavenging-a-stinking-legacy-of-suffocation-and-stigma-61586>.

coli, Rotavirus, Norovirus, and pinworms”.⁶ It is reported by down to earth that “sewer workers die as young as 40 owing to various respiratory issues due to repeated handling of human excreta.”⁷ In *Safai Karamchari Andolan v. Union of India* it was acknowledged 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 % are Dalits, compelled to undertake this denigrating task”⁸ According to the *Human Rights Watch* the problem does not merely end at caste but is also a gender issue, where 95% of the manual scavengers employed are women who are underpaid sometimes for merely a sum of ten rupees.⁹

A study conducted by *Planning Commission* in 1995 revealed that more than six lakh people in India were employed as Manual Scavengers.¹⁰ According to the Ministry of Social Justice and Empowerment the estimates in 2014 were that, “at least 11,000 manual scavengers are still employed and that 4.15 lakh (nearly half a million) insanitary latrines still exist in seven states alone.”¹¹ In 2018 the Ministry estimates around “13,657 manual scavengers in 13 states.”¹² And the practice extends to the private sector along with the public sector. According to activists, in the public sector largest employer of manual scavengers is the arguably the Indian Railways that needs manual clearing of the tracks of sewage and human waste.

For years after the legislation of the 1993 Act, there was little punishment for the hiring of workers for manual scavenging. But things have begun to change for the better. These statistics, although from the Government of India, do not reflect the true picture. According to the National Commission for *Safai Karamchari* (cleaning workers), it is estimated that, “26 lakh insanitary latrines across the country.”¹³ The Supreme Court in the Landmark case of *Safai Karamchari Andolan v. Union of India* recognised the lacuna and failure of the Employment of manual scavengers and Construction of dry latrines (Prohibition Act) 1993 and the need for the aforementioned act of 2013’s effective implementation.¹⁴ Therefore the author argues that there is a need for the aforementioned legislation in Country of India coupled with effective implementation for which suggestions will be mentioned in the paper.

SCOPE OF THE LEGISLATION

History of the Legislation

In 1993, the Government of India enacted the first legislative measure aimed at the eradication and elimination of the practice altogether by passing a statute that expressly prohibited and prescribed punishment for the hiring of manual scavengers as well as the construction of dry latrines.¹⁵ However,

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Safai Karamchari Andolan v. Union of India*, 2014 (4) SCALE 165

⁹ Human Rights Watch, *Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India*, (August 25, 2014) , <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>.

¹⁰ Narasimha Rao, *Employment of Manual Scavengers: A Curse on Human Dignity*, 2015 LawAsia J. 77, 78 (2015).

¹¹ Press Information Bureau, Government of India, *Review of the Implementation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act by Minister of Social Justice and Empowerment*, (August 21, 2014), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=108949>.

¹² Press Information Bureau, Government of India, *Rehabilitation of Manual Scavengers*, (July 31, 2018), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=181235>.

¹³ Press Information Bureau, Government of India, *National Commission for Safai Karamcharis Reviews Implementation of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013*, (September 29 2014), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=110140>.

¹⁴ *Safai Karamchari Andolan v. Union of India*, 2014 (4) SCALE 165

¹⁵ The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India).

the act turned out to be majorly unsuccessful and ineffective because it required the State Legislatures to pass separate enactments rather than being directly binding on them.¹⁶ Secondly, irrespective of the states passing a separate enactment, the act did not use authoritative wordings. For instance, the Act used the word “*may*” rather than “*shall*” while directing the states to prohibit manual scavenging¹⁷ and developing schemes to stop the construction and use of dry latrines.¹⁸ Thirdly, the act was not an effective deterrent which was due to the limited penalties it prescribed. The punishment was a one-year prison term and a minimal fine.¹⁹ Although Section 8 of the Act permitted imprisonment up to two years yet it was proved to not be enough.²⁰ Furthermore, the 1993 Act discouraged the prosecution of the violators by providing broad exemptions under the act. For example, a company could only be prosecuted if it had the knowledge of employment²¹ which would seem to promote the ambit of denial and be anti-thesis to the principle of strict liability. Due to the above reasons there were no arrests under the act for 20 years.²²

Features of the 2013 Act

In light of the drawbacks and failure of the 1993 act, the Indian Government passes a second legislation to show its resolve and commitment to prohibiting manual scavenging.²³ The 2013 act did seem to remedy certain issues that were faced previously.²⁴ Yet, it was not full proof and did fail in certain aspects.

The 2013 act was enacted with a twin objective, firstly, primary objective of assuring dignity of individual in accordance with the promises in the preamble of the Constitution read with the protections given to protect the weaker sections of the society throughout the fabric of the Constitution vis-à-vis social and economic justice. Secondly, the 2013 Act seeks to remedy the injustice and indignity suffered by manual scavengers through the course of history by rehabilitation and leading them to a life of dignity.

The new provisions have been improved by defining specific expressions mutually exclusive of each other such as, ‘*hazardous cleaning*’²⁵ ‘*insanitary latrine*’²⁶ ‘*manual scavenger*’²⁷ and ‘*sewer*’.²⁸ Furthermore, provisions have been made in the act for the mechanism to identify insanitary latrines, demolition and the construction of sanitary community latrines along with their hygienic upkeep at all

¹⁶ Ch. 1 (1)(2), The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India).

¹⁷ Ch. II (3)(1), The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India).

¹⁸ Ch. III (6)(1) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India).

¹⁹ Ch. 4 (14) The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India).

²⁰ *Ibid.*

²¹ Ch. 4 (14)(1), The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Act No. 46, Acts of Parliament, 1993 (India)..

²² The Hindu Editorial, *Get Serious*, The Hindu (September 13, 2013), <http://www.thehindu.com/opinion/editorial/get-serious/article5120916.ece>.

²³ The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

²⁴ *Ibid.*

²⁵ Section 2 (d) (1), The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

²⁶ Section 2 (e) (1), The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

²⁷ Section 2 (g) (1), The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

²⁸ Section 2 (q) (1), The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

times. The act also casts an obligation on the local authorities to carry out a survey of insanitary latrines, construction of sanitary community latrines and hygienic upkeep of the latrines.²⁹ The act also prohibited the construction of insanitary latrines.

The act cast an obligation on the employers to firstly not employ any person as a manual scavenger and secondly, to relieve any person who is already employed as a manual scavenger forthwith. Furthermore, insanitary latrines had to be demolished or converted by the occupants within the time stipulated in the act. In case of failure, the enforcement power of the same was given to local authorities to recover the cost.³⁰ The Act further includes provisions that nullify any contract, agreement or instrument employing or engaging a person for the purposes of scavenging, and enjoining the employer to retain the person so employed or engaged without retrenchment, subject to that person's willingness and on the same emoluments.³¹ There is a prohibition on local authorities or agencies from employing or engaging persons for hazardous cleaning a sewer or a septic tank.³² Punishments are also provided for contravention of key provisions.³³ In the celebrated case of *Safai Karamchari Andolan v. Union of India*³⁴ the Hon'ble Supreme Court directed states to rehabilitate under the provisions of Chapter IV of the act, all the manual scavengers included in the list under Section 11 and 12.

Secondly, the court mandated that to prevent manual scavengers in the future the following provisions need to be included in the act

1. Sewer Deaths- include safety gear and non-inclusion be made a criminal offence. Further a compensation of Rs. 10 lakh be given to family of deceased.
2. Railways should take time bound strategy to end scavenging on tracks
3. Provide support to safai karamcharis
4. Make speedy and easy access to court for receiving their legitimate dues.

In *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*³⁵ the Supreme Court passed a landmark judgement where they highlighted the plight of the scavengers and sewage workers that too without any kind of safety equipment. The Court advocated for the poor and illiterate by directing the Delhi Jal Board to pay the families of deceased higher compensation.

SHORT COMINGS IN THE ACT

1. Definition of 'manual scavenger'

The explanation to the definition of 'manual scavenger' under s 2(g)(1) of the 2013 Act in spite of the Act's intention to prohibit the employment of manual scavengers - still leaves scope for the engagement of scavengers. The definition of 'manual scavenger' says that '*a person with protective gear shall not be deemed to be manual scavenger.*'³⁶ The very act of manual

²⁹ Section 4, The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

³⁰ Section 5, The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

³¹ Section 6, The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

³² Section 7, The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

³³ Section 8 and Section 9, The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

³⁴ *Safai Karamchari Andolan v. Union of India*, 2014 (4) SCALE 165

³⁵ *Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers*, 2011 (8) SCC 568.

³⁶ The Prohibition of Employment as Manual Scavengers And Their Rehabilitation Act, 2013, Act No. 25, Acts of Parliament, 2013 (India).

scavenging must be punished whereas the current act leaves scope for continuation of the practice.

2. Barriers to the court

The 2013 Act, although it provides for rehabilitation, does not specify any concrete measures of rehabilitation that are to be implemented. The Act is also not clear on the mechanism of implementation, nor is it clear whose responsibility it is to frame and implement the schemes.

3. Penalties

The 2013 Act, as explained in the preceding paragraphs, prescribes penalties for contraventions of the key provisions against employing a manual scavenger or constructing a dry latrine, or for employing a person for the hazardous cleaning of a sewer or septic tank. But the penalties provided are very meagre.

Suggestions

1. Remove Sec. 2 (d) so as to ban manual scavenging as a whole.
2. Introduce proper technology
3. Speedy Compensation and Rehabilitation measures
4. Greater Penalty and introduction of Accountability
5. State must provide alternate employment measures
6. Link MNREGA with the present act
7. Increase role of local authorities including Railways.

CONCLUSION

The biggest challenge to the path of complete eradication of manual scavenging is implementation of the existing legislation. Though, the act has now become more stringent yet the cases that are reported are next to minimal in comparison to the widespread practice that exists even today. The authorities upon whom the responsibility is casted must make sure that they use the law to stop the practice rather than turn a blind eye. The act in itself requires only limited changes, but even if the current act is implemented well, it will go a long way in reducing and gradually eradicating the abhorrent practice of manual scavenging.