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Manual Scavenging and Human Rights Violations in India: A Legal Analysis

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Abstract

India is a unique country with a diverse population. The people of India are divided by language, culture, religion, food habits, etc. However, they still live in harmony as citizens of one united country. The Constitution of India (1950) ensures that all are equal before the law and are treated equally, but manual scavenging remains a tragic issue. Instead of eradicating manual scavenging, there is a growing problem of manual scavenging in our society. Manual scavengers are involved in the removal of human waste from dry latrines built in households. These latrines have been converted into many places to be attached to septic tanks or pits, which require manual scavengers to clean them by entering the tanks or pits. In India, numerous legislations and policies have been created to eliminate the inhumane practice of manual scavenging. These were the result of national-level committees established to eradicate the social evil of manual scavenging. However, it remains a challenge for governments to implement legislation that would eradicate and monitor this practice and empower manual scavengers. This analytical study focuses on the current practice of manual scavenging and ways to eradicate it. The paper also discusses manual scavenging practices, legislation for prevention, violations of human rights due to manual scavenging, and judicial decisions related to manual scavenging in India.

Keywords: Ambedkar, Manual scavenger, Scheduled caste, Supreme Court of India, Untouchability.

Introduction

India is a unique country with a vast yet diverse population. The people of India are divided by language, culture, religion, food habits, and more. Despite these differences, they live in harmony as citizens of one united country (Ministry of Social Justice and Empowerment [MSJE], 2022). This unity among diversity sets India apart from the rest of the world. The people of India consider everyone in the world as their relatives (India Today, 2020, September 26). However, certain practices based on caste and religion have marred this ancient civilization (Ambedkar, 1948). Some of these practices, like sati, have been eradicated from Indian society. Yet, there are still intolerable practices prevalent in Indian culture, such as manual scavenging (National Commission for Safai Karamcharis [NCSK], 2020). Great leaders like Mahatma Gandhi (Gandhi, 1927) and Dr. B.R. Ambedkar (Ambedkar, 1948) have condemned these practices and dedicated their lives to eliminating them. The Constitution of India (1950) guarantees fundamental rights such as equality before the law (Art. 14), equal protection of the law (Art. 15), and the right to life (Art. 21).



Both the Union Government and its various State Governments have recognized the gravity of the issues of manual scavenging and have initiated steps towards its eradication (see, Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). The Supreme Court of India (in *Safai Karamchari Andolan v. Union of India*, 2014) has given directions to the Government of India and State governments in relation to granting relief to individuals involved in manual scavenging. Nevertheless, the issue of manual scavenging continues to persist mostly among disadvantaged communities (see NCSK, 2020). Hence, the issue of the eradication and rehabilitation of manual scavengers still poses challenges for Governments and policymakers that consist of social, political, economic, legal, constitutional, and human rights dimensions (MSJE, 2022).

This paper has adopted a legal doctrinal approach and the primary sources are relevant legislations (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013) and official reports (MSJE, 2022; NCSK, 2020), while secondary sources will include books (Ambedkar, 1948; Gandhi, 1927), journal articles, and judicial case laws (e.g., *Safai Karamchari Andolan v. Union of India*, 2014) on an assessment of how manual scavenging may be eradicated from a legal point of view.

1. Manual Scavenging

The term “scavenge” means ‘to clean away dirt or refuse’ (Oxford English Dictionary, n.d.). People engaged in cleaning dirt or waste from public areas, such as streets, are customarily known as “scavengers”. In India, the term “scavengers” is often associated with people belonging to certain scheduled castes (Ambedkar, 1948). Before the adoption of the Constitution of India in 1950, people belonging to the scheduled castes were considered “untouchables”. Since scavengers belong to the scheduled castes, they were labeled as “untouchables”. Untouchability in any form is abolished under Art. 17 of the Indian Constitution (1950) (Constitution of India, 1950, Art. 17).⁵

To remove the stigma associated with the term scavengers, people engaged in cleaning public places, such as roads, are now renamed as “sanitary workers” or *safai karmacharis*⁶ (MSJE, 2022). The term *safai karmacharis* includes people

⁵ Yet, this disgraceful practice is continuing. Untouchability, though intended to be abolished, has not vanished in the last 70 years. Supreme Court of India observed in *Union of India v State of Maharashtra*. Supreme Court of India. (2019, October 1). *Union of India v. State of Maharashtra*. <https://indiankanoon.org/doc/90225896/>

⁶ It is like Gandhi’s attempt to refer to individuals from lower castes as *Harijan* (meaning “children of God” or “beloved of God”) was a symbolic gesture aimed at restoring their dignity. However, such renaming efforts failed in eradicating untouchability in India. The persistence of practices like manual scavenging

engaged in sweeping roads and other public places (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). In some areas, as part of cleaning streets and other public places, *safai karmacharis* are also expected to remove human excreta (night soil) and animal excreta, with bare hands or minimal tools such as brooms, metal scrapers, etc. (NCSK, 2020). Manual scavengers were also involved in removing human feces from dry latrines constructed in households (MSJE, 2022). Later, in many places, these latrines were converted and attached to septic tanks or pits.

Manual scavengers were involved in the process of cleaning septic tanks or pits by going inside them (*Safai Karamchari Andolan v. Union of India*, 2014). Where toilets are connected to a sewer system, the job of manual scavengers includes removing any blockages in the sewer system by entering it through maintenance holes (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). These activities, in which fellow humans are engaged without any mechanical devices or protective gear, are demeaning (NCSK, 2020). Therefore, the term “Manual Scavengers” is used here to denote people engaged in cleaning septic tanks, pits, and dry latrines (MSJE, 2022).

1.1 History of the Practice of Manual Scavenging

The historical background of identifying manual scavenging and manual scavengers is quite uncertain. It has been recorded through sources that this system was ancient, as referred to in *Narada Samhita* (Katiyar, 2014; Kane, 1930; Srivastava, 1997). In *Narada Samhita*, scavenging is prescribed as the duty of a slave (Jolly, 1976; Katiyar, 2014; Kane, 1930; Srivastava, 1997). Slaves were a class of defeated people in wars who were captured, won in gambles, or migrated along with their masters (Trivedi, n.d). Slaves were considered objects in some cases, and in some cases, they were treated as objects belonging to the community (Ambedkar, 1948).

In *Narada Samhita*, it is stated that five types of people are bound to obedience: *pupils, apprentices, hired servants, agents, and slaves* (Jolly, 1976; Katiyar, 2014; Kane, 1930; Srivastava, 1997). Removing impurities, especially urine and feces, is listed as one of the duties of people bound by obedience (Jolly, 1976; Katiyar, 2014; Kane, 1930; Srivastava, 1997). The work done by pupils, apprentices, hired servants, and agents is considered pure work, while the work of the slave is considered dirty work (Ambedkar, 1948).

underscores that a mere change in terminology is insufficient. What is urgently needed is a fundamental shift in societal attitudes and mindsets to bring about meaningful and lasting change.



Ancient texts also prescribe the duties of people in all four varnas (Brahmin, Kshatriya, Vaishya, and Sudra) (Jolly, 1976; Katiyar, 2014; Kane, 1930; Srivastava, 1997). There are arguments about whether the varna of people is to be determined based on their birth or acquired abilities (Ambedkar, 1948; Jaffrelot, 2017, July 17). However, there is no doubt that varnas became attached to people, and people became attached to varnas by birth as caste at some point in time (Jolly, 1976; Katiyar, 2014; Kane, 1930; Srivastava, 1997). Regardless of the origin of the practice, people of lower castes who did menial jobs such as cleaning houses and removing impurities like urine and faeces were considered untouchable, and their offspring were also regarded as untouchable (Ambedkar, 1948). The job of the scavenger was deemed inheritable.⁷ Laws ostensibly guaranteeing the appointment of scavengers' family members aimed at tying them to survive by that menial job (Ambedkar, 1948).

Vidhya Ravindranathan (n.d) argues that manual scavenging was introduced in British India due to the availability of cheap labor. She explains:

“Through unmechanized methods of disposal and collection, they shifted the costs of drainage and conservancy to the cheap labor of the scavengers. There were two types of scavenging: public or outdoor street scavenging, and private or house scavenging. The two main methods for transporting and collecting night soil were the dry conservancy and the bucket system. The scavenging operations primarily involved sweeping and removing dirt from streets, cleaning and removing sludge, flushing drains, and cleaning and removing night soil, which was carried out by a large labor force consisting of men and women scavengers, cart coolies and drivers, bullocks, latrine boys, and girls“ (Ravindranathan, n.d).

Dr. B.R. Ambedkar was the first person to raise his voice against the nefarious designs inherent in pre-independence legislation that placed manual scavengers at the bottom of the social hierarchy (Ambedkar, 1948). Commenting on the criminalization of refusal to do scavenging work and supporting the sweepers' strike in Bombay, he described the Acts as sanctions for forced labor and perpetuation of slavery through the legitimacy drawn by state power (Ambedkar, 1948, 1989). He explained his views as follows:

“People may be shocked to read that there exists a legal provision that sanctions forced labor. Beyond doubt, this is slavery. The difference between free labor and slavery lies in this. Under slavery, a breach of a contract of service is an offense punishable with a fine or imprisonment. Under free labor, a breach of the service contract is only a civil wrong for which the laborer is liable only for damages. Judged

⁷ The customary rights of the scavenger are evident from Section 20(1) of the United Provinces Municipalities Act II of 1916.

in this light of the criterion, scavenging is a legal obligation imposed upon the untouchables which they cannot escape“ (Ambedkar, 1948, p. 23; Ambedkar, 1989, p.257).

Traditionally, local bodies such as municipalities are responsible for providing sanitary services in their respective areas (Ministry of Housing and Urban Affairs [MoHUA], 2020). They engage sanitation workers (previously called scavengers) to clean work in their specific local areas (MoHUA, 2020). In some municipal laws, in addition to mandating cleaning work as the duty and obligation of the municipalities, it was also stipulated that anyone, other than the sanitation workers engaged by the municipality, involved in the removal of night soil would be punished⁸ (MoHUA, 2020). Providing public restrooms, approving the construction of buildings with facilities like privies, lavatories, and urinals, as well as the collection and disposal of solid waste, are the responsibilities of municipal bodies in India (Constitution of India, 1950, Art. 243-W). According to Article 243-W read with the Twelfth Schedule of the Constitution of India (1950), “Public health, sanitation, conservancy, and solid waste management“ fall under the purview of Municipalities.

Providing a customary right to employment is one way to ensure a continuous labor supply (Ambedkar, 1948). The poor socio-economic and educational conditions compelled many people to choose jobs as scavengers⁹ (National Commission for Safai Karamcharis [NCSK], 2020). Once they are engaged in these services, they must fulfill all obligations to clean impurities, including night soil (NCSK, 2020). One reason for continuing manual scavenging for generations is to overcome their socio-economic challenges (NCSK, 2020). This situation led Dr. B.R. Ambedkar (1948, 1989) to compare it to slavery.

Many philosophers have debated the balance between individual rights and societal control over those rights (Paine, 1791). However, they never questioned the rights of an individual (Paine, 1791). These rights are known as natural rights, which are sacred and inherent (Paine, 1791). Men are born equal (Paine, 1791) and The *Thirukkural*, in verse 972, conveys the idea that all human beings are born equal, emphasizing that all lives begin under the same circumstances, regardless of social status or background. Thomas Paine (1791) argues, “*Man has no property in man; neither does any generation have a property in the generations that follow*“ (p. 32). Paine (1791) strongly opposes any infringement on the natural rights of

⁸ A provision in the Houston municipal laws read as, “Section 99. City scavenger, etc., only to remove night soil etc., penalty – It shall be unlawful for any person other than the city scavenger, or those in his employ, to engage in the removal of night soil or pumping or otherwise cleaning any vault, cesspool, or septic tank in the city. Any person so offending shall be fined not less than \$10 nor more than \$50 for each offence to be recovered before the Corporation Court. Public Health Report, (2014) Vol. 29.

⁹ In U.S.A. also the night soil was initially removed mostly by African-Americans and immigrants.



man, which he believes were never relinquished to society. The power of the community, which represents the combined rights of individuals, is flawed and should never be used to violate natural rights (Paine, 1791).

In his words, “*When I contemplate the natural dignity of man; when I feel (for Nature has not been kind enough to me to blunt my feelings) for the honour and happiness of its character, I become irritated at the attempt to govern mankind by force and fraud, as if they were all knaves and fools, and can scarcely avoid disgust at those who are thus imposed upon*” (Paine, 1791).

Dr. B.R. Ambedkar (1948) also shared this sentiment, stating, “*All human beings are made of the same earth and have the right to demand good behavior. It is evident that slaves performed menial tasks, including scavenging*” (p. 56). Forcing ‘free men’ to undertake degrading tasks and treating them as untouchables goes against the principles of a civilized society. Perpetuating this intrusion by labeling the occupation as hereditary and denying growth to future generations is a grave injustice (Ambedkar, 1948). In the case of *Union of India v State of Maharashtra* (2019), the Supreme Court noted that “*Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all individuals are treated as equals in all aspects and not as untouchables, oppressed, or objects of exploitation. It also implies that they are not meant to serve the elite class based on caste*” (para. 12).¹⁰

1.2 Prevalence of Manual Scavenging in India

As noted earlier, in India, manual scavenging is typically undertaken by people from the Scheduled Caste¹¹ (Feachem, McGarry, & Mara, 1977, as cited in Joshi & Ferron, 2007; National Commission for Safai Karamcharis [NCSK], 2020). The scavengers are known by different names in India, with ‘Bhangi’ being one of them¹² (Ministry of Social Justice and Empowerment [MSJE], 2022; Thekaekara, as cited in Schwarz, 2006; Shukla, 2009). The atrocities inflicted on people belonging to the Scheduled Caste were numerous (Ambedkar, 1948). They were not allowed to enter temples or eateries, where tea and water were served to them in separate

¹⁰ Supreme Court of India. (2019, October 1). *Union of India v. State of Maharashtra*. <https://indiankanoon.org/doc/90225896/>

¹¹ Manual emptying of latrines has been prevalent in Africa and China for many years, but this was not assigned to members of any particular social group or gender.

¹² Bhangis are by caste and occupation human scavengers or sweepers. They shovel excrement from dry latrines throughout India. They are known by different names in different states—Bhangi, Thotti, Paki, Madiga, Balmiki, Churhra and Mehtar.

glasses, etc.¹³ (NCSK, 2020). The manual scavenging and unsanitary conditions in which the scavengers are expected to work only increased their stigma (Safai Karamchari Andolan v. Union of India, 2014). Mahatma Gandhi (Gandhi, 1927) tried to remove this stigma and make people from other castes realize that scavengers are also fellow human beings. He spent considerable time with scavengers, explaining his reasoning as follows (Prasad, 2017):

“If I lived apart from Harijans, what right had I to question the actions of others who went further in their adherence to untouchability. But whether others changed their minds or not was not for me to judge. If it was my duty to reside in Harijan quarters, I must perform it irrespective of the reaction of others. This is the thought which is possessing me and goading me to the adumbrated action“ (Gandhi, 1927, p. 45).

The actual number of manual scavengers in the country is unknown (NCSK, 2020). According to the details gathered by the National Safai Karmacharis Finance and Development Corporation (2019), the number of manual scavengers in 18 identified States as of 20.08.2019 was 42,303 (National Safai Karmacharis Finance & Development Corporation. (Survey 2018). There is no organized data collection and reporting from the States concerning manual scavengers (NCSK, 2020). One incident exemplifies the inaccuracy in reporting. In a case in Gujarat Lok Adhikarsangh v State of Gujarat (2015), the State Government filed an affidavit stating that Gujarat did not have any manual scavengers.¹⁴ This affidavit was filed in response to an order dated 19.08.2014 by the High Court, which brought to light a statement made in Parliament on 05.08.2014:

*“A question was raised before the Lok Sabha by a member regarding whether the Government had surveyed to ascertain dry toilets and the number of manual scavengers in the country, along with details and outcomes, State-wise. The question was answered on the floor of the house on 5.8.2014, along with the data. The said table indicated that in Gujarat, the number of latrines serviced manually was 2566. The statement made by the Minister on 5.8.2014 contradicted the State Government’s claim of having surveyed in 2013 and published a report on 7.1.2014 stating that no manual scavenging was being done in the municipal areas of Gujarat. The AMC in reply did not provide any details about areas outside the municipality.“*¹⁵ (Safai Karamchari Andolan v. Union of India, 2014).

¹³ Sections 3, 4 and 6 of the Protection of Civil Rights Act, 1955 listed some of these practices and made them punishable.

¹⁴ Lok Adhikarsangh v State of Gujarat. <http://indiankanoon.org/doc/68495042>.

¹⁵ The number of manual scavengers in Gujarat was 67,195. NSSO 47th Report.



2. Legislative and Administrative Measures

In India, numerous legislations and policies were created to eradicate the inhumane practice of manual scavenging (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). These were the result of national-level committees established to eliminate this social evil (NCSK, 2020). However, it was a challenge for the government to enact legislation that could eradicate, monitor, and empower manual scavengers (Safai Karamchari Andolan v. Union of India, 2014).

Just as slavery became a significant issue in the U.S.A immediately after the Declaration of Independence, untouchability became a severe issue in India after independence (Ambedkar, 1948). Even after the adoption of the Constitution in 1950, deep-rooted caste-based untouchability persisted (Constitution of India, 1950, Art. 17). In response, the Parliament of India enacted the Untouchability (Offences) Act, 1955, to eradicate untouchability (Government of India, 1955). Initially, the Act focused solely on untouchability. In 1976, Section 7A was added, making it an offense to compel anyone, based on untouchability, to engage in scavenging (Protection of Civil Rights Act, 1955). However, this Act did not successfully eliminate untouchability or manual scavenging (NCSK, 2020). The Protection of Civil Rights Act, 1955, as amended in 1976, proved ineffective in addressing manual scavenging (Safai Karamchari Andolan v. Union of India, 2014).

In 1993, the Parliament also passed the National Commission for Safai Karamcharis Act, 1993, to establish a commission advising the government on matters related to safai karamcharis and rehabilitation (National Commission for Safai Karamcharis Act, 1993). This Act was initially set to expire in 1997 but has been extended. The Protection of Human Rights Act, 1993, established Human Rights Commissions at the national and state levels to address human rights violations (Protection of Human Rights Act, 1993). Although this Act does not directly address manual scavenging, it is relevant due to the infringement on fundamental rights and human rights violations.

In 2013, Parliament passed the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (“2013 Act”) to prohibit employment as manual scavengers and provide rehabilitation for manual scavengers and their families (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). This Act was not passed under Article 252(1) of the Constitution (Constitution of India, 1950). Rehabilitation of manual scavengers is an additional factor covered in the 2013 Act compared to the 1993 Act. The 2013 Act states that its provisions would override those of the 1993 Act or any other in case of inconsistency (Prohibition of Employment as Manual Scavengers and their

Rehabilitation Act, 2013, Sec. 2(d)). Section 2(d) of the 2013 Act defines “*hazardous cleaning by an employee, concerning 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.*” (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, Sec. 2(d)).

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 prohibits the engagement of manual scavengers without any protective gear or cleaning devices (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, Sec. 7). Municipalities engaged contractors who were supposed to provide protective gear to manual scavengers, but often failed to do so (National Commission for Safai Karamcharis [NCSK], 2020). Section 33 of the 2013 Act obligates local authorities and State Governments to use modern technologies for cleaning sewers, etc. (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, Sec. 33).

These enactments created a complex system of obligations and punishments dealing with the same issue. The engagement of manual scavengers is prohibited under various acts, including the Protection of Civil Rights Act, 1955 (Protection of Civil Rights Act, 1955), the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993), and the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). Since manual scavengers are mainly from scheduled castes, it may also be considered an atrocity under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989). Despite laws and authorities established since independence, manual scavenging continues in the country (NCSK, 2020).

The Central Government has implemented various schemes to eliminate manual scavenging and rehabilitate manual scavengers (Ministry of Social Justice and Empowerment [MSJE], 2022). The International Labour Organisation also recognizes these schemes (International Labour Organisation [ILO], 2019). The Central Government has established the National Safai Karamcharis Finance & Development Corporation to provide financial assistance for the rehabilitation of sanitary workers (National Safai Karamcharis Finance and Development Corporation, 2019).



2.1 Committees and Commissions for the Welfare of Manual Scavengers

From time to time, governments have set up various Committees and Commissions to examine the existing conditions of manual scavengers and propose remedial actions (National Commission for Safai Karamcharis [NCSK], 2020). The following Committees and Commissions have been formed for the welfare of manual scavengers: Barve Committee (1949), Kaka Kalekar Commission (1953), the Central Harijan Welfare Board (1956), Malkani Committee (1957), the Committee on Customary Rights (1965), and the Pandya Committee (1969) (Ministry of Social Justice and Empowerment [MSJE], 2022). The Kaka Kalekar Committee identified outdated techniques of removing night soil as one of the reasons for the continuation of manual scavengers (Government of India, 1955). The Malkani Committee found that the existence of dry latrines was a significant reason for the continuation of manual scavengers (Government of India, 1957). The findings of these Committees and Commissions indicate that the main reason behind the existence of manual scavengers is the poor sanitary management by local bodies such as municipalities (NCSK, 2020). Despite numerous schemes brought by both Union and State Governments to improve the infrastructure of local bodies for better sanitation, the reluctance of these bodies to pass on the costs of maintenance of these infrastructures to residents through property tax or improper management of the sanitary system are the main reasons for the continuation of the manual scavenging system (MSJE, 2022).

2.2 Judicial Response to Manual Scavenging

Traditionally, courts decide disputes between parties and declare the law, while policy decisions are the responsibility of the executive branch. However, in the absence of laws or policies, courts sometimes issue directions to governments, known as judicial activism.¹⁶

¹⁶ Judicial activism has faced criticism, and caution was advised by Chief Justice M.N. Venkatachaliah (Retd) in a speech delivered on the Constitutional Day Celebrations held in 2016; “*The proposition that “when there is no law the executive must step-in and when the executive also does not act the judiciary should do so” is an attractive invitation: but it is more attractive than constitutionally sound. Executive power is of course coextensive with legislative power. A field unoccupied by law is open to the executive. But there is no warrant that under those provisions, the courts can come in and legislate. The argument that the larger power of the court to decide and pronounce upon the validity of law includes the power to frame schemes and issue directions like legislation may equally be open to question. This is typically the converse case of Bills of attainder; Legislative determination of disputes/rights has been held to be illegal and impermissible. Ameerunnisa, Ram Prasad Narayan Sahi, and Indira Gandhi are some of the telling cases. By the same logic and converse reasoning, judicial legislation, which is a judicial determination of policy and law is difficult to be justified jurisprudentially. It is one of the basic constitutional principles that just as*

In *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* (n.d.), the Delhi High Court's power to issue directions for payment of Rs.79,000/- to the Legal Services Committee, in addition to the compensation of Rs. 1.71 lacs already paid by the contractor to the representatives of the deceased workmen, was at issue. The plight of manual scavengers was brought to the High Court's attention, prompting one of its judges to examine the issue and propose a solution to the problems faced by sewage workers. After reviewing the judge's views, the Court issued several directions and issued a notice to the Chief Executive of the Delhi Jal Board, inquiring why the earlier order to provide protective gear to sewage workers had not been followed. The Supreme Court rejected the challenge to the High Court's jurisdiction, citing the *Vineet Narain* and *Visaka* judgments (1997).

The court held that;

"It is the duty of the judicial constituent of the State, like its political and executive constituents, to protect the rights of every citizen and every individual and ensure that everyone can live with dignity. Given the option, no one would like to enter the maintenance hole of the sewage system for cleaning purposes. Still, some people are forced to undertake such hazardous jobs, hoping that they will be able to make some money and feed their families at the end of the day. They risk their lives for the comfort of others. Unfortunately, for the last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and oppressed, including those who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter a maintenance hole without safety gears and proper pieces of equipment. They look the other way when the body of a worker who dies in the maintenance hole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under a constitutional obligation to take cognisance of the issues relating to the lives of the people who are forced to undertake jobs that are hazardous to life. It will be a tragic and sad day when the superior Courts shut their doors for those who, without any motive for personal gain or other extraneous reasons, come forward to seek protection and enforcement of the legal and constitutional rights of the poor, downtrodden, and disadvantaged sections of society."

The Hon'ble Supreme Court of India in *Dr. Balram Singh v. Union of India* (WP Civil No 324/2020) issued directions to the Union Government that it should take appropriate measures to ensure full rehabilitation, including employment,

courts are not constitutionally competent to legislate under the guise of interpretation so also neither Parliament nor State Legislatures can perform an essentially judicial function."



education, and skill training, to the wards of manual scavengers. Moreover, the *Registrar General and UOI and others (WP 676/24)*, Karnataka High Court expressed displeasure for “Zero Conviction Rate” concerning unabated manual scavenging activities in the state despite a ban and insisted the concerned authority to bring the case to the logical end even though there is a time bound mechanism for implementation of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. In addition to that Change India rep by its director, Mr. A. Narayanan v Government of Tamil Nadu (W.P.Np.25726 of 2017) the Madras High Court held that the State Government is under a bound duty to prohibit manual scavenging and cannot be evaded from responsibility to compensate manual scavengers who lose their lives while doing the works in manual scavenging because of the inability of the State Government to eradicate the manual scavenging.

Subsequently, in *Safai Karmachari Andolan v Union of India (2014)*, the Supreme Court directed that the dependents of the deceased manual scavengers who died while working in sewers, etc., should be paid a compensation of Rs. 10 lakhs. The settlement of Rs. 10 lakhs directed to be paid by the court is not found in the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, or any other law. This *ad hoc* lump-sum amount is different from the compensation prescribed under the Employees Compensation Act, 1923 or the Employee’s State Insurance Act, 1948. If the accident and the resultant death occurred while the employees were at their work, the compensation payable to the dependents would be determined under the provisions of these two laws. While the object of the court in determining the higher payment is laudable, the cautioning words of Justice Venkatachaliah that the courts are not competent to make these kinds of directions is notable. The judgment of the court in *Safai Karmachari Andolan* was delivered in 2014, and even today, the same amount of compensation is being paid to the dependents of the deceased.

In the *Safai Karmachari Andolan* case, the court noticed a vacuum or *cavities* in the law that permits the engagement of manual scavengers with safety gears and absolves the employers and the municipalities from any other obligations. The directions given in the judgment are intended to guide the legislature to remove the *cavities* and the executive to eradicate this inhuman practice. However, the decision of the Supreme Court in *Safai Karmachari Andolan* was not taken in its right spirit. The authorities and the other courts are content to enforce the payment of compensation. The necessity for keeping the towns and cities clean does not give anyone the right to ask any human being to undertake an activity that is considered inhumane.

3. Contemporary Issues of Manual Scavengers

There is no doubt that providing sanitation is the responsibility of municipalities (Ministry of Social Justice and Empowerment, 2013). It is a specialized job that requires specific and constant attention. Any attempt to dilute the obligations of municipalities or shift them to another party would violate the doctrine of Division of Labor and result in inefficient performance (National Commission for Safai Karamcharis, 2016). Many municipalities have outsourced these obligations to contractors through a tender process. Solid waste collection, disposal, and sewage cleaning are the primary responsibilities of municipalities and represent core activities (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). The Supreme Court has consistently held that contract laborers should not be engaged in works of a permanent nature that form part of the core activities (Safai Karmachari Andolan & Ors. v. Union of India & Ors., 2014).

Municipalities resort to hiring contract laborers for cost-benefit reasons (International Labour Organization, 2019). However, there are several disadvantages to engaging contractors for solid waste management and sewage maintenance (National Human Rights Commission, 2003). First, contract laborers receive fewer benefits compared to regular municipal employees (Shah, 2018). Second, contractors must invest in equipment, including safety gear, and provide training to workers in operating the equipment (World Health Organization, 2016). Any investments made may take years to recover their costs. If the contract duration is insufficient to recoup the investment, contractors may be discouraged from investing in equipment (National Safai Karamcharis Finance and Development Corporation, 2015). If the contract is not renewed, any training provided for workers would be wasted. To reduce risks, contractors often resort to sub-contracting (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & Ors., 2011).

Municipalities could address these issues by hiring regular employees for waste handling and sewage cleaning, even if it requires additional taxes (Ministry of Housing and Urban Affairs, 2020). Alternatively, municipalities could provide equipment and safety gear to contractors, although this may require capital investments and raise concerns about equipment maintenance (Central Public Health and Environmental Engineering Organization, 2018). Another option is to offer long-term contracts with sufficient time for contractors to recoup their investments (Planning Commission of India, 2014).



3.1 Compensation for Deaths: Is it an Appropriate Remedy?

The death rate of manual scavengers is rising across the country, which is alarming because manual scavenging is illegal, even in compliance with the legal rulings of the Supreme Court (*Safai Karmachari Andolan v. Union of India*, 2014). Certain compensations have been recorded, but most states have not consistently rehabilitated manual scavengers. Some states, such as Gujarat and Maharashtra, have not compensated for lost lives. According to the data, 636 sewer deaths were recorded in the country since the implementation of the 1993 Act until 31.03.18 (National Commission for Safai Karamcharis, 2018). The law prohibits manual scavenging, but individuals in India manage to engage in this scourge, leading to fatalities because of the lack of personal protective gear (Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013). At least the statistics on the prosecution of those engaging in manual scavenging are not easily obtainable, proving the implementation of the prohibition is flaccid. The National Advisory Council observed that almost no one has been punished under this law, possibly because of the immunity claims from ultimate employers such as Indian Railways and the local bodies.

In the USA, the practice of humans removing night soil was eradicated by providing sewer lines. Similarly, it is the responsibility of municipalities in India to provide sanitary facilities (Ministry of Housing and Urban Affairs, 2020). Some municipalities have sewer systems, while others do not. Those with sewer systems lack mechanical means to clear clogs, while those without sewer systems ask residents to have septic tanks but lack the equipment to clean them without manual intervention. In both cases, municipalities need funds to establish sewers or acquire and maintain equipment for cleaning. If manual intervention is necessary, protective gear should be mandated for safety (*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*, 2011).

4. Fiscal Constraints, Outsourcing Practices, and the Persistence of Manual Scavenging in Urban Local Governance

The municipalities meet their funding requirements by levying property tax on the owners of the properties in their area and levying trade tax, octroi, etc., on the traders. The property tax is a direct tax, and the impact of which would squarely fall on the owners of the property. The power to levy taxes is given to the municipalities to collect enough taxes as necessary to meet their expenses. However, the Municipal Councillors are unwilling to levy an additional tax or increase the tax on households. Their dilemma is explained by the *Hidayatullah J in Municipal Corporation of Delhi v Birla Cotton Spinning and Weaving Mills* (1968).

The non-availability of sufficient funds and the reluctance to levy or increase taxes on the municipality are the main reasons for this continued engagement of manual scavengers.

To distance themselves from the necessity of engaging the manual scavengers and not providing them adequate protective gear, many of the municipalities have outsourced these activities to contractors (International Labour Organization, 2019). The terms of these contracts impose the responsibility on the contractors to provide protective gear to the scavengers. The engagement of contractors by the municipalities also gives rise to several issues. If the cleaning staff is required permanently, the permissibility and desirability of outsourcing such jobs is an issue (Dr. Balram Singh v. Union of India, 2020). Secondly, maintenance and cleaning of the sewers is a specialized job requiring equipment and protective gear. If the contractor is given sufficient charges and time to recoup the value of his investments, he would not be interested in investing in such equipment and gear. The practice of the municipalities in awarding these contracts on an annual basis is not going to achieve the objective of eliminating the practice of manual scavenging. Also, the yearly agreements only increase the number of people in informal employment rather than institutionalizing their jobs.

If a contractor could not get renewal of his contract with the municipality, the people employed by him become redundant and either seek employment with the new contractor or look for alternate jobs. These conditions force the scavengers to agree to undertake the dangerous jobs or else they would be jobless. The periodical renewal of the contracts also creates a system where the successful contractors engage the subcontractors to carry out the work. After the skimming by each level of the contractors, the wages payable to the scavengers would be the bare minimum, and there would be nothing left to take care of the safety aspects. The courts have reconciled that the governments could not abolish manual scavenging and consoled themselves by prescribing compensation (Change India v. Government of Tamil Nadu, 2017). The courts have also simplified the task of the municipalities and governments by stipulating that they could recover the compensation paid to manual scavengers from the contractors.

There is no incentive for the municipalities to eliminate manual scavenging, as it is cost-effective. If there is any compensation payable or criminal liability, they are passed on to the contractors. The direction by the Supreme Court to pay compensation for the death of manual scavengers has not helped to eliminate this barbaric practice (Registrar General and Union of India, 2024). The utility of the monetary assistance paid by the National Safai Karamcharis Finance & Development Corporation in eliminating manual scavenging needs to be examined in the long term. The service provided would help uplift the individual concerned, but it would not improve the infrastructure needed for eliminating the manual labor



in sewage cleaning, night-soil removal, or septic tank cleaning activities. The place vacated by a manual scavenger who received benefits from the Development Corporation would be swiftly assumed by another economically weak person. If these requirements remain, the poverty of the people in the economically weaker sections of society will continue to undertake these hazardous activities, risking their self-respect and lives.

5. Conclusion

The employment of manual scavengers is a clear violation of basic rights enshrined in the Constitution of India (Constitution of India, 1950, Article 21), a contravention of statutory prohibitions enforced through laws such as the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, and an affront on the principles of human rights in international law contained in various United Nations' resolutions (United Nations, 2014). The continuing practice of manual scavenging, notwithstanding these laws, indicates severe systemic failures that lead to social justice in action.

The Supreme Court of India has noted multiple times that state agencies continue to hire manual scavengers, including among the Indian railways, which is a breach of the law (Supreme Court of India, 2020). Municipalities have shifted responsibility from themselves by engaging contractors for sanitary work to get around the law and to remove the practice, but with no positive change. There are gaps in some government programs, such as the Swachh Bharat Mission, which focus on replacing dry latrines with sanitary ones but do not address the necessary infrastructure, including ensuring a sustainable water supply. Without addressing infrastructural gaps, such programs could be ineffective in the long run.

5.1 Recommendations

1. **Accountability for offences:** Municipalities and local governing bodies must be accountable for breaches of anti-scavenging law. If a government agency (e.g., railways) was involved, disciplinary action should follow all responsible officers (National Human Rights Commission [NHRC], 2019).
2. **Funding with an adequate amount:** Nothing can justify promoting human rights violations due to a lack of money. The government can allocate all the money it wants to welfare schemes to eradicate manual scavenging, and still not meet constitutional and legal obligations (Ministry of Social Justice and Empowerment, 2021).
3. **Systemic change, not a piecemeal approach:** Current government initiatives focus on symptoms and not the causes of the problem. The only way to

ensure change is to build the capacity of local governments, requiring long-term institutional reform and strict enforcement of existing law (Planning Commission, 2013).

4. **Technological and social remedies:** Mechanization (e.g., robots for cleaning sewers) is the solution, but progress has been haphazard. To end manual scavenging, there must be a range of solutions focused on technology, education, and caste sensitization to dismantle this entrenched system (Safai Karmachari Andolan, 2018).

The number of manual scavengers is increasing day by day in India (NCSK, 2020). Until the country achieves the complete elimination of manual scavenging, it would be shameful for a nation that prides itself as one of the ancient civilizations to continue this practice (Ambedkar, 1948; Gandhi, 1927). Ending manual scavenging requires steadfast political will, strong monitoring mechanisms, and social accountability; otherwise, legislative solutions alone will never truly protect the rights and dignity of the marginalized people.

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Ethical and Originality Statement

The Author(s) declare that this work is original and has never been published in any form or any other media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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