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Lex Valorem: Indian Journal of Law and Contemporary issues is a peer reviewed law journal that aims to provide a platform to all the budding lawyers, researchers and advocates for their original work. The journal follows the principle “Where value is law” and the members of the journal work towards striving value in all fields of law.

Lex Valorem is not just confined to the walls of publishing research papers but also legal updates, case analysis and other areas of legal interest.

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# **Manual scavenging in the era of 21<sup>st</sup> century**

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## **Abstract**

Manual scavenging is a profession which has been in existence since from the time immoral. This practice of removing human excreta from the public and private, gutters, sewers and drainage not only unethical but also violates human rights. Since, after Independence government has passed two legislations in the year 1993 and in 2013, to ban the practice of manual scavenging and do rehabilitation of the workers. This paper deals the meaning of manual scavenging and who are the persons mostly engaged in the manual scavenging. Another aspect of this paper deals with the laws passed in regard to manual screening, judicial pronouncements and NHRC recommendations on rights of manual scavengers. This paper seeks to critically examine the rights provided under the legislations and how much government is able to really put an end to the manual scavengers. The end of this paper will include the concluding remark and suggest some remedial measures to bring the scavengers into the mainstream of our country.

### **Key words-**

**Bhangi:** It is called to those person in the society who are mostly engaged traditionally in manual scavenging.

**Dalit:** Generally called ‘untouchables’ and placed at the lowest in the caste structure.

**Dry toilet:** That toilet which does not have water system and need daily manual cleaning.

**Panchayat/Gram Panchayat:** Officially elected body governed at village level, help in execute plans for socially and economically development.

**Open defecation:** Defecation on roads and ground that requires manual disposal. **Scavenging-** Process of removing the things.

**Casteism-**Discrimination on the basis of caste.

## **Introduction**

*“In India, a man is not scavenging because of this work. He is a scavenger because of this birth irrespective of the question whether he does scavenging or not”*

*–Dr. B.R. Ambedkar*

The statement was given by the respected Dr Bhim Rao Ambedkar is true even in the era of the 21<sup>st</sup> century .On the 26<sup>th</sup> of January, 1950, the Indian Constitution came into force it has been 70 years we have adopted the Constitution, which contains numerous fundamental rights to the citizens/person. One of the fundamental rights is the abolition of untouchability which still is going on in many parts of the country. Are we really following the principle of equality embodied in our Constitution? Are do we really treat people equality? The

answer is negative because manual scavenging which is still prevailing in India, no alternative has been made till now which totally eradicate the process of manual scavenging, so, how can we say that untouchability has been abolished. It is the duty of the government to provide the alternative of this service and provide services to the person involved in this activity. But again the question is, even they may provide alternative jobs will they be treated equally in the society, will they not consider as untouchables? As B.R. Ambedkar said that in India, a person is known by his birth, not by his work, the title attached to the person by his birth will make him alive as it is in the society, it can not be removed even he/she will achieve good work in the society. Thus, there need more consideration for the upliftment of socio-degrade people especially who belong to the lowest community in a social hierarchy.

### **What is the manual scavenging?**

Manual scavenging is the process of removal of human excrete from the public, private, gutters and sewers, by another human being. The International Labour Organisation defines it as ‘the removal of human excreta from public streets and dry latrines, and cleaning septic tanks, sewers, gutters and drains. [The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013](#) defines ‘manual scavenger’ as manual scavenger means a person who is engaged or employed by any individual person or by any local authority or by any agency or by any contractor for the purpose of manual cleaning, carrying, disposing of human excreta in any insanitary latrine or in an open drain or pit into which the human excreta is disposed of or on any railway track or any other place.

The International Labor Organization (ILO) categorise manual scavenging into three form: 1) the removal of human excreta from dry latrines and public streets, 2) the process of cleaning the septic tanks, and 3) the process of cleaning the gutters and sewers. These tasks again sub-divided as per gender. Women are mostly engaged in this work. Ninety five percent of private and village toilets are cleaned by women; open areas, open gutters and defecation from roads have been removed by both men and women; but men typically clean septic tanks, closed gutters, and sewers.

Generally, the term used for the manual scavengers is ‘bhangi’ which is the most derogatory term used against these people who clean our environment and save us from diseases that might cause due to dirty environment.

### **Who are the person mostly engaged in Manual Scavenging?**

Casteism in India prevail from the time immoral and even after abolition in our Constitution, still it is prevailing in India. Hindu valmiki sub-caste from the Dalits are the mainly person who are engaged in manual scavenging. Further there are sub-division among the caste who belong to a manual scavenging’s are [Chura](#), [Mehatar](#), [Malkana](#), [Lalbegi](#) and [Halalkhor](#). Since these communities belong to a bottom of the social hierarchy, so they face caste discrimination even within the Dalit community. They are considered fit for only the most

“polluting” task, their work is to manually dispose of human excreta and performed other unsanitary work in society.

Due to this discrimination, they are considered as untouchables still in the 21<sup>st</sup> century. According to a national survey conducted till January 31, 2020, almost in 18 States, a total of 48,345 manual scavengers have been identified<sup>1</sup>. If we classify according to the states having highest number of manual scavengers are found in [Uttar Pradesh](#) that is 12,436.

### **Laws passed in regard to Manual scavenging**

The first Act passed in this regard was [the Employment of Manual Scavengers and Construction of Dry Latrines \(Prohibition\) Act, 1993](#) with an aim-

1. To prohibit the employment of manual scavenger or prohibit the regulation of construction of dry latrines and continuance of any dry latrine in any area.
2. Provide dignity to every individual which has been enshrined under [the preamble of the Constitution](#).
3. The state will raise the standard of living of its people and the improvement of public health is the primary duty.
4. To eradicate dehumanise practising which still prevail in many parts of India.
5. To enact uniform legislation for the whole of India for the abolishment of manual scavenging by declaring employment to the manual scavengers for removal of human excreta an offence and also ban the proliferation of dry latrines in the country.
6. Provide punishment if any person found pushing or employing person for doing manual scavenging.

This Act was not much useful, there was no conviction under the Act. One Non-governmental organisation, Safai Karamchari Andolan in 2000, filed a petition in Supreme Court seeking to the concern of the deaths of the manual scavengers caused in sewer lines, septic tanks and drains. Due to the continuous efforts of the various organisations. In 2013 The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act was passed.

The 2013 Act aims to prevent the employment of any person for the work of manual scavenging by any contractor, individual, agency or by any local authority. As picking up of human excreta is harmful to one's health and hygiene, the Act seeks to complete ban on the practice of manual scavenging in any part of India. Also, rules and procedures for the rehabilitation of manual scavenging's through training in alternate employment, financial and proprietary help, has been laid down under this Act.

The Act requires a local authority (municipality or panchayat) who held responsible for identify the manual scavengers. Railways authority and containment boards are responsible for identification of manual scavengers in its area.

## **Has the 2013 law really put an end to Manual Scavenging?**

Hazardous cleaning has been defined under the [section \(2\)\(1\)\(d\)](#) of 2013 Act which mandates that the person who got the job must provide the cleaner with 'protective gear' and what is this particular protective gear is a subject of debate. This provision also provides safety to the person engaged in this work but no safety has been provided as per the requirements.

Basic requirements that can help them is not covered under the Act like oxygen cylinder, torches and constant of monitoring of workers through computers etc.

The primary step has been under the Act is to demolish the insanity latrines, pits and open drains. Although the law prohibits any individual, panchayat, contractor or agency to build an unsanitary latrine or employ a manual scavenger. But open defecation is still prevailing and there are about 2.6 million insanitary latrines that require cleaning hand.

However, a ray of hope surfaced after the Supreme Court issued directions in 2014 to prevent and control the practice and also to prosecute the offenders. SC also directed the government to pay a compensation of 10 lakh rupees to the family members whose person has been died in acts of manual scavenging since 1993.

### **Judiciary intervention**

Judiciary has played an active role for the upliftment of socio-economic welfare of the poor and weaker section of the society. Article 21 of the Constitution of India, which enshrined the right to life with dignity, Supreme Court has given a numerous directions dealing with the rights of manual scavengers. SC played a great role towards the concern of the manual scavengers and also direct State authorities for the compliance of the provisions of the Act.

### ***Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers<sup>ii</sup>***

In this case, the Supreme Court passed a landmark judgment while identifying and highlighting the boredom and trouble of the backward sections of the society, particularly the scavengers and sewage workers, who put their lives in risk by going in the drainage or sewer without any safety equipment and security and have been deprived of fundamental rights to equality, liberty and life. The Supreme Court referred to a report<sup>iii</sup> and stated that:

“The workers have been suffering from high mortality and morbidity due to high exposure at their workplace. In the last 2 years, 33 workers have died due to accidents while working on the blocked sewer lines and drainage. 59 per cent of the workers enter underground sewer manholes more than 10 times a month and half of them required to work more than 8 hours in a day. Almost 41 workers have reported cases of syncope, and other 24 workers reported temporary loss of consciousness. One-third of the workers had been immunized against tetanus while fortunately none of them had been vaccinated against hepatitis B. Due to the suffering and pressurized work half of the workers across all age group

were found under weight according to Body Mass Index calculation. Approximately 2950 rupees per month without any benefit irrespective of service period have been received by all daily wagers.<sup>iv</sup>”

The Supreme Court while criticising the state government and the state apparatus on being insensitive towards the safety and wellbeing of those workers who are on account of sheer poverty, compelled to work under most unfavorable and unethical conditions and regularly face the threat of being deprived of their life and personal liberty. Supreme Court also directed the civic bodies to ensure immediate compliance of the directions and orders passed by the Delhi High Court for ensuring safety and security in all terms to the sewage workers and manual scavengers.

*Safai Karamchari Andolan v. Union of India*<sup>v</sup>, this was the landmark case on the abolition of manual scavengers, the Supreme Court acknowledged that the menace of manual scavenging in India is an inhuman practice, degrading and undignified profession.

The Supreme Court observed that the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (EMSCDL), neither dilute constitutional mandate of [Article 17 of the constitution](#) nor does it condone inaction on part of Union and State governments under EMSCDL Act, 1993. The Supreme Court held that 2013 Act expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in removing of human excreta on the railway track, cleaning of sewage and tanks.

Since India is a signatory of various International covenants and treaties, the Supreme Court referred to these conventions, which seek to guarantee a dignified human life in respect to his profession and another way of life. Convention on Elimination of Racial Discrimination, Universal Declaration of Human Rights, Convention for Elimination of all Forms of Discrimination Against Women is some of the conventions which inculcate in our domestic laws. The honourable Supreme Court laid down following propositions with regards to the rehabilitation of manual scavengers and for their better socio-economic condition.

If the practice of manual scavenging prevents in future generations, rehabilitation of manual scavengers should need to include:

- (a) **Sewer deaths**- In case of emergency, if a person enters into a sewer line without any safety gears and safety equipment, it should make a crime and of the death caused in such situation compensation of at least ten lakh rupees should be given to the family of the deceased.
- (b) **Railways**- Railways should convert dry latrines into bio-toilets within a stipulated period to end the practice of manual scavenging.
- (c) **Provide dignity to women**- Support should be provided to the safai karamchari women to live with dignity by their choice of livelihood.

Principle of justice and transformation must be considered while doing rehabilitation. Supreme Court emphasized the process of rehabilitation given under part IV of the PEMSAR Act, 2013. Supreme Court also directed to the State governments and Union territories to fully comply and implement the various provision of PEMSAR Act, 2013 and strict action should be taken for the non-implementation or violation of provisions contained in PEMSAR Act, 2013.

Supreme Court time to time show concern towards the manual scavengers. SC expressing serious concern towards the manual scavengers said that “no country can allow dying their people” on 18<sup>th</sup> September 2019. SC also added that even after 70 years of independence why proper oxygen and protective gear mask provided to the manual scavengers.

### **NHRC recommendation on rights of manual scavengers**

National Human Rights Commission has made various recommendations to the public authorities dealing with the issues on manual scavenging and sanitation. The recommendations are given below-

1. Though the surveys on manual scavenging have been conducted, that survey has many loopholes. Therefore, at least once in three years, a comprehensive survey should be done in collaboration with active NGOs.
2. According to the survey conducted by the Ministry of Housing and Urban Poverty Alleviation, Government of India, dry latrines found in the states of Uttar Pradesh, Jammu and Kashmir, Bihar and Assam. Therefore, these states should take all necessary steps and measures for the complete conversions of dry latrines into water shield latrine and rehabilitation of manual scavengers in their respective state.
3. Manual scavenging is different from the sanitary workers and all the authorities may restrict the definition of manual scavenging under Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.
4. The presence of various agencies most of the time delaying the elimination of the practice of manual scavenging and the rehabilitation work. Therefore, it is recommended that the District Magistrates after consultation with the three Central Ministries concerned with manual scavenging should make the nodal agency and joint instructions. This instruction should be issued to the States/ Union Territories and the District Magistrates to take necessary steps for coordination and do efforts to eradicate this issue. Also at State level, there should be a coordinating body to consider framing of appropriate rules and regulations, survey as suggested in recommendation 1, demolition of dry latrines, rehabilitation of manual scavengers, prosecution of defaulters etc.
5. Where there is a scarcity of water and lack of space in some states, new method and technology should be adopted to overcome this issue.

6. It should be mandatory in the municipal and panchayat byelaws of every states that the construction of dry latrine in their house is not allowed except water shield or sanitary latrines. There should be a fixed time limit for the conversion of a dry latrine into water shield latrines. Penal action should be taken against the municipalities if the conditions will not be fulfilled.
7. For the better future of the children of manual scavengers, their scholarship must not be stopped even after the rehabilitation of manual scavengers.
8. The simple process must be provided by the banks while giving loans to manual scavengers for their rehabilitation.
9. It should ensure that who are entitled to BPL card in the manual scavenging family they are entitled to that benefit.
10. The State Human Rights Commissions must start monitoring the elimination of manual scavenging and consequent rehabilitation of manual scavengers in the States.

### **Conclusion and Suggestion**

From the above discussion, it can be concluded that despite the legislations the existence of manual scavenging have been found in many parts of India. It can be eradicated with the efforts of NGOs and ministries concerned with the manual scavenging. Though the legislation has been made strict implementation is required. It is not good for any country who allowed to die their person who involves in the saving of the environment as pointed ours by the honourable Supreme Court. We are moving towards digital India but if there found a person involving in the inhumane degradation then how we can say that we are moving toward development. To develop the country, all the factors must be taken into consideration side by side.

Here are some of the suggestions that can be adopted to stop manual scavenging.

- (a) **Community initiatives**: Since community initiative is an important step for abolishing manual scavenging. Therefore, if the communities would not encourage manual scavenging and stop subletting the service like sewer cleaning within the scavenging community. If the community do so it will help a lot because every step taken from our home is the best practice to stop anything.
- (b) **Responsibility of railways**: The largest institution that uses dry latrines are the Indian railways. Ministry of Railway must take immediate action to prohibit the practice of dry latrines and within every 3 years, present progress reports in every session of Parliament. By this action, the Government can abolish scavenging within a stipulated time. The alternative method can be achieved by constructing bio-toilets in railway stations and trains.
- (c) **Awareness and Sanitation programmes**: Lack of awareness in rural and urban areas regarding the sanitation is the main cause which hurdles the implementation of laws specially made to abolish the

manual scavenging. Thus, it is necessary to conduct awareness and sanitation programmes. In 2014, Swach Bharat Abhiyan programme has been launched by the government to create awareness to clean the environment.

- (d) **National-level monitoring system and social audit**: The Government of India should form the national level committee which regularly monitors and analyse the practice of manual scavenging. The committee should consist of different representatives that are representative of the ministries, state representative, public representative, community representative and a representative from the civil society organisation. The committee may also consist of representatives from the state bureaucracy, state human right commission, scheduled castes/scheduled tribes commission, state women commission and civil society organisation working on the concern of manual scavengers. For the better implementation of Acts, a high-level social audit of PEMSR Act, 2013 should be conducted by Comptroller and Auditor General of India. The audit will help in executive and lawmakers to familiar with the loopholes in the system and ensure effective implementation of the law.
- (e) **Legislative and executive will**: Though the laws have been passed regarding the abolition of manual scavenging strict implementation is required and the amendments in different statutes can be made to ensure stringency among different laws on scavenging and social welfare.
- (f) **Role of local authorities**: The municipal and panchayats bye-laws of the states should have provisions not to allow the construction of any new house with dry latrine and they need to construct sanitized latrine or water sealed latrine. There must be the provision of conversion of dry latrines into water sealed latrine within a stipulated time. If the municipalities will not comply with the provisions, strict action must be taken against them. At gram level there must be three or four sub-committees who look after the status of manual scavenging and the president of the committee will make the record under the gram panchayat proceedings.

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<sup>i</sup><https://www.thehindu.com/news/national/indias-manual-scavenging-problem/article30834545.ece>

<sup>ii</sup>2011 (8) SCC 568.

<sup>iii</sup>Centre for Education and Communication in collaboration with Occupational Health & Safety Management Consultancy Services on "Health & Safety Status of Sewage Workers in Delhi".

<sup>iv</sup> <https://indiankanoon.org/doc/379785/>

<sup>v</sup>2014 (4) SCALE 165