

HEALTH RIGHTS OF MANUAL SCAVENGERS: RIGHT TO ACCESS HEALTH DENIED?

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INTRODUCTION:

“Not all soldiers come with guns to ensure our safety and protect us, some soldiers do come with brooms and bare hands to ensure a safe hygienic surrounding for us...”

No one likes to look at shit, *“if it’s so hard to look at shit for a couple of hours, imagine what it must feel like to clean it every day and sometimes die in it”*. This paper deals with the powerful indictment of society’s apathy towards the thousands who are tasked with cleaning public toilets and sewers. An utter disregard for the life and safety of the manual scavengers, penny crunching by employers resulting in the absence of the bare minimum of safety equipment and an utter desperation to earn that forces many into this job. The paper will explore how the very definition is problematic for many reasons; one being that it doesn’t explicitly include sewage workers, who are subjected to a lifestyle which is hardly any better. Secondly, by this definition, workers who use ‘tools’ are also often overlooked, as it is believed that the safety gears provided to them would aid them to carry out their daily tasks in a hygienic manner. In reality, these tools are either not provided to the workers at all, or are in such bad conditions that they actually hinder their work. As per the workers, the gloves provided to them give off such bad lingering odour that they rather clear the garbage and dispose human excreta with their bare hands. The only purpose these low-quality, counter-productive tools serve is that the authorities involved can claim that they play no active role in the declining health of the people, as they have dutifully supplied such gears. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (the 1993 Act), declared the employment of manual scavengers and construction of dry toilets to be punishable with fines and imprisonment. Superseding the 1993 Act, the 2013 Act goes beyond prohibitions on dry latrines, and outlaws all manual excrement cleaning of

insanitary latrines, open drains, or pits. And, importantly, it recognizes a constitutional obligation to correct the historical injustice and indignity suffered by manual scavenging communities by providing alternate livelihoods and other assistance.

Some key points that need to be observed are as follows:

- 1. The Constitution of India has banned cleaning human waste by hands, there are some articles of the constitution show what the law says. But law is not very comprehensive regarding manual scavenging and sanitation work, hence loopholes.*
- 2. Most deaths have been attributed to septic tanks, which tend to be huge tanks where person has to drop inside to clean it. These deaths if shown on TV are termed as "Accident", "Slipped and Fell" and some were as ridiculous as a person's phone fell so he jumped in. There is no accountability on the part of government or contractors.*
- 3. The basic fundamental challenge is with respect to their health rights, they are clearly being denied proper access to the health care facilities; there are hardly any governmental programs or scheme which is ensuring them their health rights.*

The hygiene of the workers seems to be of the least priority. They are also asked to 'take care' of unclaimed dead bodies that the police finds, no matter at what stage of decomposition it is in, without appropriate safety measures. The workers also are asked to dispose dirty sanitary napkins which give worse stench than human faeces. The plight of these workers are yet to be cured, even though we have laws to protect but on ground their health and lives are most vulnerable to various ailments and even death. It's high time that Government should realise the need to increase the ambit and understanding of manual scavengers and come up with policies to protect their health rights and prevent their health exploitation. It is the matter of utmost shame that our nation is burdened with, the one who are the real soldiers of "Swacch Bharat Mission" are hardly cared for and they still continue to struggle with their health and hygiene. Not all soldiers come with guns to protect you some soldiers do come with brooms and bare hands to ensure a safe hygienic surrounding and we are hardly concerned about them.

MANUAL SCAVENGING –HEALTH AT STAKE

Who is a 'manual scavenger'?

A manual scavenger can be defined as any one falling under the following categories:¹

- Any person who has been employed to handle undecomposed human waste from an insanitary latrine, open drain or pit or railway track is a manual scavenger under this law.
- The person could have been employed by any one - say, someone from their village or by an agency or contractor.
- It does not matter if he/she was given regular employment or engaged on contract basis, he/she is covered under this law.
- Exception - Any person who has been employed to clean human waste and does so with the help of the appropriate protective gear and equipment will not be considered a manual scavenger under this law.
- Another group of people called 'safai karamcharis' are also sometimes considered as manual scavengers - however, they usually refer to people working as sweepers or cleaning workers in the municipalities, government or private organisations.

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HEALTH HAZARDS FACED BY MANUAL SCAVENGERS:

The workers are commonly exposed to gases like hydrogen disulphide, methane, ammonia and carbon monoxide. As per a report which studied 26 sewer workers exposed to smell and found that 53.8% developed sub-acute symptoms including sore throat, cough, chest tightness, breathlessness, thirst, sweating, irritability and loss of libido. Further, a large number of latrines are 'serviced' by pigs. Many contract leptospirosis through contact with pigs' blood, urine and other body fluids.² Leptospirosis causes high fever, joint pain, anaemia, and liver and kidney infections and it can be fatal. People that are heavily exposed to poultry and pigs are most likely to be affected. Another danger is the presence of swine brucellosis, a bacterial disease that can be transmitted to humans from infected pigs through contamination

¹ Law against Manual Scavenging, Vikaspedia (Available at: <http://vikaspedia.in/social-welfare/social-awareness/legal-awareness/law-against-manual-scavenging>, last accessed on 23rd August 2020 at 11:03PM)

² Dr. Ashish Mittal, Pranjali Jyoti Goswami, Hole to Hell, A study on Health & Safety Status of Sewer workers in Delhi, Center for Education and Communication, 2006.

of your eyes, nose, mouth or any open wounds. These workers should need to be brought under occupational health services, which should include pre-placement and periodic health monitoring. But the Government has miserably failed to secure access to these basic health care facilities. The Health & Hygiene problem is not only limited to the safai karmacharis, but the problem is much beyond, its not just about their present generation but also it's about their children and upcoming generations. Due to lack of access to basic health care facilities we are not only making their life but rather we are also making their upcoming generations vulnerable to many diseases apart from the cancer of caste based discrimination. It is a catastrophic situation, even worst than the nuclear disasters or bhopal gas tragedy if you consider the health conditions of thousands manual scavengers and taking into consideration their children and upcoming generation.³ Hence, it is very critical to discuss about their health, as they are first of all human beings, not only Universal declaration on Human Rights or Constitution of India provides them with that fundamental right rather by birth irrespective of caste, profession, nationality and religion they are entitled to their Health Rights. With this background, we can postulate the following research question which will be elaborated in rest of the paper.

i) *What has government done towards ensuring health rights of cleaning staffs?*

ii) *What process the State has adopted in order to govern access to health in health spheres through various legal & welfare policies for the people who are working as manual scavengers/ associated with sewage & garbage cleaning?*

RIGHT TO HEALTH & GOVERNMENTALITY

The program of hygiene as a regime of health for populations entails a certain number of authoritarian medical interventions and controls. Government is defined as a right manner of disposing things so as to lead not to the form of the common good, as the jurists' texts would have said, but to an end that is "convenient" for each of the things that are to be governed.⁴ This implies a plurality of specific aims: for instance, government have to ensure that the greatest possible amount of wealth is produced, that the people are provided with sufficient means of subsistence,⁵ that the population is enabled to multiply, and so on. Thus, there is a

³ *Supra* f.n. 1

⁴ *Ibid.*

⁵ Paul Rabinow, *Governmentality*, Essential Works of Foucault 1954-1984

whole series of specific finalities that become the objective of government as such. In order to achieve these various finalities, things must be disposed and this term, “dispose,” is important because, with sovereignty, the instrument that allowed it to achieve its aim that is, obedience to the laws was the law itself: law and sovereignty were absolutely inseparable. On the contrary, with government it is a question of not imposing law on men but of disposing things: that is, of employing tactics rather than laws, and even of using laws themselves as tactics to arrange things in such a way that, through a certain number of means, such and such ends may be achieved. Considering the laborious and risky nature of the jobs, there is no compensation for injuries occurring within the work site. Physical Injuries of the manual scavengers majority of them are faced head injury, Leg injury, fainting, burning of eyes and nose burning, ear burning and bleeding, with the issue of manual scavenging, there is a view of that “Right to Health” must be included in the Fundamental Rights of Indian citizens, without any discrimination. Majority of the workers are at health risk but yet no specific governmental program relating to their health has yet been formalized or worked on. They are unable able to access any kind of emergency medical needs.⁶

INDIAN CONSTITUTION & RIGHT TO HEALTH

The Constitution has made health care services largely a responsibility of State governments but has left enough manoeuvrability for the Centre since a large number of items are listed in the concurrent list. When we look at right to health and healthcare in the legal and constitutional framework, it is clearly evident that the Constitution and laws of the land do not in any way accord health and healthcare the status of rights. In late 1970s, the Supreme Court began to give an expanded meaning to the term ‘life’ appearing in Article 21⁷. Over the years it has come to be accepted that life does not only mean animal existence but the life of a dignified human being with all its concomitant attributes. This would include a healthy environment and effective health care, whereas in case of manual scavengers it is clearly a violation of their fundamental right under Article 21.⁸ The ‘Right to Health’ is inseparable from ‘Right to Life’, and the ‘Right to Medical Facilities’ as a concomitant of ‘Right to Health’ is also part and parcel of Right to Life. In a welfare state, the corresponding duty to the right to health and medical facility lies with the State facilities. It, is the duty of the state

⁶Paul Rabinow, Health A Social Medicine, Essential Works of Foucault 1954-1984

⁷ Article 21, Constitution of India, 1950

⁸ Goswami, S. Manual scavenging: A stinking legacy of suffocation and stigma, Down To Earth, 2018

to ensure that in order to ensure right to life of Manual Scavengers, they should also ensure proper medical facilities and schemes so that, they don't feel alienated and denied their fundamental right to life which also include right to health as its basic constituent.⁹

RIGHT TO HEALTH & ACCESSIBILITY

Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions¹⁰:

- **Non-discrimination:** Health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.
- **Physical accessibility:** Health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas.
- **Economic accessibility (affordability):** Health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.
- **Information accessibility:** Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

If you consider the above types of barriers, we can very well connect how much the manual scavengers and safai karmachari's are denied their basic right to health because of accessibility issue. First of all there is no such exclusive health policy or

⁹ Tiwari, R.R., Occupational health hazards in sewage and sanitary workers, Indian Journal of Occupational and Environmental Medicine, 12(3): 112–115.

¹⁰ Adv. Mihir Desai & Adv. Kamayani Bali Mahabal, Fundamental Right to Health and Public Health Care Health Care Case Law in India A Reader, Centre for Enquiry into Health and Allied Themes Survey No. 2804 & 2805.

scheme is there for taking care of their medical needs, further because of the caste discrimination and low wages they face challenges in accessing the existing health care facilities also, even some have reported that in government hospitals doctors and nurses even avoid to interact and treat them cause of their caste and nature of work. Considering the kind of diseases and infection they are being exposed to, it needs special medical care and money for treatment. Due to lack of such intensive medical facilities and lower governmental hospitals, they are not being entitled to proper treatment and they are unable to afford the treatment considering financial constraints. So, as a whole we can conclude that the manual scavengers are facing worst form of denial when it comes to their access to health care facilities.

LEGAL SAFEGUARDS –HOW MUCH EFFECTIVE?

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (“Act”) is a law against manual scavenging in India, prohibiting dry latrines and all kinds of manual cleaning of excrement, as well as the cleaning of gutters, sewers, and septic tanks without protective gear (§7 & §9). However, since sanitation is a state subject, the implementation of the law is state-specific. However, the act of manual scavenging is more than a state issue; it is also a human rights violation. The Constitution of India, in conformity with the international position, abolishes un-touchability (Art. 17) and prohibits caste-based discrimination (Art. 15). Furthermore, under the Constitution human dignity is an inalienable right which is part of the fundamental right to life.¹¹ The Courts have held human dignity to be the most important, fundamental, inalienable and transcendental of rights. ‘Dignity’ has been interpreted to include equal treatment and respect, and equal protection of law. It is a universally recognized right, endorsed by instruments such as the Universal Declaration of Human Rights by way of Articles 1, 22 and 23.¹²

Sadly, despite such constitutional safeguards, manual scavengers remains victims of discrimination. There are a number of reasons for this.

¹¹ Swapnil Tripathi, Right to Dignity, not for Manual Scavengers: The neglected state of rights of scavengers in India, Oxford Human Rights Lab (Available at: <https://ohrh.law.ox.ac.uk/the-dignity-and-rights-of-manual-scavengers-in-india/>, last accessed on 24th August 2020 at 09:20PM)

¹²Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) available at <http://www.un.org/en/universal-declaration-human-rights/>

Firstly, as India is a federal democracy and sanitation falls within the competency of the states (Entry 6, List II, Schedule VII, and Constitution of India), the implementation of the prohibition on manual scavenging rests solely within the domain of the states. Hence, no collective/nation-wide action can be taken by the federal government.

Secondly, the law requires that the rehabilitation of scavengers has to be carried out as per the existing schemes, even though these very schemes have not been successful in eradicating the practice in the past.

Thirdly, it is not just the law but the attitude of public authorities which aggravates the plight of the scavengers. The Government has repeatedly sought an extension of deadline to curb the problem, exhibiting its lack of commitment. The present scheme of law therefore fails in protecting the dignity of manual scavengers. The end to manual scavenging can come not only by modernizing sanitation but by also ensuring former scavengers do not go back to it as a result of poverty or unemployment. Amendments to the current law, strict enforcement, and a change in mind-set are needed.

LOOPHOLES & CHALLENGES:

The MS Act 2013 prohibits manual scavenging and states that no person or agency can employ manual scavenger. Local authorities should demolish existing insanitary latrines (household or public) that require manual cleaning and it shall be illegal to construct any such latrines after this law. However, for cleaning sewers and septic tanks, the Act stops short of completely banning the practice of manual cleaning and states safety measures that should be taken. However, a study by Rashtriya Garima Abhiyan shows that most of the provisions are not adhered to as per the law.¹³ The study covered 51 incidents in which 97 deaths were reported. It was found that not even in a single incident protective gear and safety devices were provided to the victims who are required under section 4 and 5 of the Act. Under section 6, various precautions like periodical check of protective gears and safety devices, providing body suits to the manual scavengers, presence of supervisor at the site of the cleaning, checking for oxygen level to avoid asphyxia were hardly followed. Similarly, section 7 of the Act require safety precautions in case of emergency; harness or any other method to bring injured manual scavenger out and availability of ambulance in close proximity to transport

¹³ Rashtriya Garima Abhiyan (Justice Denied: Death of Workers engaged in manual scavenging while cleaning the Septic Tank or Sewer).

the injured. The study shows that the precautionary measures were almost absent in the incidents documented. Most of the deaths could have been avoided if these guidelines were followed. Hence, the implementation of the Act is far from satisfactory.¹⁴

RIGHT TO HEALTH CARE OF WORKER: CASE LAWS

Health and Health Care of Workers is an essential component of right to life. In **CERC vs. Union of India**,¹⁵ the Supreme Court was dealing with the rights of workers in asbestos manufacturing and health hazards related to it. The Court was dealing essentially with private employers involved in asbestos mining and industry. To begin with, the Court noted that the right to health and health care of a worker is a component of the fundamental right to life guaranteed under Article 21 of the Constitution of India. The Court observed:

“Article 38(1) lays down the foundation for human rights and enjoins the State to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Art. 46 direct the State to protect the poor from social injustice and all forms of exploitation. Article 39(e) charges that the policy of the State shall be to secure “the health and strength of the workers”. Article 42 mandates that the States shall make provision, statutory or executive “to secure just and humane conditions of work”. Article 43 directs that the State shall “endeavour to secure to all workers, by suitable legislation or economic organisation or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers”. Article 48-A enjoins the State to protect and improve the environment .The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood.”

Facilities for medical care and health against sickness ensure stable manpower for economic development and would generate devotion to duty and dedication to give the workers best physically as well as mentally in production of goods or services. Health of the worker enables him to enjoy the fruit of his labour, keeping him physically fit and mentally alert for

¹⁴ Manual Scavenging In India: Tata Trust Policy Brief (Available at: <https://www.tatatrusters.org/upload/pb-manual-scavenging.pdf>, last accessed on 26th August 2020 at 11:18PM)

¹⁵ Consumer Education & Research Centre vs Union Of India & Others, 1995 SCC (3) 42

leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workmen.

On 12th July, 2011, in the case of, *Delhi Jal Board Versus National Campaign for Dignity and Rights of the Sewerage and Allied Workers & Others*¹⁶ the Supreme Court held that the State could not “*absolve themselves of the responsibility to put in place effective mechanisms for ensuring safety of the workers employed for maintaining and cleaning the sewerage system*”. The Supreme Court has recognised the plight of sewerage workers and the high risks they face in their jobs as amounting to a denial of their fundamental rights of equality, life and liberty. Hence, the Supreme Court pulled up the central government for its callousness in not enacting a law to ban manual scavenging and criticised the government for being insensitive to the safety and well-being of the workers. Numerous directives provided by the Supreme Court are outlined below:

- *Free medical examination and treatment to sewer workers and continuation of treatment until recovery or payment of compensation to those suffering from any occupational disease, ailment or accident in accordance with the provisions of the Workmen’s Compensation Act, 1923;*
- *Sewer workers, including contract workers, shall get the payment of all statutory dues such as provident fund, gratuity and bonus;*
- *Workers shall be provided with all possible modern protective equipment;*
- *Employers shall provide soap and oil to all the workmen;*
- *Workers should be provided with restrooms and canteens, first-aid facilities, safe drinking water, washing facilities, latrines and urinals, shelters and crèches. These are to be provided at what are known as ‘stores’ or places where the workers assemble to give their attendance and from where they depart to their respective work sites.*

STATUS OF HEALTH OF SAFAI KARMACHARIS

The Mortality rate in the category of these workers is higher in comparison to other trade/occupation. No data on their Mortality Rate/Infant Mortality Rate has been collected and compiled separately. Infant Mortality Rate also seems to be higher. Their infants are also

¹⁶ Delhi Jal Board Versus National Campaign for Dignity and Rights of the Sewerage and Allied Workers & Others, Civil Appeal No..5322 OF 2011.

victims of malnutrition. Mostly due to being unaware, common vaccines like Polio, DPT, Khasra, Hepatitis etc. which are provided by the Government free of cost, are also not administered to their children, resulting a large number of their children suffering from such diseases which could have been avoided by immunizing. Due to un-hygienic conditions they work and live in, the Infant Mortality Rate (IMR) and Mother Mortality Rate(MMR) are very high in this group of people. However, no segregated data is maintained by the Central as well as State Governments.

CONCLUSION

Basic human rights cannot be denied to people who are working and rendering services to the larger community. However, if one looks at the condition of sewerage workers then a grotesque picture, wherein workers have been subjugated and marginalised, comes to light. Work health and safety aims and welfare of workers at work has been severely compromised in the case of sewerage workers. Very few workers are covered under the National Health Insurance Scheme. The permanent employees have the option of a deductible component from their salary, which goes towards maintaining an insurance plan. Owing to the low wages and the optional status of the same, it is not very effective. Contract workers have no access to medical facilities and tests by design.¹⁷ Non availability of comprehensive Occupational Safety and Health Act, separate Occupational Safety and Health Administration, and even the non-availability of waste management workers occupation safety rules and regulations. Sanitation and health-care are essential components for a good quality of life. A safai karamchhari or a scavenger or other sanitation worker handling night soil, filth, garbage, dead animals, cleaning of sewers, nallas including sweeping of streets and roads, all are exposed to serious health hazards and are prone to contacting diseases.

In *Safai Karamchhari Andolan v. Union of India*¹⁸, the Supreme Court directed the government to completely abolish the practice and provide for the rehabilitation of people released from manual scavenging. However, no progress has been made.¹⁹ It is clear that the judiciary has been taking active steps to ensure respect for the human rights of manual scavengers, but such steps without the support of the others organs of government is to no avail. The Ministry of Social Justice and Empowerment has recently drafted a proposal for an

¹⁷ *Supra* f.n. 11

¹⁸ *Safai Karamchhari Andolan v. Union of India*, Writ Petition (Civil) No. 583 Of 2003

¹⁹ *Ibid.*

improved implementation of the Act. The proposal provides for revised safety standards, stricter punishments for contractors and better rehabilitation machinery for the scavengers. It is hoped that the proposal will be implemented quickly. They continue to work hard even after undergoing major surgeries like hysterectomy, without being allowed enough time to rest. This causes them to lead not just an unhealthy life, but a painful one as well. In Mahatma Gandhi's words:

*"We have reduced them to the level of the beast. They earn a few coppers but only at the expense of their human dignity. The weight of oppression has crushed them. It is enough to break one's heart to see them eating their food, covering under the shadow of the latrine wall."*²⁰



²⁰National Commission for Safai Karamcharis Report 2006-2007, (Available at: <https://ncsk.nic.in/sites/default/files/Binder4.pdf>, last accessed on 28th August 2020 at 12:34AM)