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“MANUAL SCAVENGING: A CASE OF DENIED RIGHTS”

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Abstract

The profession of manual scavenging has existed since the dawn of human civilisation. In addition to being barbaric, the inhumane practice of manually removing night soil—which entails removing human waste from dry toilets using bare hands, brooms, or metal scrappers—and transporting waste and baskets to disposal sites is arguably the worst violation of human rights. Numerous laws were passed in order to guarantee an equitable and casteless society, but the scavenging communities' living conditions have remained appalling. Ironically, the Indian government only passed legislation specifically prohibiting the cruel and degrading practice of manual scavenging in 1993 and 2013, after decades of independence. This essay discusses the origins of manual scavenging and any comparable activities that may exist worldwide. This paper's analysis of the statutory framework is another component.

administrative plans, court rulings, and remedial actions (problems and worries). In summary, this paper aims to critically analyse the proper regime of manual scavengers in light of the state's failure to protect the scavenging community's rights and the role of state instruments as violators. Furthermore, this paper will propose corrective actions and forward-thinking measures to integrate the scavenger community into our nation and significantly contribute to its development.

- Linking MNREGA and other social security schemes with the Scavenging Act of 2013 Effective coordination among public and private authorities Community initiatives Responsibility of railways Sanitation programmes and awareness National level monitoring system and social audit Role of local authorities Legislative and executive will.

I. Introduction.

I might not be reborn but if so, I wish to be reborn into a scavenger family, so that I can ease them of the inhuman, unhealthy, and hateful practice of handling night soil.

-- **Mahatma Gandhi**

Who is a Manual Scavenger?

A manual scavenger is an individual engaged by a person, original body, agency, or contractor for manually drawing, removing, getting relieve of, or dealing with mortal dirt in

an aseptic restroom, in an open drain or hole into which analogous dirt of the aseptic restroom is getting relieve of, on a road line, or in any other places or spots as may be notified by the Central Government or State Government, as per Section 2(g) of " The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013".

On January 26, 1950, the Indian Constitution went into effect, bringing with it the foundational principles of civil rights protection as well as the source of estate and class

annihilation, specifically composition 17 (nullification of untouchability). Multitudinous laws were passed to guarantee an egalitarian and casteless society, analogous as the Protection of Civil Rights Act of 1955 and the Scheduled Castes and Scheduled Tribes Act of 1988, but the situation of the weaker corridor has not shown respectable suggestions of improvement. Caste is still a significant factor in class and occupational division moment. Indeed, though mortal development has advanced significantly worldwide, there is a community in India that subsists on carrying mortal waste and maintaining cooperative sanitation while carrying the burden of their estate identity.

Since the dawn of mortal civilization and the partition of India into varnas, homemade scavenging has been a profession. Only Dalits carry out this dirty and contaminating work, and they're members of a Dalit sub-estate that's despised and "untouchable" indeed by other Dalit sub-castes. The cruel practice of manually removing night soil, which involves carrying baskets and waste to disposal spots and removing mortal waste from dry toilets with bare hands, brooms, or substance squabbles, is not only barbaric but also potentially the worst mortal rights violation.

According to Section 2(g) of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (henceforth appertained to as the PEMSR Act, 2013), a homemade scavenger is defined as "an existent who's engaged or employed by a person, a group of individualities, an original authority, or a contractor to work manually, carry, dispose of, or else handle mortal excreta in a aseptic restroom, in an open drain or hole where excreta from sanitation installations is disposed of, or in a analogous position."

Although manual scavenging is a dangerous and unacceptable way to dispose of human waste, it still occurs in India despite scientific and technological advancements that have reduced the need for manual labour and the

availability of simple, cost-effective alternatives that can solve the twin problems of safe human excreta disposal and manual scavenging. It is inherited by successive generations. The acceptance culture that permeates their society is also depriving them of their basic rights. The rigid caste system that prevails in India's rural and urban areas, the dearth of reliable manual scavengers, inadequate law enforcement, and other factors have all contributed to the state's failure in spite of numerous plans, laws, and policy initiatives and corruption.

II. Prevalence of manual scavenging.

When the first public restrooms appeared in Europe in 1214, manual scavenging is said to have begun. John Harrington created the water closet in 1596. The flush type toilet, created by S.S. Helier in 1870, have a large popularity in the western world. In the western world, this led to the extinction of other toilet types. In the middle of the 1950s, Western Europe stopped using any surface toilets. Consequently, India is the only nation in the world where a specific segment of the populace has historically been in charge of keeping the area tidy by clearing out social waste, including human waste.

There are still areas of India where manual scavenging is practiced without adequate sewage systems. It is believed to be most common in Madhya Pradesh, Uttar Pradesh, Rajasthan, and Gujarat. Public dry toilets are still operated by a few Indian municipalities. The Indian Railways, which has restrooms that dump all train waste on the tracks and hire scavengers to clean it by hand, is the largest violator of this law in India. The 2011 socioeconomic caste census report states that there are 63,713 manual scavengers in Maharashtra, 23,093 in Madhya Pradesh, 17,619 in Uttar Pradesh, 17,332 in Tripura, and 15,375 in Karnataka.

III. Manual scavenging in India: Historical background and scavenging communities.

In India, manual scavenging has been done since ancient times. Scavenging by certain Indian castes has existed since the dawn of civilization, according to the contents of sacred texts and other literature. Slave manual scavenging was one of the 15 tasks listed in the Naadiya Samhita. This also persisted throughout the Buddhist and Maurya eras. In 1556 AD, Jahangir constructed a public restroom for 100 families in Alwar, 120 kilometres from Delhi. Documentary evidence regarding its upkeep is scarce. According to scholars, Mughal women who practiced purdah needed to use scavenged enclosed toilets. It is suggested that the Bhangis are descended from Rajput's because they share some of their clan names.

The scavenger castes, which went by different names in different states, such as the Bhangi, Valmiki, Chura, Muhtar, Mahabir, Lal Begi, Halalkhor, and so on in northern India; the Har, Hadi, Hela, Dom, and Sanei, among others, in eastern India; the Mukhiyar, Thoti, Chachati, Pakay, and Relli, along with the Mehtar, Bhangias, Halalkhor, Ghasi, Olgana, Zadmalli, Barvashia, Metariya, Jamphoda, and Mela, among others, in western and central India. Some of them began to reappear as Adi Dharmi, Adi Dravida, Adi Karnataka, and Adi Andhra in the 1911 census.

IV. International covenants, protocols and instruments.

The problems and issues encountered by manual scavengers were also debated and given consideration in recent times by international organizations, particularly the United Nations (UN). In 2009, the commission for the promotion and protection of human rights appointed special rapporteurs to investigate the issue of discrimination by work and descent globally. The report of the special rapporteurs on draft principles and guidelines for the Effective Elimination of Discrimination Based on Work and Descent is one of the highlights of developing standards and regulations.

V. Constitutional provisions.

¹¹⁰⁴Since manual scavengers belong to the lower section of society, they are provided to some special rights apart from rights under the Indian constitution. Some of the important and relevant constitutional provisions are as follows:

Article 14 sets forth the rights to equality under the law; Article 16(2) deals with equality of opportunity in public employment concerns; Article 17 abolishes untouchability.

Article 41: In some cases, right to work, education, and public aid;

Article 42: Fair and humane labour standards

Article 46: Encouragement of scheduled tribes, scheduled castes, and other backward groups' educational and financial goals.

Article 47: National obligation to promote public health and nutrition;

Article 19(1)(a): Freedom of speech and expression and right to practice any profession, or carry on any occupation, trades, or business.

Article 21: Protection of personal freedom and life;

Article 23: No forced labour, human trafficking, etc.

Article 338: Establishing a National Commission for Schedule Caste.

VI. Legislative framework.

Apart from plethora of constitutional provisions the legislature was enacted several laws for the advancement of the schedule classes including manual scavengers. Some of the major enactments are as follows:

¹¹⁰⁴ Indian Constitution 1950.

¹¹⁰⁵The Protection of Civil Rights Act, 1955

Originally passed trying to eradicate the practice of untouchability and the social handicaps it produced against scheduled caste members, the 1955 Untouchability (Offences) Act aimed for this. Amend in 1977, it is now known as the Protection of the Civil Rights Act, 1955. Under the revised legislation, which also made untouchability a crime subject to prosecution and punishment, it ceased to be a compoundable offence.

¹¹⁰⁶The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 became effective on January 31, 1990. Among other provisions, the Act defines certain crimes as atrocities, imposes harsher penalties on offenders, and establishes specialized courts to accelerate the prosecution of such cases. The Act's primary goals are to stop scheduled castes and tribes from being abused, establish special courts for trying these crimes, provide relief and rehabilitation to victims, and address issues pertinent to or arising from such crimes. The most recent changes regarding manual scavengers helped the Act even more. The Central Government announced on January 1, 2016, that it is illegal under the Act to use, coerce, or permit any member of the SC/ST community for manual scavenging. Its contravention involves a punishment of not less than six months of imprisonment, which extends up to five years, and a fine.

¹¹⁰⁷Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (henceforth appertained to as the EMSCDL Act, 1993) makes vittles' for the conservation and construction of water-sealed latrines and other issues, and for the restriction on the employment of homemade scavengers and the construction or durability of dry latrines.

The Act established the National Commission for Safai Karam Charis, which has the responsibility to study, dissect, and cover the perpetration of different programs to profit Safai Karam Charis as a separate reality. It also aims to requital their grievances. This Act is a weal act meant to help people engaged in cleaning and plumbing jobs in different state departments. Under Section 31 of the PEMSR Act, the National Commission for Safai Karam Chari is fairly commanded to cover the perpetration, interrogate into violations, and resolve cases of non-compliance with the PEMSR Act of 2014. national Commission for Safai Karam Charis Act, 1993

¹¹⁰⁸National commission for schedule caste (NCSC)

(i) to make in such reports recommendations as to the measures that should be taken by the Union or any state for the implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes.

(ii) The commission is formed with the mandate to protect the interest of schedule castes in India. Article 338 (5) of India's constitution states some responsibilities of the NCSC.

(iii) To inquire and oversee all matters connected with the safeguards afforded for the scheduled castes and assess the functioning of such safeguards;

¹¹⁰⁵ The protection of civil rights act 1955

¹¹⁰⁶ The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

¹¹⁰⁷ Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

¹¹⁰⁸ National commission for schedule caste (NCSC)2004.

(iv) To investigate particular grievances regarding the denial of rights and protection of the scheduled castes;

For join and advise in the planning process of socio-economic development of the scheduled castes and to assess the progress of their development;

(v) To make recommendations regarding the steps to be taken by the Union or any State for effective implementation of those safeguards and other provisions for protection, welfare and socio-economic advancement of the scheduled castes

(vi) To perform such other functions with respect to protection, welfare and development and advancement of the scheduled castes.

VII. Government appointed committees and commissions.

Given that manual scavenging is an undignified and degrading job performed by the lowest class in Indian society, it has gained significant attention since independence. The Government of India has periodically established various committees and commissions that propose practical recommendations for the rehabilitation and social inclusion of scavenging communities.

¹¹⁰⁹Committee Of Brave

The former Government of Bombay established a committee called the Scavengers' Living Conditions Enquiry Committee in 1949, chaired by V.N. Barve, to investigate the living conditions of scavengers in the State of Bombay and recommend methods to enhance their working conditions and determine their minimum wages. The Committee presented its report to the Government of Bombay in 1952.

¹¹¹⁰Kaka Kalelkar Commission.

Established in 1953, the inaugural backward class commission was chaired by Kaka Kalelkar.

The report was submitted by the committee in 1955. The committee's report characterized manual scavengers as sub-human and emphasized the antiquated methods of night soil disposal and sanitation that involved the manual extraction of human waste by scavenging groups. The committee also criticized the municipal corporations for being the most egregious offenders.

¹¹¹¹Central harijan welfare board (CHWB)

It was founded in 1956 by the Ministry of Home Affairs, with Pandit Govind Ballabh Pant serving as its chairman. The board suggested the implementation of centrally sponsored programs for manual scavengers after reviewing the working conditions and living standards of sweepers and scavengers in India.

¹¹¹²Malkani committee.

At its meeting on October 12, 1957, CHWB decided to form a high-level committee to conduct a thorough investigation into the nation's scavenging threat. The Scavenging Conditions Inquiry Committee was then established, with Professor N.R. Malkani serving as its chairman. In 1960, the committee turned in its report. In its report, the committee identified dry latrines as a primary barrier to India's efforts to eradicate manual scavenging.

Committee on customary rights.

In 1965, a committee headed by Prof. N. R. Malkani was appointed by the Central Department of Social Welfare to investigate the issue of scavengers' customary rights being abolished. According to the committee's 1966 report, in areas where scavenging is not municipalized, latrines are cleaned privately, and one scavenger has the inherited right to clean a latrine against another scavenger through an agreement and understanding. Additionally, a customary relationship is formed with the householder, and the scavenger is compensated in one way or another.

¹¹⁰⁹ Barve Committee 1949.

¹¹¹⁰ The First Backward Class Commission was set up by a Presidential Order under Article 340 of the Constitution of India on Jan 29th, 1953, under the Chairmanship of Shri Kaka Kalelkar (popularly known as Kaka Kalelkar Commission). It submitted its report on March 30th, 1955.

¹¹¹¹ Central harijan welfare board (CHWB)

¹¹¹² Malkani committee.

Pandya committee.

It was established as a National Labour Commission subcommittee in 1968–69 to investigate the working conditions of scavengers and sweepers, with Bhanu Prasad Pandya serving as its chairman. However, neither the federal government nor the state governments gave it much thought. Nonetheless, it suggested that a central law be passed to control the living and working conditions of scavenger and sweeper communities. It also suggested that a sufficient and effective enforcement system be established.

VIII. Government/administrative schemes

Indian Government has invested funds in sanitation modernization. National schemes of sanitation focused on modernizing the management of human waste. The Sulabh Shauchalaya Scheme (1974), The Integrated Low-cost Sanitation Scheme (1981), Nirmal Bharat Abhiyan (2009) and Swachh Bharat Abhiyan (2014) are few examples. The following are some of the welfare schemes for scavenging communities:

Self-employment scheme for rehabilitation of manual scavenging (SRMS)

In April 2007, the government initiated this scheme to liberate the manual scavengers and to rehabilitate them. Central Government has revised the SRMS for rehabilitation of all the manual scavengers identified under the provisions of the Manual Scavengers Act, 2013. The main features of the Scheme include one-time cash assistance, training with stipend and concessional loans with subsidy for taking up alternative occupation.

National scheme of liberation and rehabilitation of scavengers and their dependents (NSLRSD)

The primary goal of the NSLRSD, which was established in 1989, is to provide for and involve manual scavengers in alternative and respectable jobs in order to free them from their current, inherited, and inhumane job of

manually clearing night dirt and filth. A 2003 CAG report came to the conclusion that the scheme, which involved an investment of 600 crores of rupees, had failed to meet its goal. Additionally, according to the CAG report, there was "no evidence to suggest if those liberated were in fact rehabilitated" and "a lack of correspondence between 'liberation' and 'rehabilitation.'"

Integrated Lowcost sanitation scheme.

In order to transform the dry latrine system into a water-borne low-cost sanitation system and free the manual scavengers, the Indian government, Ministry of Urban Employment, and Poverty Alleviation have partnered with HUDCO to launch a massive integrated low-cost sanitation program. HUDCO has also been providing support for basic sanitation programs.

Nirmal Bharat Abhiyaan (NBA) (2009-14) and Swachh Bharat Abhiyaan (SBA) (2014- 19):

Given that unsanitary waste disposal methods (such as open defecation and dry latrines) are the primary cause of manual scavenging. The goal of the 1999-conceived Total Sanitation Campaign (TSC), which was renamed the Nirmal Bharat Abhiyan in 2012, was to guarantee complete sanitation in both urban and rural areas by the year 2017. In 2014, the SBA took the place of the NBA. SBA was created with the following goals in mind:

- i. Open defecation is eliminated.
- ii. Manual scavenging is eliminated.
- iii. Municipal Solid Waste Management: A Contemporary and Scientific Approach. To alter behaviour in relation to hygienic sanitation practices. Ironically, the situation of manual scavengers has been appalling in spite of numerous constitutional, statutory, and administrative protections and frameworks. The process of identifying manual scavengers has advanced slowly thus far, and the identification of manual scavengers has so far

progressed at snail's pace and the rehabilitation schemes for the welfare of manual scavengers has failed to achieve much result.

IX. Judicial intervention in manual scavenging.

Judiciary on the other hand has always played an active role in strengthening the cause of socio-economic welfare by translating several directive principles into enforceable rights for the upliftment of poor and weaker section of the society. A liberal interpretation of article 21 of the constitution has created numerous rights and has given a new direction to social welfare jurisprudence in India. With regard to judicial response towards the manual scavengers, recently courts have adopted a stern attitude towards the manual scavenging and pulled up the State authorities for failing to eliminate manual scavenging.

1. ¹¹¹³Safai karamchaari Andolan v. Union of India.

The Supreme Court recognized the threat of manual scavenging in India as an inhumane, degrading, and undignified profession in the current case. The Supreme Court noted that the EMSCDL Act of 1993 and the PEMSR Act of 2013 neither weaken the constitutional mandate of Article 17 of the Constitution nor excuse the union and state governments' inaction under the Act. According to the Supreme Court, the PEMSR Act of 2013 clearly recognizes the rights of individuals working in sewage and tank cleaning, as well as those cleaning human waste on railroad tracks, under Articles 17 and 21 of the Constitution.

According to P. Sathasivam CJ, "the Ministry of Social Justice and Empowerment's official statistics for the year 2002-2003 put the figure of identified manual scavengers at 6,76,009." More than 95% of these are Dalits who are forced to perform this demeaning work. The Supreme Court also cited a number of international agreements and instruments,

including the Convention on Elimination of Racial Discrimination (CERD), the Universal Declaration of Human Rights (UDHR), and the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW), to which India is a signatory and which aim to ensure a dignified human life with regard to his profession and other spheres of life. The Supreme Court established the following ideas regarding manual scavenger rehabilitation: Rehabilitation for manual scavengers must include the following if the practice is to be stopped and future generations are to be shielded from the cruel practice of manual scavenging: (a) Sewer deaths: even in emergency situations, it should be illegal to enter sewer lines without safety equipment. The family of the deceased should receive Rs. 10 lakhs in compensation for each such death.

(b) Railways – should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

i. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.

ii. Rehabilitation must be based on the principles of justice and transformation.

Supreme Court stressed on the rehabilitation of manual scavengers in accordance with part IV of the PEMSR Act, 2013. The Supreme Court directed the state governments and union territories to fully implement various provisions of PEMSR Act, 2013 and take appropriate action for non-implementation as well as violation of provisions contained in PEMSR Act, 2013.

¹¹¹³ Safai Karamchari Andolan And Ors vs Union Of India And Ors on 27 March, 2014_SC(UPP)_280

2. ¹¹¹⁴Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage & Allied Workers.

The Supreme Court issued a historic ruling in this case, recognizing and emphasizing the suffering and indifference of the underprivileged segments of society, especially the scavengers and sewage workers, who put their lives in danger by going down the drain without any security or safety gear and who have been denied the fundamental rights to equality, life, and liberty for more than 60 years. Citing a report, the Supreme Court declared that:

Workers are experiencing high rates of morbidity and mortality as a result of occupational exposure. Over the past two years, 33 workers have lost their lives in accidents involving blocked sewer lines; 59% of workers enter underground sewer manholes more than ten times per month, and half of them must work more than eight hours a day, workers have experienced syncope, and others have experienced temporary unconsciousness. None of the employees had received a hepatitis B vaccination, but slightly more than one-third had received a tetanus vaccination. According to Body Mass Index (BMI) calculations, 46% of workers in all age groups were underweight. All daily wage earners received a monthly salary of about 2950 rupees with no additional benefit irrespective of service period.

When one of the three organs of the government, the judiciary, gives orders so that the right to equality, life, and liberty is no longer an illusory figure for those afflicted with the disabilities of poverty, illiteracy, and ignorance, and when orders are issued for enforcing laws made by the legislature in favor of the have-nots, a theoretical controversy is raised by putting forth the following arguments against judicial activism and the overreach of the judiciary, as put forth by the Delhi Jal Board:

judicial overreach and the orders given in favour of the weaker segments of the society

are always under challenge in the higher courts. In majority of cases, the only purpose of this litigative exercise is to exhaust those who sincerely plead the cause of the weak and poor.

The government and state apparatus were also criticized by the Supreme Court for their insensitivity to the safety and well-being of people who are forced to work in extremely unfavourable conditions and frequently face the possibility of losing their lives due to extreme poverty. The wealthy class's elitist attitude toward pro bono and public interest litigation was also rejected by the Supreme Court. In addition to ordering the civic authorities to immediately comply with the directives and orders issued by the Delhi High Court to guarantee the safety and security of the sewage workers, the Supreme Court also ordered that the families of the deceased receive greater compensation.

X. Issues and challenges of abolition and rehabilitation.

In India, millions of people still lack the privilege to awaken to the dawn of freedom. Their days begin with the brutal act of manual scavenging and conclude with the same dread of the following day. The majority of them are women who engage in the savage habit of scavenging. Caste divisions within Indian society give it an inhuman appearance. A situation where some groups are forced to perform caste-based labourer, with manual scavenging being the worst.

The state's inability to prevent local households from using manual scavengers illegally: Under the ¹¹¹⁵EMSCDL Act of 1993, the Indian government has a very bad record of punishing individuals who continue manual scavenging. The National Advisory Council claims that "almost no one has been punished under this law." According to the 2011 Indian census, there are 13,14,652 latrines where night soil is disposed of in

¹¹¹⁴ In 2011 AIR SCW 4916 (Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers.

¹¹¹⁵ THE EMPLOYMENT OF MANUAL SCAVENGERS AND CONSTRUCTION OF DRY LATRINES (PROHIBITION) ACT, 1993

open drains; 7,94,390 of these are manually serviced, and 4,97,236 are serviced by animals. This indicates the administrative slackness in removing unsanitary latrines, which are the primary cause of manual scavenging in India. In addition to the fact that laws prohibiting manual scavenging are frequently disregarded in reality, those who attempt to leave may face reprisals, including community

- i. leave can suffer retribution, including community threats of physical violence and displacement.
- ii. Difficulties in accessing the criminal justice system: Due to prevalent discrimination, Dalits require significant assistance in accessing the criminal justice system when they are victims of crime. While people throughout India face police inaction and outright refusals to investigate their complaints, these problems are intensified for socially and economically backward people. People from manual scavenging communities are susceptible to this type of treatment due to the caste bias by police and local government officials. Activists and rights groups told Human Rights Watch that police routinely fail to register and investigate complaints of crimes against Dalits when the perpetrators are of a dominant caste. In particular, police will not register cases under the Schedule Castes /Schedule Tribes Act, 1988—a law crucial to protect people who work as manual scavengers.
- iii. Harassment and threats from local employers: In a 2014 Human Rights Watch report, women who engage in manual scavenging admitted that because dry toilets are cleaned every day, the community puts pressure on them if they skip even one day. Dominant caste groups

may deny people access to upper caste landholders' and community property when they refuse to carry out caste-based tasks. This access is essential because the majority of manual scavengers do not own land and need to enter both privately and communally owned areas in order to gather firewood, graze livestock, or even urinate in the fields.

- iv. Social Insecurities and Poor Social Status because of Unemployment and Economically and socially and educationally weaker.
- v. Lack of accountability for failing to end manual scavenging: Under the PEMSR Act, 2013, district magistrates and local authorities are responsible for ensuring the implementation of PEMSR Act, 2013 and oversee rehabilitation process of manual scavengers. In addition, the act contains provisions for state governments to appoint inspectors to examine premises for insanitary latrines and persons employed as manual scavengers. Finally, the act calls for central and state monitoring committees, and vigilance committees in each district.
- vi. The PEMSR Act, 2013 permits the state government to conduct special trials. Complaints have to be made before the court within three months of the offense. However, since the same district authority responsible for adjudicating offenses under the act may also be the authority responsible for implementing the law, in some cases, there is a potential conflict of interest. For these provisions in the new law to be effectively implemented, it is crucial that sufficient resources and training are provided to activate these monitoring mechanisms in collaboration with manual

- scavenging communities, rights activists, and civil society organizations.
- vii. Lack of alternative employment opportunities: People engaged in manual scavenging rely upon the daily food donations they receive for subsistence. In order to leave manual scavenging they must have immediate access to alternate employment. These communities, however, face significant barriers to entering the labour market, including social boycotts and economic boycotts in retaliation for refusing to clean toilets in the village, gender- and caste-based discrimination in access to employment, and corruption, such as being asked to pay bribes in order to be appointed to reserved government positions.
- viii. Inadequate surveys and failure to identify people still engaged in manual scavenging: According to the SC, government surveys have been ineffective. In particular, the court notes, the 2013 central government survey “has shown remarkably little progress” and has identified “only a miniscule proportion of the number of people engaged in manual scavenging. There are different figures with regard to the no. of manual scavengers in India. For instance, according to National Safai Karamchari Commission 3rd and 4th Report there are 5,77,228 manual scavengers; according to 2002-03 report of Ministry of Social Justice and Empowerment there are 6,76,009 manual scavengers; whereas Safai Karamchari Andolan (NGO) working for manual scavengers) has estimated around 1.2 million manual scavengers. Whereas Socio Economic Caste

Census report of 2011 puts the figure to 1, 80, 657 manual scavengers, with Maharashtra having the highest number of scavengers i.e., 63,713. Therefore, periodic comprehensive survey, at least once in three years, should be conducted by the government either independently or in collaboration with credible non-governmental organizations (NGOs).

XI, PEMSAR Act, 2013 – Salient Features.

It was passed by both the Houses of Parliament on September 7, 2013. The PEMSAR Act, 2013 received assent of the President on September 18, 2013 and subsequently published in the Gazette of India on September 19, 2013.

- The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.
- Its main objectives are: - Prohibition of employment as manual scavengers; ii. Rehabilitation of manual scavengers.
- The Act recognizes the link between manual scavengers and weaker sections of the society. It therefore, views manual scavenging as being violative of their right to dignity.
- Under the Act, each local authority, cantonment board and railway authority are responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.
- Each occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost. If he fails to do so, the local authority shall convert the latrine and recover the cost from him.
- The district magistrate and the local authority shall be the implementing authorities.
- Offences under the Bill shall be cognizable and non-bailable, and may be tried summarily.
- It provides for detailed vigilance mechanism and monitoring committee at district, state and central level.

- The Act specifically provides for carrying out surveys for identifying persons employed as manual scavengers.

XII. Conclusion and suggestions.

Based on the discussion above, it can be said that the situation of manual labour has not significantly improved in spite of a number of government initiatives. Despite the fact that policymakers have started a number of social welfare reforms aimed at manual scavengers, they have largely failed to guarantee their success in practice. In addition to policymakers ignoring the actual needs of the scavengers and their improvement, organized schedule caste movements have also failed to address the issue of manual scavengers.

In terms of human rights concerns, manual scavenging is still a major problem. despite the fact that laws, significant financial resources, and programs of economic aid for scavenger communities have been established. The strict enforcement and scrutiny measure necessary to guarantee correct law implementation and efficient use of budgetary allocation, however, are the most important prerequisites. Finally, the public will inevitably become aware of the need to discourage dehumanizing jobs like manual scavenging. Several helpful suggestions in this area can be implemented:

- i. Linking ¹¹¹⁶MNREGA and other social security schemes with the ¹¹¹⁷Scavenging Act of 2013: Since PMSR Act, 2013 doesn't have any express provision of linking rehabilitation programmes for scavengers with the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA). Thus, an amendment must be brought to the Scavengers Act of 2013 and the rehabilitation programmes must be linked with MNREGA and other social security laws like Unorganized Sector

workers' ¹¹¹⁸Social Security Act, 2008. In this way scavenging activities can be eliminated in rural areas where it is still practiced. Moreover, such an entitlement will facilitate the scavenging communities to get jobs under ¹¹¹⁹MNREGA and other social security laws, which are often deprived to them due to the stigma attached to their profession and lack of express provisions in the law.

- ii. Efficient collaboration between public and private entities: Key roles in ending manual scavenging and rehabilitating emancipated families fall to the Ministry of Social Justice and Empowerment, the Ministry of Drinking Water and Sanitation, the Ministry of Rural Development, the Ministry of Housing and Poverty Alleviation, the Ministry of Urban Development, and the Ministry of Railways. Furthermore, because a significant portion of women participate in manual scavenging, the Ministry of Women and Child Development and the Ministry of Labor also play a significant role. In order to collaborate, a coordination committee comprising representatives from each of the eight ministries should be established. The function of NGOs, Bhaagidari, and RWAs in relation to private authorities should be strengthened by

- iii. Community initiatives: Since eliminating manual scavenging requires community initiative. Therefore, in order to prevent scavenging, communities should discourage and stop subletting services like sewer cleaning. Additionally, people should promise to follow hygienic procedures and

¹¹¹⁶ Mahatma Gandhi National Rural Employment Act 2005
¹¹¹⁷ Manual Scavenging Act 2013

¹¹¹⁸ Social security act, 2008.
¹¹¹⁹ MNREGA Act 2005

refrain from supporting or using manual scavengers for such low-paying jobs.

iv. **Railway responsibility:** The biggest organization in the nation that uses dry latrines is the Indian Railway. This practice must be stopped right away, and the railway ministry must report progress to Parliament at each session for the next three years. This is so that the Indian government can guarantee that scavenging in Indian railways is completely eradicated within the allotted time. This can be accomplished by expediting the installation of bio-toilets in trains and train stations. The¹¹²⁰ DRDO and other technical research think tanks could provide technical assistance in this area.

Responsibility of railways: Indian railway is the largest institution in India employing dry latrines. The railway ministry should immediately ban this practice and for the next three years submit progress reports in each session of Parliament. This, so that the Government of India can ensure complete abolition of scavenging in Indian railway within stipulated time. This can be done by accelerating bio-toilet construction in railway stations and trains. For this purpose, technical support of DRDO and another technical research think tank can be utilized.

v. **Sanitation initiatives and awareness:** The primary cause and barrier to the elimination of manual scavenging in both rural and urban areas is inadequate sanitation, or the absence of restrooms. Therefore, it is essential to accelerate sanitation initiatives and raise awareness about appropriate toilets. The UPA government established a new

Ministry of Sanitation and Drinking Water in 2009 to oversee policies and initiatives pertaining to sanitation programs, which included building contemporary restrooms.

vi. discouraging the practice of open defecation and creating awareness in rural and urban areas. In 2014,¹¹²¹Swachh Bharat Abhiyaan has been launched on similar lines.

vii. **National level monitoring system and social audit:** The Government of India should form a national level monitoring committee which regularly monitors the practice of manual scavenging. This committee could be formed of ministry representatives, public representatives, state representatives, community representatives as well as civil society organisations representatives. As Acts implementation is of utmost importance, thus, Comptroller and Auditor General of India should perform a high-level social audit of PMSR Act, 2013 and all allied schemes. Such an audit will allow the executive and lawmakers to familiarize themselves with loopholes in the system and facilitate proper Summer Issue 2016 Law Review implementation of the law. In addition, for identification of manual scavengers in various states there has to be an expeditious conduct of a detailed and thorough survey for identifying manual scavengers in India by forming a high-level state committee under the chairmanship of a retired judge or a sitting judge of a high court. The committee can have members from state bureaucracy, schedule

¹¹²⁰ The Defence Research and Development Organisation (DRDO)

¹¹²¹ Swachh Bharat Mission, Swachh Bharat Abhiyan, or Clean India Mission is a country-wide campaign initiated by the Government of India on 2 October 2014.

- castes/schedule tribes commission, state human rights commission, state women commission and civil society members working for the cause of manual scavengers
- viii. If you have more content, you would like paraphrased, please provide it, and I'll be happy to help! Function of local governments: The municipal and panchayat bye laws in the states must include regulations that prohibit the building of any new homes with dry latrines or without water-sealed latrines or sanitary latrines using suitable technology, and actions should be implemented to ensure that existing dry latrines are torn down and replaced with new water-sealed or sanitary latrines employing appropriate methods. A deadline must be established for the transformation of dry latrines into wet ones and for building new latrines. It ought to be a criterion for determining grants.
- ix. ¹¹²² Legislative and executive will: While a constitutional amendment to enhance the conditions of manual scavengers is not advised, it is possible to modify various statutes to guarantee strictness and uniformity across different laws regarding scavenging and social welfare. The recent enactment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act 1 of 2016) is an encouraging development.
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¹¹²² the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act 1 of 2016).