

MANUAL SCAVENGING IN INDIA

THE PRACTICE, THE REMEDIAL INITIATIVES, THE SHORTCOMINGS & THE CHALLENGES

A SNAPSHOT VIEW



Submitted by

SAMAJIK SHAIKSHANIK VIKAS KENDRA (SSVK)

Lok Shakti Bhawan

Parmanand Path, Nageshwar Colony

Boring Road, Patna – 80001

BIHAR, INDIA

Web Site: www.ssvk.org

E-mail: ssvkindia@gmail.org

Introduction

Manual Scavenger means a person engaged or employed on regular or frequent basis by an individual or a local authority or a public or private agency, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which human excreta from insanitary latrines is disposed of, or on a railway track, before the excreta fully decomposes.

Manual Scavengers are usually self-employed or contract employees. "Self-employed" means a person who scavenges a group of households' dry latrines or drains etc. in a particular ward, for payment in cash and/or in kind, by the house-owners. Contract employees would normally be those who are hired through contractors, by a municipal body or any other organization or a group of house-owners, to scavenge individual or community dry latrines and open drains where night soil is disposed.

The dehumanising practice of *manual scavenging* is closely interlinked with untouchability. It is well known that this work is socially assigned and imposed upon certain untouchable castes of India. Manual scavenging is rooted in caste and with very few exceptions, all the manual scavengers are from the Scheduled Castes. Even amidst schedule castes, manual scavengers occupy the lowest rung which further excludes them as "untouchables among the untouchables". Manual scavenging is thus a caste based occupation, with a large majority of them being women. The continuance of manual scavenging constitutes a gross violation of human rights and the worth of the human person and flies in the face of the Constitutional guarantee assured, in its very Preamble, of a life with dignity for every individual in the country.

The number of manual scavengers in the country according to the official statistics of the Ministry of Social Justice and Empowerment of the Government of India (2006) was 6,76,009, subsequently revised to 7,70,338. The highest numbers were in Uttar Pradesh 2,13,975 followed by Madhya Pradesh (81,307), Maharashtra (64,785), Gujarat (64,195) and Rajasthan 57,736. But independent estimates indicate that there could be about twelve lakh manual scavengers in the country. The figure for Bihar stood at 12,226 though a survey conducted in 2002 at the initiative of Mr. Jabir Husain, the then Chairperson of Bihar Legislative Council put the number at 22,000.

State Led Initiatives for Eradication/Curtailment of Manual Scavenging

The first legislative initiative in terms of curtailing the practice of manual scavenging was through **incorporation of Section 7A in the Protection of Civil Rights Act 1955 in 1976** which provided that whoever compelled any person on the ground of untouchability to do any scavenging should be deemed to have enforced a disability arising out of untouchability and thus punishable with imprisonment. However, it was only four decades after the commencement of the Constitution that manual scavenging was specifically prohibited under the '**Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act**' which was passed by Parliament in May 1993 after obtaining resolutions from the State Legislatures of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal under Article 252(1) of the Constitution. While the Act received the assent of the President in June 1993, it took almost four years for the issue of the notification bringing the Act into force in these six States and all Union Territories in January 1997. The remaining States were expected to adopt the Act by passing resolutions under Article 252(1); but the legislation is yet to become one of countrywide applicability. Some of the States have not adopted the law on the ground that there were no manual scavengers in the State, despite evidence to the contrary. As of now the Act stands adopted by 23 states and all union territories. Two other states, one being Bihar, have enacted their own laws, which are similar to the central Act. Yet, as per the 2011 Census, there were 7.94 lakh latrines in the country from which night soil was removed by humans.

In addition to the above, other legislations, in favour of the interest of the Scheduled castes and the Scheduled tribes are as follows:

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: The main aim of this act is effective action for prevention of atrocities against these Castes / Tribes. The punishment for the accused is very much specified and clarified under the act.

The Bonded Labour System (Abolition) Act, 1976 prohibits bonded labour.

The practice of manual scavenging violates **articles 14, 17, 21 and 23 of the Constitution**.

Vishakha guidelines and Protection of Women from Sexual harassment at workplace.

Various provisions of **the Universal Declaration of Human Rights and CEDAW** which hold all human beings to be equal and to which India is a signatory.

The Government has also formulated the following schemes/programmes which specifically or implicitly address the issue of social and economic upliftment of the manual scavengers:

Valmiki Malin Basti Awas Yojna (VAMBAY): This scheme was launched by Government of India during 2001 with the aim to provide shelter and upgrade the existing shelter for people living below poverty line in urban slums which helps in making cities slum free. The scheme is shared on 50:50 basis with states. Preference is given to women headed households. The Government releases subsidy on a 1:1 basis with loan

Total Sanitation Campaign (TSC): The Total Sanitation Campaign is a comprehensive demand driven and people centred programme to ensure sanitation facilities in rural areas with broader goal to eradicate the practice of open defecation. It follows a principle of “low to no subsidy” where a nominal subsidy in the form of incentive is given to rural poor households for construction of toilets. The key intervention areas are Individual Household Latrines (IHHL), School Sanitation and Hygiene Education (SSHE), Community Sanitary Complex, Anganwadi toilets supported by Rural Sanitary Mats and Production Centres. In order to lend vigour to TSC, the Government of India, since 2003, has initiated an incentive scheme for fully sanitized and open defecation free Gram Panchayats, Blocks, and Districts called the ‘Nirmal Gram Puraskar’. The incentive provision is for Panchayati Raj Institutions (PRIs) as well as individuals and organizations that are the driving forces for full sanitation coverage.

Integrated Low Cost Sanitation Scheme (ILCS): In order to eliminate the dehumanizing practice of physically carrying night soil, the Centrally Sponsored Scheme for Urban Low Cost Sanitation was initiated in 1981 by the Ministry of Home Affairs and later implemented through the Ministry of Social Justice and Empowerment. The scheme envisages conversion of dry latrines into low cost twin pit sanitary latrines and liberation of scavengers through total elimination of manual scavenging. The scheme has been taken up on a ‘whole town basis’ and is being operated through the Housing and Urban Development Corporation (HUDCO) by providing a mix of subsidy from the Central Government and loan from the HUDCO in a synchronized manner.

Pay and Use Toilet Scheme: Under ‘Pay and Use Toilet Scheme’, Central assistance through Housing and Urban Development Corporation (HUDCO) was available to Urban Local Bodies (ULBs) for construction of toilets for footpath and slum dwellers who were unable to construct their own toilets. The period of the project was one year and the subsidy was payable in four equal installments on submission of utilization certificates of each instalment.

Pre-matric Scholarships for the Children of those Engaged in Unclean Occupations: The objective of this scheme is to provide financial assistance to enable the children of scavengers of dry latrines, tanners, flayers and sweepers who have traditional links with scavenging to pursue pre-matric education. Under the scheme, the States / UTs are provided 100% Central assistance over and above their respective committed liabilities to implement this scheme. The scheme covers over 6 lakh students every year

National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS): The National Scheme of Liberation and Rehabilitation of Scavengers (NSLRS) was launched by the Government in March, 1992 to provide alternate employment to the scavengers and their dependents. Under the NSLRS the scavengers and their dependents are trained in trades of their aptitude which can provide them alternate employment. During the course of training, the trainees get stipend up to Rs.500/- per month and a tool

kit allowance up to Rs.2,000/-. For rehabilitation, there is a prescribed financial package for different trades by which financial assistance up to Rs.50,000/- can be provided. Under NSLRS, the Government of India has formulated and issued guidelines to all States and their Special Central Assistance (SCAs) to form groups of 5 to 25 scavengers and start a production-cum-trading-cum service centre for large-scale conversion of dry latrines through Sanitary Marts in which the loan component would be provided by the National Safai Karamcharis Finance and Development Corporation (NSKFDC).

National Safai Karamcharis Finance and Development Corporation (NSKFDC): National Safai Karamcharis Finance and Development Corporation (NSKFDC) was incorporated on 24 January, 1997 under Section 25 of the Companies Act, 1956, as an Apex Institution for all round socio-economic upliftment of the Safai Karamcharis and their dependents throughout India and to extend concessional financial assistance to the Safai Karamcharis beneficiaries for establishment of income generating projects. NSKFDC provides loans to the Safai Karamcharis and their dependents through the state channelising Agencies. The target groups of the Corporation are "Scavengers" and their dependents and "Safai Karamcharis".

Assistance to State Scheduled Castes Development Corporations (SCDCs): The scheme for assistance to State Scheduled Castes Development Corporations was introduced in the year 1978-79 as a Centrally Sponsored Scheme in the States/UTs having sizeable Scheduled Castes population. At present, SCDCs are functioning in 26 States and UTs. They have been acting as promoters and catalysts for generating credit from financial institutions, providing missing inputs by way of margin money loans and subsidy to the target groups.

Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS): Introduced from January 2007 by the Ministry of Social Justice and Empowerment, the objective of SRMS is to rehabilitate remaining Manual Scavengers and their dependents out of the total of 7,70,338 identified by the Ministry. As 4,27,870 manual scavengers already stood assisted under NSLRS, this scheme is specifically directed at the rehabilitation of the remaining 3,42,468 in a time bound manner. Under this scheme, the identified manual scavengers and their dependents are provided capital subsidy up to Rs. 20,000 and concessional loan for undertaking self-employment ventures. Beneficiaries are also provided training for skill development for a period up to one year, during which a stipend of Rs. 1000 per month is also provided. Credit is to be provided by the banks, which will charge interest from the beneficiaries at the rates prescribed under the scheme. Both, term loan (upto a maximum cost of Rs. 5 lakhs) and micro financing (upto a maximum of Rs. 25,000) is admissible under the scheme. Micro financing will also be done through self help groups (SHGs) and reputed Non-Governmental Organisations(NGOs). Beneficiaries are allowed to avail second and subsequent loan from banks if required, without capital subsidy and interest subsidy and other grants under the scheme.

The scheme is implemented at the national level through the NSKFDC or other identified agencies for this purpose. At the State level, the implementing agencies will be the state channelising agencies identified for the purpose, which may include government agencies and reputed non-governmental organisations. Such agencies are also responsible for providing interest subsidy to the banks.

The beneficiaries are free to select any viable income generating self-employment project, an indicative list of which is as follows:

Sl. No.	Projects	Indicative cost of the Project
1	Fruit & Vegetables Vendor & Meat Shop, Paan Shop, Watch Repairing Shop and Wet Grinder etc.	Upto Rs.25,000 each
2.	Barber Shop, Tailoring Shop, Flour Mill, Bicycle Hiring and Repairing and STD/PCO Booth etc.	Rs.25,001 to Rs.50,000 each
3.	Autorickshaw (Petrol), Automobile Repair Shop, PCO/Photocopier Booth, General Provision Store, Beauty Parlour and Music Store etc.	Rs.50,001 to Rs.1,00,000 each
4.	Transport , Denting & Painting of Vehicles and Domestic Gadgets, Laundry & Dry Cleaning Shop, Sanitary & Hardware Shop, Servicing & Repair of Domestic Electrical Appliances, Tent House, Band Party, Readymade Garments Shop, Agriculture and allied activities including Non-land based schemes like Tractor, Trolley, Poultry Farming	Rs.1,00,001 to Rs.5,00,000 each

Source: Ministry of Social Justice and Empowerment Department of Social Justice & Empowerment

Civil Society Initiatives for Eradication of Manual Scavenging

Safai Karmachari Andolan (SKA) : It is a national movement committed to the total eradication of manual scavenging and the rehabilitation of all scavengers for dignified occupations. Its avowed mission is the liberation and rehabilitation of all persons engaged in manual scavenging across India from their caste-based hereditary and inhuman occupation. Safai Karmachari Andolan's major focus is to organize and mobilize the community around the issues of dignity and rights, accompanied by strategic advocacy and legal interventions.

Initiated in 1995 by children of those engaged in Manual Scavenging themselves for liberation from this ghastly occupation and dignity, it has, since then, grown progressively to become a national movement spread over 25 states of India, with the national secretariat in New Delhi. Under the guidance of the National Advisory Group SKA's programs are executed by the National Core Team working closely together with State Conveners, Organizers and Animators across the country.

While primarily focusing on the rights of manual scavengers, SKA is also committed to working with all those engaged in 'unclean' occupations such as sewage workers, pit workers and sweepers who fall within the ambit of 'safai karmacharis'. SKA was instrumental in eradicating manual scavenging in as many as 139 districts, as of 2009. SKA works in close cooperation and collaboration with other Dalit and human rights organizations committed to the rights of Dalits and other marginalized communities in general and safai karmacharis in particular.

Rashtriya Garima Abhiyan: The "Rashtriya Garima Abhiyan" (National Campaign for Dignity and Elimination of Manual Scavenging) launched by Jan Sahas, a Madhya Pradesh based NGO, in 2002 has proven to be a very innovative and effective program to end manual scavenging. The key interventions include getting the involved people out of this practice, organizing and capacitating them, ensuring education for their children and working for their holistic development. Jan Sahas is working directly in two districts of Indore and Dewas on this Campaign and through a network of organization is involved in 25 districts of Madhya Pradesh and 32 districts of 5 neighbouring states.

The Campaign appeals to the innate sense of dignity and urges manual scavengers to give up this caste-based, unconstitutional practice. The campaign provides on-going support so that liberated manual scavengers may thwart opposition they face and oppose all forms of discrimination. Manual scavengers are organized into sanghatans (community-based organizations) so that they are better able to demand their rights. The Abhiyan, in its efforts to attain the social, economic, political and cultural

rehabilitation of manual scavengers informs them of their rights and helps liberated manual scavengers to access and realize them.

The Abhiyan has been successful in liberating 11,000 manual scavengers, 95% of whom are women and who have been empowered to live lives of dignity. They are able to find alternative forms of work that pay competitive wages their children face less discrimination and they are having an increasing say in local political institutions. Liberated and empowered, manual scavengers have taken the lead in working to put an end to this practice by taking the campaign to other villages and states.

Abhiyan, with its rights based and bottom up approach has also been a very effective advocate to stop manual scavenging at the local, state and national level. Through its studies it has drawn attention to places where manual scavenging still exists, such as the Indian Railways. It is working with the Government to amend the current legislation to end manual scavenging so that a more comprehensive Act to address this issue is in place.

Current Status/Ground Reality

Though the Census of India 2011 pegs the number of dry latrines at 7,94,390, there are over and above this another 1,314,652 toilets where the human excreta is flushed in open drains which are also cleaned up by human beings. The census also adds that there are 497,236 toilets in the country where the human excreta is cleaned up by animals through eating it. This is however a very confusing statement as in toilets like these it is not possible that the human excreta is cleaned up completely through animals eating it. Ultimately it has to be cleaned up by humans only. Thus there are more than 26 lakhs [2.6 million] dry latrines in the country where the practice of manual scavenging still continues.

It is painful to note that in a country with a billion people, with social welfare measures, planned development programmes, a small group of people involved in an obnoxious task, despite legal provisions and planned programmes are yet to be released and rehabilitated. Manual scavengers continue being the most discriminated people experiencing the most atrocious form of untouchability. It is true that the previous 11 Five Year Plans had initiated some steps to alleviate their conditions and there are several legislations and schemes already in place. But their implementation leaves much to be desired. Consequently the manual scavengers are neither liberated fully nor rehabilitated in the true sense of the term; they remain as mere initial steps. Part of the reason also lies in the loopholes and inadequacy of only specific legislation to this date namely '**Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993**'.

Review of the 1993 Act

According to Clause 3 of the Act no person shall employ or permit to employ any other person for manually carrying human excreta; or construct or maintain a dry latrine. Further, according to the clause, no one would do the work of manual scavenging of the human excreta, neither appoint a person to do the same job, nor construct a dry toilet. The Act employs a very restrictive definition of manual scavenging confining the practice and its remedial around the usage of dry toilets. It does not cover all those who are employed to clear, carry and dispose human excreta in places other than the dry latrines who clean the sewers, septic tanks, drains where human excreta is washed in railway tracks, rail toilets. Thus, unfortunately, apart from private households, organizations of the Central Government, especially the defence establishments and Indian Railways as well as the local bodies under the State Governments such as municipal and panchayat institutions are themselves major employers of manual scavengers even at present. The definition also reduces the whole problem into one of sanitation and misses out on the larger issue of restoration of human dignity

While the 1993 Act is restrictive in its definition, the NSKFDC a body instituted by the government for the benefit of Safai karmacharis defines scavenging more broadly. According to NSKFDC manual scavengers are those employed/engaged fully or partially to clean the human excreta and filth. This difference in definition calls for clarity and better coordination on the part of government bodies. **Definitions are important as they reflect perspectives and indicate approaches to liberation and rehabilitation.**

The Act defines a water seal latrine as a pour-flush latrine, water flush latrine or a sanitary latrine with a minimum water-seal of 20 millimetres diameter in which human excreta is pushed in or flushed by water. It has been found in many cases that water seal latrines are neither connected to the drainage system nor to a soak pit, where the excreta is naturally composted. Rather, they lead into a tank or a pit that has to be manually cleaned. Manual scavengers are employed to clean these pits periodically, without proper equipment. Hence, the definition of water seal latrine needs to be expanded if all types of manual scavenging have to be eradicated.

The Act states that no court shall take cognisance of any offence under this Act except upon a complaint made by a person generally or specially authorised in this behalf by the Executive Authority. The executive authority is a district magistrate or a sub-divisional magistrate. Thus, by placing the onus of lodging a complaint on the executive authority, it takes away the power to seek redress from the affected person.

The Act further elaborates that the State Government shall not issue a notification unless it has given a notice of ninety days and where adequate facilities for the use of water-seal latrines in that area exist and it is necessary or expedient to do so for the protection and improvement of the environment or public health in that area. This limits the power of the executive authority to strictly enforce the Act. Employment of manual scavengers by people or institutions cannot be halted or questioned immediately. This compromises with the effectiveness of the Act in adhering to a timeframe for eradicating manual scavenging.

The Act bestows the power to the State Government to exempt any area, category of buildings or class of persons from any provisions of this Act, if it deems fit. This leaves it to the discretion of the state government to take any action whatsoever regarding the implementation of the provisions of the Act creating a loophole that provides opportunity for non-performance.

Though the 1993 Act is a central Act, sanitation is the subject of the States. It is therefore not mandatory for the States to adopt any Act related to sanitation. As a consequence, several states took their own time to adopt the 1993 Act and some as yet have to.

The State Governments and ULBs are not playing pro-active role in fulfilling the vision of the Act, which is total eradication of manual scavenging in the country. The deadlines set for such eradication is repeatedly being extended because of indifference non reliable/availability of data of manual scavengers and their dependants and lack of will on the part of implementing authorities.

Though, any contravention of the provisions of the Act is to be punishable with imprisonment for a term which may extend to one year or with fine, which may extend to Rs. 2,000, or with both: till date not a single conviction has taken place.

The presence of too many agencies is often delaying the elimination of the practice of manual scavenging and rehabilitation work. The Ministry of Social Justice and Empowerment has the overall responsibility for rehabilitation of scavengers, whereas the Ministry of Housing and Urban Poverty Alleviation has the responsibility for removal of dry latrines and provision of sanitation facilities at household and community levels in urban areas. In rural areas, the Ministry of Rural Development, Government of India is assigned this responsibility. Consequently, the existing apparatus has not been effective in identifying and rehabilitating manual scavengers and in bringing the violators to book. There is need for appointment of nodal agencies at the district, state and centre level with a clearly defined chain of command and accountability to look into cases of violation of the Act, rehabilitation of manual scavengers and to oversee schemes for construction of water seal toilets.

The National Commission for Safai Karamcharis Act 1993 enacted in September 1993 provides for the setting up of a National Commission for Safai Karamcharis. The function of the Commission is to recommend to the Central Government specific programmes of action towards elimination of inequalities in status, facilities and opportunities for Safai Karamcharis under a time bound action plan; study and evaluate the implementation of programmes and schemes relating to social and economic rehabilitation of Safai Karamcharis and make recommendations to Central and State governments; investigate specific

grievances including non-implementation of law in its application to Safai Karamcharis and take up the matter with the concerned authorities . It has also been provided that the Central Government shall consult the Commission on all major policy matters affecting the Safai Karamcharis and that the Annual Report of the Commission is to be placed before the Parliament. The Act has conferred no powers at all on the Commission except that of calling for information, thus reducing the Commission to an advisory body bereft of any real authority. Consequently this legislation has had very little impact on the conditions of the manual scavengers in the country. The issue of safai karamcharis is not only related to eradication of manual scavenging, but is of a holistic development of the most marginalized section of our society and therefore needs to be focused for a longer period

The issue of lack of space and scarcity of water in some pockets in some states as a reason for not switching from dry to sanitary toilets needs to be addressed by adopting appropriate technology and methodologies.

Though the union government has introduced various schemes for the rehabilitation of manual scavengers over the years and allocated funds for the purpose, not many manual scavengers are aware of such government schemes and rehabilitation programmes. Nor much has been done to disseminate the information among them.

The Self Employment scheme for Rehabilitation of Manual Scavengers (SRMS)

The Ministry of Social Justice and Empowerment, Government of India initiated **the Self Employment scheme for Rehabilitation of Manual Scavengers (SRMS) in 2007** for the rehabilitation of 3,42,468 manual scavengers . However, the actual coverage fell dismally short of the intended coverage. According to the Rashtriya Garima Abhiyan (RGA), there were many fallacies and gaps in this scheme due to which people could not avail the benefits. Some of the gaps in the scheme as identified by RGA on the basis of a survey of the implementation status of the scheme in 3 states in 2010-2011 are as follows:

Issue of women: Most of the provisions for rehabilitation under the scheme were not gender sensitive and were addressing men largely despite an overwhelming percentage (95% and above) of the individuals involved in manual scavenging being women. Caste and the patriarchal social structure excluded them from benefitting from this programme.

Issue of loan: Directed at a community with the most marginalised social, political and economic status, the support should have been in the nature of a grant in aid and not as a loan, the subsidy component notwithstanding. Therefore it could not become successful in addressing its objectives.

Defaulters: Most of the loans under SRMS were through banks with average loan size in the range of Rs.25000 out of which 50% or Rs.12500 was the subsidy component. Most of the subsidy amount was spent on taking the loan due to the red tape and attendant corruption and the loan amount (apart from the subsidy) was interest chargeable by the bank. Little wonder then that the scheme had defaulters in significant numbers.

Rural Areas: According to RGA survey around 60% of those involved manual scavenging are in rural areas (larger villages and settlements). The focus of the survey and the benefits of the scheme was however skewed more towards urban areas therefore limiting the benefits to those in the urban areas and leaving out the others on a large scale.

Corruption: There was large scale corruption involved in preparing the list for rehabilitation by the states. In Madhya Pradesh alone (according to RGA survey), in districts where more than 165 women were involved in manual scavenging not a single name was included in the list and in districts having 302 such women 2186 names were included. As per the survey, only 10% of those involved in manual scavenging were actually included in the list and the rest were left out. This resulted in many eligible individuals not getting the benefits and at the same time many who were not eligible benefitting out of the scheme.

Government programmes have emphasized the financial aspect of rehabilitation and failed to address the caste-based oppression and related social conditions that have perpetuated this practice for centuries.

Many Dalit Muslims are also involved in manual scavenging in many areas and their situation is also critical but they are not recognized as scheduled castes. Thus they stand excluded not only from the legislations but the special schemes as well targeted at the upliftment of the scheduled castes.

Steps in the direction of a new legislation

The limitations of the 1993 Act notwithstanding, the passing of the 1993 Act armed activists and human rights lawyers with a weapon to fight for the rights of the people, mostly women, who still carried shit on their heads. However, the inadequacies of the act and its tardy application, kept engaging individuals, NGOs, civil society networks, international NGOs, quasi government bodies and statutorily constituted bodies to raise the issue of inadequacy and ineffective implementation of the Act and attendant programmes and the desired remedies for time bound eradication of the practice of manual scavenging.

In 2003, the **Safai Karamchari Andolan** filed a writ petition requesting the Supreme Court to direct the centre and states to take effective steps to eliminate manual scavenging and implement the 1993 Act.

The **National Human Rights Commission**, which has termed manual scavenging as one of the worst violation of human rights, held a National Workshop on 'Manual Scavenging and Sanitation' in New Delhi in August 2008, as a part of programme to commemorate the 60th anniversary of the Universal Declaration of Human Rights. The workshop not only reiterated the imperative of eradication of manual scavenging but also came up with specific recommendations for reinforcing and enhancing the existing governmental initiatives.

The **Rashtriya Garima Abhiyan (National Campaign for Dignity and Elimination of Manual Scavenging)**, from November 30, 2012 to January 31, 2013, led balmiki women on a national journey or *yatra* to abolish manual scavenging. The *Maila Mukti Yatra* or the 'Freedom From Shit journey' covered more than 10,000 kilometres, 200 districts and 18 states in 65 days. They knocked at the doors of more than 200 parliamentarians, organized various events and protests and held hundreds of meetings with the different ministries, state governments, the National Advisory Council, Planning Commission and various political leaders.

In 2011, the **National Advisory Council** recommended steps to eradicate manual scavenging and prohibit the employment of manual scavengers.

Eventually On September 3, 2012, the "**Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012**" was introduced in the Lok Sabha to create more stringent provisions for the prohibition of insanitary latrines and the rehabilitation of manual scavengers. The Standing Committee examining the Bill submitted its report on March 4, 2013. Minister for Social Justice and Empowerment Kumari Selja introduced the bill in parliament in its monsoon session and it was passed by both Lok Sabha and Rajya Sabha on September 6 and 7, 2013 successively. It received assent of the President on 18th September 2013 and was published in the Gazette of India on 19th September 2013, thus becoming the "**Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**" which comes into force from December 6, 2013.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

Key Features

The Bill prohibits: (a) the employment of a person as a manual scavenger, (b) the employment of an individual for the hazardous cleaning (manual cleaning without protective gear and other safety precautions) of a sewer or a septic tank, and (c) the construction of insanitary latrines. It provides for the rehabilitation of people currently engaged in the profession.

A “manual scavenger” is a person who manually cleans or disposes of human excreta in an insanitary latrine, an open drain, or a railway track. An “insanitary latrine” requires human excreta to be cleaned or otherwise handled manually, either in situ, or in an open drain or pit into which excreta is discharged or flushed out, before the excreta fully decomposes in such manner as may be prescribed: Provided that a water flush latrine in a railway passenger coach, when cleaned by an employee with the help of such devices and using such protective gear, as the Central Government may notify in this behalf, shall not be deemed to be an insanitary latrine.

The Bill shall override the 1993 Act and state laws on manual scavenging.

Identification of insanitary latrines and manual scavengers

Every local authority (municipality, Panchayat, cantonment board or railway authority) has to carry out a survey of insanitary latrines within its jurisdiction. The authorities have to publish a list of such latrines within two months of the law coming into force and give notice to the occupiers to either demolish or convert them into sanitary latrines within six months.

The Chief Executive Officer of a municipality or a Panchayat may conduct a survey to identify manual scavengers. Individuals may also self-identify as manual scavengers.

Prohibition and conversion of insanitary latrines

Every occupier (and in some cases, owner) of an insanitary latrine shall demolish or convert the latrine into a sanitary latrine at his own cost within six months of the Act. If he fails to do so, the local authority shall convert or demolish the latrine and be entitled to recover the cost from the occupier.

State governments may provide assistance to occupiers for converting latrines. However, non-receipt of assistance shall not be a valid ground to use an insanitary latrine beyond nine months of the law in force.

Each local authority shall carry out an awareness campaign to enforce the above provisions of the Bill.

Prohibition and rehabilitation of manual scavengers

Existing contracts with manual scavengers shall be void once the law is in force. However, the employer shall retain full-time scavengers on the same salary and assign them to different work.

All persons listed as manual scavengers shall be rehabilitated with a onetime cash assistance, scholarship for their children, and a residential plot with financial assistance for constructing a house. One adult member of the family will be trained in a livelihood skill and given a monthly stipend of at least Rs 3,000 during training. A subsidy and concessional loan shall also be given for taking up an alternative occupation.

Implementing authorities

Each District Magistrate and local authority is responsible for ensuring that: (i) no person within his jurisdiction is engaged as a manual scavenger, (ii) no insanitary latrines are constructed, and (iii) manual scavengers are rehabilitated.

The Bill creates provisions for the construction of an adequate number of sanitary community latrines and the use of appropriate technological appliances for cleaning sewers and septic tanks.

The state government may appoint inspectors. They shall be responsible for examining premises for latrines, persons employed as manual scavengers and seizing relevant records

Central and State Monitoring Committees, and Vigilance Committees in each district and sub division shall be established to oversee implementation. The National Commission for Safai Karamcharis (a statutory body) shall monitor implementation and inquire into complaints against contraventions of the Act.

Penalty

The penalty for employing manual scavengers or failing to demolish insanitary latrines is imprisonment of one year and/or a fine of Rs 50,000 for the first offence. Subsequent offences will be punished with imprisonment up to two years and/or a fine of Rs one lakh. The penalty for the hazardous cleaning of septic tanks and sewers is imprisonment of two years and/or a fine of Rs two lakh for the first offence, and five years and/or a fine of Rs five lakh for subsequent offences.

Offences under this Bill are cognizable and non-bailable. The Bill permits the state government to confer powers of a Judicial Magistrate of the first class on an Executive Magistrate to conduct trials. Complaints have to be made before the court within three months of the offence.

Comparison with the 1993 Act and state Acts

The 2013 Act improves upon the preceding acts in terms of providing for the following:

- Prohibiting the cleaning of sewers or septic tanks without protective gear.
- Prohibiting insanitary latrines in comparison to the Act, which prohibited dry latrines.
- A survey of manual scavengers and insanitary latrines, and conversion of insanitary latrines.
- Provisions for the rehabilitation of manual scavengers.
- Offences under the 1993 Act were cognizable, now they shall be non-bailable as well. The penalty for offences have been increased from a year of imprisonment and fine up to Rs 2,000 to up to a maximum penalty of five years of imprisonment and/or a fine up to Rs five lakh.
- Extending its application to railways and cantonment boards.

The 2013 Act – An Assessment

Both the 1993 Act and the new Act are against manual scavenging, but have different perspectives. According to Ashif of Rashtriya Garima Abhiyan, an advocacy group which is working for complete eradication of manual scavenging: “The earlier Act was from the sanitation perspective and the ministry of housing and poverty alleviation was supervising it. The law did not fix the state's liability. So, many states didn't even formulate rules under the Act, claiming their states are free of manual scavenging.” The new Bill looks at manual scavenging from the point of view of restoring human dignity and human rights and talks about rehabilitation and has been drafted by the ministry of social justice and empowerment.

The strength of the new law is that it is a central law, binding on all States, and not a State law requiring endorsement by State legislatures, which sadly took 18 years for the 1993 law. It recognises the ‘historical injustice and indignity’ caused to people forced for generations to perform this degrading work, and imposes strict penalties for its further continuance and a package of rehabilitation.

This law is more comprehensive than the past one, and brings in both the Railways and sewers into the ambit of its definitions and prohibitions for the first time. The earlier law did not cover cleaning of excreta from railway tracks, nor hazardous and demeaning practices in which sanitary workers were forced to enter sewer lines and wade in human excreta. Technical options exist today which can ensure that no human contact with excreta is necessary. But Railways and municipalities have refused to make the investments necessary for human dignity of the sanitary workers, and the new law does well to bring them under the law. However, there are still many escape clauses built into the new law, which allows governments to continue these old practices as long as they introduce ‘protective gear’. There should be no compromise that both Railways and municipal administrations must upgrade technologies to ensure that no human being is forced to come into contact with human excreta as they perform their duties. Critics, here argue that the Act lacked political will to prohibit the practice of manual scavenging and will only increase the practice with protective gears, under the given provisions.

The new law requires every local authority to carry out a survey of unsanitary latrines and manual scavengers within its jurisdiction. However, the experience with the 1993 law has been that State governments have greatly under-reported the prevalence of manual scavenging, and mostly continue to be in denial. Having declared that manual scavenging has been eradicated, officers reject community

findings that these latrines and manual scavengers exist, even when confronted with strong evidence. If government and community activists conduct separate surveys, it is most unlikely that they will agree on most of the findings, and the time-bound eradication of the practice will be impossible. Therefore the rules should mandate a joint survey of dry unsanitary latrines and manual scavengers by designated teams of both officials and community members. There should also be provision for self-declaration by manual scavengers.

Critics of the act state that the provisions regarding rehabilitation are entirely geared towards economic rehabilitation whereas the aspirations of the manual scavengers were for a more comprehensive rehabilitation which also addressed political social and educational rehabilitation thus more holistically empowering them. Even in terms of this limited rehabilitation, the package and estimated budget is not clearly described in the law. It doesn't talk about mechanism of its implementation. It is still not clear who will formulate the schemes and how they will be implemented. The Act talks of providing land as rehabilitation package but is silent on the location of land (whether it would be outside or inside a village) and other measures that would ensure dignity of life within a certain time frame. The Act is also silent on the rehabilitation of even those scavengers who left this profession in the past 20 years before this enactment.

The Act places an obligation on every occupier of an insanitary latrine to convert or demolish the latrine within six months or be penalised with imprisonment up to one year and/or a fine of Rs 50,000. The Bill does not make it mandatory for states or the central government to provide financial assistance for conversion or demolition. This is at variance with the current policy on conversion of insanitary latrines. Under the Integrated Low Cost Sanitation Scheme, the owner has to bear only 10% of the cost, while the centre bears the remaining 75% and the state 15 % of the cost. Though the Standing Committee recommended that the centre coordinate with states to fund the entire cost of conversion to sanitary latrines, the recommendation was not incorporated in the bill finally introduced in the parliament. In the absence of financial assistance from the government, implementation of the Act might be affected adversely.

The Act permits state governments to grant an Executive Magistrate the power of a Judicial Magistrate of the first class to conduct trials for offences under the Bill. The District Magistrate is the authority responsible for implementing the provisions of the Bill. Often, the District Magistrate is a member of the civil services (and in some states, the same person as the District Collector) and has powers of an Executive Magistrate. Several other Executive Magistrates would be in his chain of command. Granting the Executive Magistrate the power to try cases for non-implementation of provisions of the Bill could lead to a situation where the judge is trying a case against himself or against a person who falls within the same administrative set-up. It is unclear how this conflict of interest will be resolved.

While the Act is encouraging in that it focuses on pinning responsibility on officials whose duty it is to ensure the implementation of the Act, it does not spell out their responsibilities and accountability and is silent on penalties and suitable administrative measures to be imposed on them for non-implementation of the provisions of the Act.

The new law provides that the employer shall retain full-time scavengers on the same salary and assign them to different work. It does not extend this protection to the large proportion of manual scavengers — including those employed for sewers and the Railways — who are contract and casual workers. The rules should clearly lay down that no person who is employed in casual, contract or regular employment in any of these tasks will be terminated, and instead will be redeployed in non-manual scavenging related tasks.

Non-SC scavengers like Dalit Muslim, Dalit Christians are not protected under this act as they are still not recognised as Scheduled Castes.

Finally, the law is still weak in specifying the duties of the State to rehabilitate with education, housing in mixed colonies, pensions, grants and soft loans, vocational and computer education. These entitlements

should be spelt out in careful detail, if the transition of manual scavengers and their children to a life of social equality and dignity is to be accomplished.

In conclusion it may be stated that the adoption of the law by the parliament is a first step. Now implementation of this legislation, inclusion of remaining provisions in the rules, budgetary allocations, awareness about the new law in the community and larger society remain as struggle points. Most importantly, mobilization of the manual scavengers across the nation to use this law as a weapon for their freedom and life with dignity is crucial. Even though favourable amendments moved by several parliamentarians during discussions on the bill were not incorporated, one needs to take heart from the minister for Social Justice and Empowerment Kumari Selja's assurance that the parliament will address the lacunae in the Act while framing rules and guidelines of the act. .

MANUAL SCAVENGING - THE REAL CHALLENGE

The approaches till date to end manual scavenging include Gandhian Approach which appeals to conscience of people; Legal Approach relying on the legislative advocacy, Rehabilitation Approach that advocates for policies of rehabilitation and Technocratic Approach advocating replacing dry latrines and constructing flush toilets. These approaches, however, are limited by their focus on abolishing manual scavenging alone. By treating manual scavenging as a form of work or employment—a subset of labour that could be sanitized through technical interventions or economic empowerment schemes—these approaches have failed to place the issue of manual scavengers in social, cultural and political context. Such targeted strategies failed to mount a frontal challenge to the pyramid-like caste structure that confines manual scavengers to its base; did not identify women as the primary demographic that performed this work, facing discrimination from their very own families; and did not recognize the hierarchy maintained among Dalits. None of these strategies have sought to “liberate” manual scavengers from a mind-set that reinforces their confinement to torturous caste-based duties outlawed under both Indian domestic law and the UN Convention on Torture. Any progressive attempt has been subdued by acts of discrimination and exclusion that has exacerbated their sense of powerlessness. Discrimination and exclusion in all spheres of life – social, religious, economic and political– have resulted in a loss of identity and dignity. Further, the lack of resource ownership and opportunities make them more vulnerable.

References:

1. Manual Scavengers : Welfare and Rehabilitation, **Lok Sabha Secretariat**, Parliament Library And Reference, Research, Documentation And Information Service (LARRDIS), Member's Reference Service, Reference Note No.18/RN/Ref./August/2013
2. Analysis and Recommendations in the context of The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012, submitted to Honourable Members of Parliament (Rajya Sabha and Lok Sabha, Rashtriya Garima Abhiyan
3. Report of Sub Group on Safai Karmacharis, submitted to The Chairman, The Working Group on the “Empowerment of Scheduled Castes (SCs) for the Eleventh Five-Year Plan (2007 – 2012)
4. Burden Of Inheritance, Can we stop manual scavenging ? Yes, but first we need to accept it exists, Report of Water Aid India, October, 2009
5. Social Inclusion of Manual Scavengers, A Report of National Round Table Discussion, Organised by UNDP and UN Solution Exchange (Gender Community of Practice), New Delhi, December 21, 2012
6. The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, Ministry of Law and Justice, New Delhi, September 19, 2013
7. Change in Sight, Diya Trivedi, The Hindu, September 19, 2013
8. Critical Analysis of The Prohibition of Employment As Manual Scavengers and Their Rehabilitation Act, 2013, Jitendra Rathod for Beyond Headlines, September 29, 2013
9. Get Serious, Editorial, The Hindu, September 13, 2013
10. Stringent anti-manual scavenging Bill passed, PTI, The Hindu, September 8, 2013
11. Manual scavenging prohibition Bill: how effective? Jitendra Choube, Down to Earth , September 10, 2013
12. Website of Safai Karmachari Andolan: www.safaikarmachariandolan.org
13. Website of Rashtriya Garima Abhiyan: www.jansahasindia.org , www.mailamukti.org