

The Children of Manual Scavengers in Child Labour: A Study with Reference to Madurai Corporation - Tamil Nadu

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Abstract: *The Indian history witnesses the plight of the Manual Scavengers in socio - legal context. The untouchability and socio - legal exclusion is the day to day reality in their life. They are socially impure, economically poor and legally abandoned. They remove the human excreta manually as traditional occupation imposed by the caste - system. The children of Manual Scavengers are not exception to this. Child labour is an unending misery in the life of the children of manual scavengers. But the expectation of the children is not the employment but empowerment. The problem is even though the well being of children and educational empowerment are portrayed and child labour in any form is prohibited by the Constitution of India, the sad truth is the misery of child labour in the life of manual scavengers' children is unending. Moreover, they experience all kinds of discriminations due to the caste - based traditional work of manual scavenging. The question is whether the legislative and the executive are aware of protecting and prohibiting the child labour of manual scavengers' children? Whether the judicial activism in protecting the Manual Scavengers' Children from the misery of Child labour and protect the human rights of these children is sufficient? It aims to study the importance of protecting the Manual Scavengers' children from child labour and promoting the human dignity and equality in their life. It also aims to provide legislative measures for effective implementation of the existing laws prohibiting child - labour. Also aims for socio - legal awareness as a need. A critical analysis is made with the help of legislation, bylaws, ordinance as primary source and the judgments as secondary source. Also it contributes to stakeholders such as the literature, Manual Scavengers' children as victims, the litigants and citizens.*

Keywords: Manual Scavenging, Child Labour – Prohibition, Effective Legislations, Judicial Activism

1. Introduction

We, the people of India firmly enjoy the caste system of India as it has the systematically formed structure to discriminate its people based on their work and decent for centuries. The social institution called as caste system is well rooted on varna - ashrama - dharma is aged about 3000 years. This is the pyramid made up of four classes such as the Brahmins, Kshatriyas, Vaisyas and sudras. The Brahmins are in the top of the pyramid and the sudras lie at the bottom of this caste based social pyramid. There is another varna whom this social pyramid excluded is called 'panchamas' that is out - caste - the fifth varna. The panchamas who are called as out - caste and untouchables are not included in this system of organization either by birth or by the nature of occupation and even as human beings with dignity.

It is only in the nineteenth century the suppressed, oppressed, discriminated and out - caste Sudras and Panchamas are identified as human by Dr. Ambedkar with the term 'Dalit' which means broken, scattered, divided and split which is propounded by his teacher Mahatma Jotiba Phule. Still they are socially stigmatized as untouchable and face the political exclusion in their daily lives. In spite of economic growth and scientific advancements, the modern forms of discriminations regressively increase.

Dalits being considered as polluted/ impure are socially excluded from the society and they are forced to live in an ecologically abused area such as near to the river bank, lake and cremation area which means they are thrown out from the village and not considered as human beings.

Economically, dalits are born to be poor and dependent on their oppressors and politically they are nothing. They experience number of atrocities from all the facets of socio - economic, political and religious dimensions.

Moreover, Dalit is a category of people which includes number of lower castes treated as untouchables. One among such untouchable sub - caste is the Manual Scavengers - caste which is identified with different names in different States of India.

2. Manual Scavengers

We cannot deny that the Caste system gets its spirit by dividing people on the base of occupation. In this system dalits have been assigned for the occupation such as sweeping, cleaning, leather work, disposal of dead animals and human corpus which are considered 'polluted naturally' by the caste people. Moreover, the sweeper community in dalits is allotted the removal of human and animal waste and strictly enforced. They manually remove the human and animal excreta using brooms, small tinplate, and baskets carried on their heads. People entrapped by the tradition of manual scavenging are forced to perform several other lowly tasks.

2.1 Meaning and Definition

We could simply define manual scavenging as removal of excreta (night soil) 'dry toilets', for example toilet without

the modern flush system, especially without the water seal.¹ Manual scavenging refers to the unsafe and undignified way of removal of raw human excreta (night soil) manually from dry toilets or the toilets without water.

Manual scavenging refers to the practice of manually cleaning, carrying, disposing or handling in any manner, the human excreta from dry latrines and sewers. The most basic tools such as buckets, brooms and baskets are used in this job.

The official definition of a manual scavenger in Indian law from 1993 is as follows:² "Manual scavengers" means a person engaged or employed on a regular basis by an individual or a local authority or a public or private agency for manually cleaning. They carry and dispose or handle the human excreta in an insanitary latrine or an open drain or pit into which human excreta from insanitary latrines indisposed of or on a railway track before the excreta fully decomposes and the expression manual scavenging interpreted accordingly.

In 2013 Act, the definition of manual scavengers was expanded and include the persons employed in cleaning of septic tanks, open drains and railway tracks.³ The Hindi phrase safai karamchhari defines not only "manual scavengers" but also other sanitation workers such as toilet cleaners and caretakers in domestic, public and institutional settings and those who empty pits from pit latrines and vaults of septic tanks and other fecal sludge handlers; those who clean sewers and manholes and those who work at sewage treatment and fecal sludge treatment plants and disposal sites.⁴

The National Human Rights Commission of India advocated for the term to include other types of hazardous cleaning,⁵ which means an employee, in relation to a sewer or septic tank, means its manual cleaning by such employee without the employer fulfilling his obligations to provide protective gear and other cleaning devices and ensuring observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made there under.

2.2 Socio - economic Status

Manual scavenging still survives in parts of India without proper sewage systems. The states like Gujarat, Madhya Pradesh, Uttar Pradesh, and Rajasthan are considered to be

the worst in regards to the matters related to the sanitation.⁶ So also in this systematically formed caste based occupation they are the out - caste or untouchables who extremely experience the caste discrimination and social exclusion on the notion of pollution and purity. The discrimination and untouchability is the endless misery throughout their life with no difference of men, women and children.

The Manual Scavengers are as lowest in the caste hierarchy so also lowest in their economic status. Since they do the caste - forced discriminatory work traditionally, the wage is not fixed one but depends on the upper caste individuals and it can be as money or any kind like food, cloths, ect., as their remuneration. It affects them economically worst from generation to generation and poverty is their economic identity.

2.3 Identified with Different Name

The Manual scavenger as lowest among lowest are identified with different names in different States. Such as: Bhangis in Uttar Pradesh and Gujarat. The term literally means 'broken identity' and the word itself is derogatory and dehumanizing.⁷ Phakis in Andhra Pradesh, Balmiki in Haryana and Sakkiliars in Tamil Nadu.⁸

2.4 Discriminative Occupations

The Manual Scavengers who are identified with different names are forced to do the works other than sweeping, cleaning drains and removing human excreta in the society such as:

- To dispose the animal - excreta and dead animals as cattle, cats, dogs and other.
- To assist in child birth: the women of manual scavengers have to clean the blood and placenta, etc. after delivery and this is considered as unclean work in the society.
- To do the menial work at the time of death in the upper caste and do all the ritualistic work like taking the clothes, washing the deceased and all other work at the cremation ground.

3. Children in India

Children in any civilized country become the ultimate resources of the future the country. It is no that the children are the wealth of any nation that determine the future existence and development of the nation. India is one among the nations in the world that concentrates the future of its children as the future of itself. There is constant care rendered to children on social, economic and educational empowerment.

There are 472 million of children in India under the age of 18 years which is about 39 Percent of the total population of the Country. The children between the age 0 - 6 years constituted 29 percent of total child population. Moreover, there are 73 percent of children in India live in the rural

¹ Rashtriya GarimaAbhiyan – 2011.

² <http://legislative.gov.in/> (The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.)"

³ <http://legislative.gov.in/> ("The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013)"

⁴ Walters, Vicky (2 January 2019). "Parenting from the 'Polluted' Margins: Stigma, Education and Social (Im)Mobility for the Children of India's Out-Casted Sanitation Workers". South Asia: Journal of South Asian Studies. **42** (1): 51–68.

⁵ www.hindustantimes.com/ "NHRC recommends special Act against manual scavenging". *Hindustan Times*. 5 January 2021. Retrieved 31 January 2022.

⁶ The Times of India (Nov. 1, 2014) *Manual scavenging still practiced in developed Gujarat*, Editorial.

⁷ <https://terragreen.teriin.org/terragreen/TGJan19>.

⁸ <https://terragreen.teriin.org/terragreen/TGJan19>.

areas.⁹ According to the World Bank development indicators, the child population between the ages 0 - 14 in India is reported as about 25.78 percentage in 2021.¹⁰

3.1 Child Labour in India

Child labour can be understood as the form of work that which exploits the right and dignity of the children and their entire childhood. Further the term "child labour" can be defined as the work that deprives children of their childhood and harmful to physical and mental development.

Hazardous work or Hazardous child labour is one of the worst forms of the child labour which is harmful to the health, life and morals of children. The term **the worst forms of child labour** comprises:¹¹

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

As per Census - 2011, the number of child labourers in India is about 10.1 million of which 5.6 million are boys and 4.5 million are girls. There are used in several forms of child labour such as bonded labour, agriculture, fisheries, and mining and in various industries. Children are also involved in other forms of exploitations including sexual exploitation.¹² The table below explains the percentage of children being child labour between the age 5 - 14 in rural and urban respectively.

Percentage of Working Children 2001 – 2011.

Year	Percentage of Working Children (5 - 14)			Total Number of Working Children (5 - 14) (in millions)		
	Rural	Urban	Total	Rural	Urban	Total
2001	5.9	2.1	5.0	11.4	1.3	12.7
2011	4.3	2.9	3.9	8.1	2.0	10.1

Source – Census 2001 and 2011.

Distribution of Working Children as per Census – 2011¹³

Area of work	Percentage	Numbers (in millions)
Cultivation	26.0	2.63
Agriculture	32.9	3.33
Household	5.2	0.52
Other works	35.8	3.62

Source – Census 2011.

⁹ <https://www.humanium.org/en/india/>

¹⁰ <https://tradingeconomics.com/india/population-ages-0-14>

¹¹ Worst forms of Child Labour Convention, 1993. S.3.

¹² <https://www.unicef.org/india/>

¹³ <https://www.ilo.org/wcmsp5/groups/public/>

3.2 Manual Scavengers' Children

The inhuman practice of manual scavenging still continuous in India both in rural and urban areas as caste based occupation with caste based discriminations. The atrocities of caste untouchability suffered by these people did not exempt the children of this community. The caste forced occupation of manual scavenging hunts the children to do the inhuman practice of removing the human excreta by hands and suffer the untouchability and all forms of discriminations.

3.3 Manual Scavengers' Children in Child Labour

The manual scavenging as removing the human excreta by hands is not a work out of wish but by force of caste system. Thus the children of manual scavengers are forced to do this traditional caste based/forced work. The survey shows that children below the age of 12 and especially girls are now employed as manual scavengers both in rural and urban through unknown middlemen.¹⁴

The children are for no means forced to accompany and assist their parents of doing this caste based occupation. In this regard the state of Maharashtra numbers highest of child labours in which the most numbers of boys between the age of 8 - 13 working as manhole cleaning assistance. There are many more states like Tamil Nadu, Jharkhand, Odish, Tripura and Madhya Pradesh are worst performing in forcing the children in this work.¹⁵ There is more than 30, 356 children work as labour engaged in direct scavenging, sweeping, railway track cleaning, sewer and septic tank cleaning and assisting in manual scavenging jobs.¹⁶

3.3.1 Challenges

The children of manual scavengers as they are forced to surrender them in to the child labour face the challenges in their day to day life. Some of such challenges are as below:

Poverty:

India has achieved strong economic growth but the pain of poverty in the life of children of manual scavengers still remain as the birth right in the caste based society. They live in the continuing great poverty based of the caste system.

Child Labour:

Child labour is unavoidable factor the life of manual scavengers' children and the major factors that which makes these children as victims are lack of food, high poverty and socio - economic factors. The other factor could be the lack of awareness of about the harmful effects of child labour and need of child education. The Children out of school is an usual event in the life of these children who take part in their parental work as bread winners and contributors.

Child Abuse:

The children of manual scavengers' undergo all forms of abuses which could be grouped into mental, physical and socio - economic and much more the sexual abuse is the

¹⁴ <https://thewire.in/> Manual Scavenging Is Continuing Unabated In India – And Even Children Are Forced Into It.

¹⁵ *Ibid*

¹⁶ <https://www.downtoearth.org.in/>

dark reality in the life of these children. The caste based factor of socio - economic status and the loss of parents and become careless in the society and their protection gets into question.

Child Marriage:

We could surely say that in over all there is decline in child marriage in India even though there is no complete eradication of child marriage. But the child marriage in the life of children of manual scavengers it is something very frequent and suffer the subsequent factors such as poverty, sickness, illiteracy, unskilled occupations, child labour and so.

4. Legislative on Child Labour

There is a constant effort from the legislative in protecting the children and prohibiting the child labour in all the forms in India. Such legislative provisions in curtailing the child labour and promoting the right of children in India can be understood from constitutional and other Acts and policies.

4.1 Constitutional Provisions

- Article 21 A - gives the right to education as fundamental which should be provided by the State as free and compulsory education to all children between the ages of 6 to 14 years.
- Article 24 - prohibits the employment of children below the age of fourteen years in any factory or mine or engaged in any other hazardous employment.
- Article 39 – directs the state towards securing the tender age of children.
- The Right to Education Bill is the other move of reaching the Constitutional purpose of child - education. The implementation of bill also aims to eradication the child labour and brings the children into schools.

4.2 Child Labour (Prohibition and Regulation) Act - 1986

The Act is significant made to protect children and prohibit child labour in India. It designates a child as a person who has not completed the age of fourteen years and further it also aims to regulate the hours and working conditions of child workers and prohibits to children from working in hazardous industries.

The Act as a prohibitive measure of child labour enumerates 13 occupations and 57 processes contained in the schedule under section 3. Further the Act aims to punish the persons who employ any child in contravention of the provisions of section 3 of this Act.

4.3 National Policy on Child Labour – 1987

The Policy aims with the action plan for tackling the problem of child labour which envisages legislative action plan. It focuses on the empowerment of children and plans for development and welfare programs for the working children. In pursuance of National Child Labour Policy there are other schemes started to rehabilitate child labour and moreover to withdraw the children from the hazardous

occupations and processes and then put them into special schools before bringing them to formal schooling system.

There are legislative action plans for the enforcement of Child Labour Act and other laws for ensuring that children are not employed in such hazardous work and further regulate the other working conditions and ensure the health and safety of the children and simultaneously rehabilitating the children.

5. Judiciary on Child Labour

Judiciary is one of the prime organs in promoting and protecting the human life and dignity. In mater of protecting the children and prohibiting the child labour it has played a crucial role and ultimately aimed to curb the child labour in India.

5.1 Children in Hazardous Work

The Supreme Court held that children should not be employed in any hazardous works such as in manufacturing of fireworks, match boxes that which has risk of life. Further the Court held that the employer must pay compensation in violation of the law.¹⁷ Children employed in construction work which is considered as dangerous and absolutely a hazardous work the Court made restriction that the children about 14 years of age must be restricted in every kind of construction work.¹⁸

5.2 Bonded Labour

Justice Bhagwati remarked that the Directive Principles of State Policy have obligated the Central and State Government to take steps and adoptive measures for the purpose of ensuring social justice to the have - nots. It is not right on the part of the concerned Government to shut their eyes to the inhuman exploitation to which the bonded labourers are subjected and the Government must take all possible efforts to eradicate it and prohibit inhuman function.¹⁹

5.3 Court Direction to States

The Judiciary has played essential role at different circumstances expressed its fervent views on prohibiting the child labour in all forms and directed the States to have proper legal measures to prohibit child labour and promote child rights. The Court directed the States to take sole responsibility of guarantee proper development of its personality.²⁰ Court directed the States that it is essential that the State should step into retard the trend to employ child and educate people to prevent child abuse and child labour and further the State must create a separate independent department concerned with child welfare.²¹

¹⁷ M.C Mehta v. State of Tamil Nadu and others, 1996

¹⁸ Peoples Union for Democratic Rights v. Union of India

¹⁹ Bandhua Mukti Morcha v. Union of India and others

²⁰ Sheela Barse v. Union of India.

²¹ Srirama Babu v. The Chief Secretary, 1997

6. Conclusion and Suggestion

Children are the future of any country and child welfare, protection, promotion and empowerment are the nonnegotiable factors. India is not an exceptional in this idea and no one can deny that there are legal measures and judicial and executive activism in promoting and protecting child right and constantly prohibiting child labour in all forms but still exists child labour in India. Moreover the pain of child labour in the life of the children of manual scavengers is an unending misery of life. They are denied of health, education, food and shelter and much more suffer the discrimination and thirst human dignity.

7. Suggestions

The needs of children of manual scavengers in India are to be addressed as:

Health:

Indian Constitution proclaims right to health as fundamental under Art.21. The access to health gets important place in promoting right to live with good health and nourished food to the children of manual scavengers. They are born to suffer the disadvantages related to access to health and suffer the under nutrition. Moreover the children become victim for the other types of occupation disease and communicable disease like HIV and so. They suffer lack of safe drinking water and adequate sanitation system.

Education:

Education of children in India is fundamental right and like backbone in promoting and realizing the rights of children. The lack of access to education remains the key problem in the life of children of manual scavengers. Although India's literacy rate is increasing and government is taking deferent measures to achieve quality education and fight against illiteracy, the educational empowerment of these children is still as mirage and the caste discriminations got linked in educationally marginalizing these children.

Protection:

Children have the right to be protected as right to life from all forms of neglect, exploitations and abuse at home and society. The children of manual scavengers live the unsafe life and face the incidents of abuse, exploitation, humiliation, violence and child labour which is the harmful traditional occupation of manual scavenging.

References

- [1] <https://www.ilo.org/wcmsp5/groups/public/>
- [2] <https://thewire.in/> Manual Scavenging Is Continuing Unabated In India – And Even Children Are Forced Into It.
- [3] Worst forms of Child Labour Convention, 1993. S.3.
- [4] <https://www.unicef.org/india/>
- [5] <https://terragreen.teriin.org/terragreen/TGJan19>.
- [6] <https://www.humanium.org/en/india/>
- [7] [https://tradingeconomics.com/india/population - ages - 0 - 14](https://tradingeconomics.com/india/population-ages-0-14)
- [8] <https://www.downtoearth.org.in/>
- [9] Rashtriya GarimaAbhiyan – 2011.
- [10] <http://legislative.gov.in/> (The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.) "
- [11] <http://legislative.gov.in/> ("The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013) "
- [12] Sheela Barse v. Union of India.
- [13] Srirama Babu v. The Chief Secretary, 1997
- [14] M. C Mehta v. State of Tamil Nadu and others, 1996
- [15] Peoples Union for Democratic Rights v. Union of India
- [16] Bandhua Mukti Morcha v. Union of India and others