

*Analysis and Recommendations in the context of*

# **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012**



Submitted to: Honorable Members of Parliament (Lok Sabha and Rajya Sabha)



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## **1. Situation of Manual Scavenging practice in India:**

The inhumane practice of manual scavenging enslaves estimated 12,00,000 people in India. They are subjected to ongoing, intergenerational torture, severe mental and physical pain rooted in caste based discrimination<sup>1</sup>. Manual scavengers (95% women) manually clean the dry latrines used by others in the village/semi-urban areas. They lift and carry heavy loads of excrement in cane baskets to designated sites of disposal. In the heat of summer and during the rains, the excrement leaks on to their faces and bodies! The stench and working conditions are unbearable. In addition, they and their men folk are expected to carry out other “polluting” tasks, including disposing of dead animals, cleaning placentas after delivery, and various funeral related activities. Their children also face discrimination in schools<sup>2</sup>.

The caste system, a critical aspect of the Indian social fabric has been in existence for centuries. It is based on human inequality where the division of labor is done on the basis of caste. The social, economic and political relations among people depend on their caste status. The system has rendered the vast majority of the people oppressed and considered “Untouchables”, deprived of their social, economic and political rights. Communities of manual scavengers belong to the scheduled caste and are placed in the lowest rung of Hindu society- ‘Untouchables among the Untouchables’. The continuing hold of caste based thinking and practice undermines self esteem and dignity. Previous approaches 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 labor 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<sup>3</sup>. 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 sought to “liberate” manual scavengers from a mindset that reinforced their confinement to torturous caste-based duties outlawed under both Indian domestic law and the UN Convention on Torture<sup>4</sup>. 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.

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<sup>1</sup> Study Report: “*Untouchability in Rural India Study*” conducted by National Human Rights Commission and Action Aid, 2001 ([www.sagepub.com/books/Book230642](http://www.sagepub.com/books/Book230642))

<sup>2</sup> Study report: Inclusion and Exclusion of Dalit in Health and Education (2008-09), Jan Sahas-UNICEF [www.dalits.nl/pdf/ExclusionAndInclusionOfDalitCommunity.pdf](http://www.dalits.nl/pdf/ExclusionAndInclusionOfDalitCommunity.pdf)

<sup>3</sup> Study Report: Implementation status of schemes for rehabilitation of manual scavengers (2011)

<sup>4</sup> Article 1 of the United Nations Convention Against Torture



## 2. Bill Summary<sup>5</sup>:

### **The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012**

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012 was introduced in the Lok Sabha on September 3, 2012 by the Minister of Social Justice and Empowerment, Mukul Wasnik. The Bill was referred to the Standing Committee on Social Justice and Empowerment (Chairperson: Dara Singh Chauhan), which is scheduled to submit its report within three months.

The Bill prohibits employing a person as a manual scavenger and provides for the rehabilitation of people currently engaged in the profession.

A “manual scavenger” is defined as a person who is engaged for manually cleaning or disposing of human excreta in an insanitary latrine or in an open drain or on a railway track. “Insanitary latrine” means a latrine which requires human excreta to be cleaned manually (except water flush latrine in a railway passenger coach which is cleaned by an employee using protective gear as notified by the central government).

The Bill prohibits any person, local authority or agency to construct an insanitary latrine or engage a person for manual scavenging. Every occupier of insanitary latrine shall either demolish or convert such latrine into a sanitary latrine at his own cost.

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

If there is reason to believe there are manual scavengers in a municipality or a Panchayat, the Chief Executive Officer of such municipality or Panchayat shall conduct a survey to determine the number. All persons listed shall not be obliged to work as manual scavengers and shall be rehabilitated in the specified manner. This includes a onetime cash assistance, residential plot and training.

The Bill makes it mandatory for municipalities, cantonment boards and railway authorities to construct adequate number of sanitary community latrines within three years of this Act coming into force. Any contract entered into before this Act that engages persons for manual scavenging shall be deemed to be void. However, the employer shall retain such full-time scavengers on the same emolument and assign them to different work.

The local authority is responsible for ensuring that no insanitary latrine is built or used nine months after this Act is in force. The District Magistrate has to ensure that no person within his jurisdiction is engaged as a manual scavenger, constructs an insanitary latrine, and manual scavengers are rehabilitated.

If anyone employs a manual scavenger or constructs an insanitary latrine, he shall be penalized with

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<sup>5</sup> We are acknowledging PRS Legislative Research for the summary and analysis



imprisonment up to one year or a fine of up to Rs 50,000 or both. The penalty for subsequent offences is higher.

Every local authority or agency is prohibited from employing a person for hazardous cleaning (manual cleaning without protective gear and other safety precautions) of a sewer or a septic tank. This provision is applicable within a year of the Act coming into force. The penalty for violation is imprisonment for up to two years or a fine up to Rs 2 lakh or both.

A complaint has to be made within three months of the occurrence of the alleged offence.

The appropriate government may appoint Inspectors for certain areas to examine premises for latrines; examine any person if he believes he is employed as a manual scavenger and seize records that he considers relevant.

The offences under this Act may be tried by an Executive Magistrate on whom the state government may confer powers of a Judicial Magistrate of the first class. An offence may be tried summarily.

The central government shall constitute a Central Monitoring Committee and every state government a State Monitoring Committee. These Committees shall advise the appropriate government and local authorities on effective implementation of the law.

Every state government shall constitute a Vigilance Commission for each district. The Commission shall advise the District Magistrate on the implementation of the law, oversee rehabilitation and monitor the registration, investigation and prosecution of offences.

The National Commission for Safai Karamcharis (a statutory body) shall monitor the implementation of this Act, inquire into complaints of contravention of the Act and advise the central and state government on effective implementation of the Act.

## **PART A: HIGHLIGHTS OF THE BILL**

### **Context**

Manual scavenging is defined as the manual cleaning of latrines or the disposal of human excreta. Currently, manual scavenging is prohibited by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, which was passed by Parliament after six states passed resolutions requesting the centre to frame a law. Over time, the Act was adopted by 23 states and all union territories. Two other states have enacted their own laws, which are similar to the central Act.<sup>2</sup> Yet, as per the 2011 Census, about 23 lakh pit latrines (which are insanitary latrines) continue to exist in the country.

The central government implemented two schemes, namely, the Integrated Low Cost Sanitation Scheme (ILCS) in 1981, and the Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS) in 2007. ILCS seeks to provide funds to poor urban households to convert dry latrines to water flush latrines.<sup>4</sup> SRMS was launched to provide manual scavengers with skill training, a loan and subsidy for undertaking alternative occupations. 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.



In 2011, the National Advisory Council recommended steps to eradicate manual scavenging and prohibit the employment of manual scavengers. On September 3, 2012, a Bill 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.

### **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 manually.
- 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 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.

## **PART B: KEY ISSUES AND ANALYSIS**

### **Jurisdiction of Parliament to legislate on manual scavenging**

#### **Clause 3**

In 1993, six states passed resolutions under Article 252 of the Constitution requesting the centre to formulate a law on manual scavenging, an issue under Item 6 of the State List, public health and sanitation. Since the previous law was enacted under the State List, the question arises whether Parliament has the jurisdiction to enact this Bill. It could be argued that the objective of the Bill is to protect weaker sections of society, including Scheduled Castes and Scheduled Tribes from the practice of manual scavenging, that is, it is primarily about preventing employment in hazardous occupations. In view of this interpretation, Parliament may be empowered to legislate on the issue through Entry 23 (employment and unemployment) and Entry 24 (welfare of labour including condition of work) of the Concurrent List.

### **Cost of converting insanitary latrines borne by occupiers**

#### **Clause 5, 8, 9**

The Bill 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 percent of the cost, while the centre bears the remaining 75 percent and the state 15 percent of the cost. The Standing Committee recommended that the centre coordinate with states to fund the entire cost of conversion to sanitary latrines. In the absence of financial assistance from the government,



implementation of the Bill might be affected adversely.

### **Offences and procedure for trial**

#### **Applicability of summary procedure to trial of offences**

##### **Clause 21(2) and 22**

Offences under the Bill are non-bailable, and in some cases, punishable with imprisonment up to five years. The Bill allows offences to be tried summarily. The concept of summary trials was introduced in India through an amendment to the Code of Criminal Procedure (CrPC) in 2008. Summary trials were permitted for certain types of offences, particularly those of a minor nature for which the maximum imprisonment was two years. According to the CrPC, the maximum sentence of imprisonment for an offence that is tried summarily cannot exceed three months.<sup>10</sup> Given the nature of summary trials under the CrPC, it is unclear how offences carrying punishment of five years, as is the case in the Bill, will fit into this framework.

### **Conflict of interest between implementing and judicial authorities**

#### **Clause 18 and 21 (1)**

The Bill 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.

### **Comparison with the 1993 Act and state Acts**

Twenty-three states and all union territories have adopted the 1993 Act. Two other states, Rajasthan and Himachal Pradesh, have enacted their own laws that are similar to the 1993 Act. In case of any inconsistency, the provisions of this Bill will override the 1993 Act and the state laws. Some of the Bill's features include:

- 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.

## **3. Standing Committee Report Summary on “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012”**

The Standing Committee on Social Justice and Empowerment (Chairperson: Hemanand Biswal) presented its report on the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012 on March 4, 2013. The Bill was introduced in the Lok Sabha on September 3, 2012 by the



Minister of Social Justice and Empowerment, Mukul Wasnik.

The Bill seeks to eliminate manual scavenging and insanitary latrines. It also aims to provide rehabilitation to manual scavengers and their families.

The Bill holds local authorities responsible for rehabilitating manual scavengers. The Committee recommended that efforts should be made to suitably employ manual scavengers in municipalities, corporations and other local bodies.

The Bill establishes a Central Monitoring Committee (CMC) composed of secretaries of various stakeholder ministries to oversee implementation of the Bill. The Committee recommended forming an Inter Ministerial Group, in addition to the CMC, to ensure coordination between ministries.

The Bill sets up Vigilance and Monitoring Committees. The Committee recommended that women be better represented in both committees. Also, that the Committees should meet frequently and submit six monthly progress reports to Parliament.

The Bill mentions that the cost of converting an insanitary latrine should be borne by its occupier. It also states that state governments may provide assistance for conversion but non-provision of assistance shall be an invalid ground for using an insanitary latrine. The Committee recommended that the centre cooperate with states to finance the entire cost of conversion to sanitary latrines.

Current schemes such as Nirmal Bharat Abhiyan in rural areas and the Integrated Low Cost Sanitation Scheme in urban areas extend assistance to BPL and economically weaker section households. The Committee suggested that these schemes be extended to all occupiers of insanitary latrines irrespective of their economic status.

The Bill penalises the occupier or the owner for employing scavengers and constructing insanitary latrines. The Committee noted that the penalties should be decided after giving due consideration to the financial status of such persons.

Complaints regarding contravention of the Bill should be registered within three months from the date of occurrence of the offence. The Committee recommended reducing the period to 30 days.

The Bill specifies a survey to identify manual scavengers. The Committee felt that the survey should mention the number of years a manual scavenger has been working and specify a cut-off date for eligibility to provide benefits to genuine individuals. A penal provision should be included to prevent bogus claims by manual scavengers.

The Committee recommended that the Bill should specify the duties and responsibilities of officials responsible for implementation of the Act. Penalties and suitable administrative measures should be imposed on them in case of delays in delivering rehabilitation benefits to manual scavengers.

Under the Bill, the Ministry of Railways is responsible for eliminating manual scavenging on railway tracks. The Committee recommended that the railways seek more funds for the Twelfth Five Year Plan for the conversion of all toilets into bio-toilets and elimination of direct discharge toilets.



## 4. Other laws and Provisions:

As is amply evident, millions of people – majority of them women - across the country continue to be held captive by the inhuman and degrading tradition of manual scavenging. It is because of this caste-based tradition that they remain deprived of their constitutional and statutory rights to equality, liberty, education and social development. Manual scavenging is virtually a form of modern-day slavery that violates the following.

1. Bonded Labor System (abolition) Act, 1976.
2. Section 7(a) of the Protection of Civil Rights Act, 1995, which deems anyone forcing another person to engage in bonded labor, manual scavenging or disposing animal carcasses to be committing a criminal offense punishable with 3 to 6 months of imprisonment and fine up to Rs 500.
3. The practice of manual scavenging violates articles 14, 17, 21 and 23 of the Constitution.
4. Vishakha guidelines and Protection of Women from Sexual harassment at workplace.
5. 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.

## 5. Issues related to Manual Scavenging:

### Census of India 2011:

According to the Census of India 2011, there are still 794,390 dry latrines in the country, where the human excreta is cleaned up by humans. 73% of the dry latrines are in rural areas where as 27% in urban areas. Apart from these there are 1,314,652 toilets where the human excreta is flushed in open drains. According to the definitions by Rashtriya Garima Abhiyan and the Drafting Committee for the amendment in 1993 act, the human excreta flushed in open drains through toilets like these 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 we believe that 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. The Census says that in states of Madhya Pradesh, Gujarat, Chhattisgarh, Maharashtra, Andhra Pradesh, Haryana, Delhi NCR, Rajasthan and Jharkhand there are very less no. of dry latrines exist. However this is far from being true as surveys conducted by Garima Abhiyan and other organisations it has clearly come out that even in these states dry latrines exist and the practice of manual scavenging continues at a large scale in these states. It is a matter of surprise that in states where the practice of manual scavenging is clearly visible the Census reports negligible numbers of dry latrines.

### Manual scavenging in Indian railway:

Indian Railways is an institution in the country where dry latrines exist in great numbers and a large number of individuals are engaged in manual scavenging. Recently Rural Development, Water and Sanitation Minister have also called the Indian railway the world's biggest open toilet. He accepted we are the world's capital for open defecation. 60 per cent of all open defecation in the world is in India. This is a matter of great shame. An Indian railway is really the largest open toilet in the world. 11 million passengers every day and we all know the state of sanitation in our railway. At present only nine trains with 436 coaches are fitted with bio-toilets, while 4,000 coaches are produced annually



which could be fitted with new bio-toilets developed by Defence Research & Development Organisation (DRDO).

### **Uncompleted and unsuccessful rehabilitation of manual scavengers in India<sup>6</sup>:**

The Ministry of Social Justice and Empowerment, Government of India initiated the Self Employment scheme for Rehabilitation of Manual Scavengers (SRMS) in 2007. An amount of Rs.735.60 Crores was allocated for the rehabilitation of 3,42,468 individuals. This scheme was for the period January 2007 to March 2009 but was extended till March 2010. Under this scheme only 1,18,474 individuals showed interest to avail the benefits out of which 78,941 individuals were benefited and 39,533 individuals could not due to various reasons. According to the Ministry a total of Rs.231 Crores were released under this schemes between financial years 2006-2007 to financial year 2009-2010. Under this scheme 13275 individuals were benefited. Rashtriya Garima Abhiyan conducted a survey on Implementation status of SRMS in 3 states of India in year 2010-11. Some findings of this study are given below:

- a) 76 % people who got benefits, were not involved in the manual scavenging practice.
- b) Scheme was not launched in the 25% of districts and said that manual scavenging practice does not exist in these districts. But during the study, it was found that manual scavenging practice is rampant in these districts.
- c) 98 per cent of people engaged in the profession are women. But it was found that benefits of SRMS were given to 51 per cent of men in these three states.
- d) 85% people said that they have faced various types of problems to get benefits of scheme like time wasting, bribe, misbehaviour and problems related to the documents and processes.
- e) Middle men or commission agents would visit Dalit bastis telling households to sign on so and so papers as the government had chosen them as beneficiaries of a new scheme. The beneficiaries would never get to know the loan amount, sanctioning officer or other details of the transactions. After a while, the middle men would revisit them and hand over Rs 3,000 to Rs 4,500. Many of these people did not even know why they were being given the money or how much money had been borrowed in their names. In Madhya Pradesh, around 68 per cent of the beneficiaries were taken for a ride by the brokers, in Uttar Pradesh, 63 per cent and in Rajasthan 62 per cent.

There were many fallacies and gaps in this scheme due to which people did not avail the benefits inspite of the provisions and as a result the scheme could not be effective. Some of the identified gaps in the schemes are as follows:

1. Issue of women: Most of the provisions for rehabilitation under the scheme were not gender sensitive and were addressing men largely. Our experience says that around 95-98% of the individuals involved in manual scavenging are women. The exploitation of these women on grounds of patriarchy and caste system is very high!
2. Issue of loan: The biggest flaw in this Scheme was that though it was for the rehabilitation of those involved in manual scavenging the key provision was for a loan with some amount of subsidy. According to us; To take a community, which was compelled to take up manual scavenging due to a caste based system and was excluded, socially, politically and economically, out of this system loan cannot be a solution, even if it comes with some amount of subsidy. The key assumption of this scheme was based on loans therefore it could not become successful in addressing its objectives.]

<sup>6</sup> Study on rehabilitation of manual scavengers (implementation status of SRMS scheme) in India by Rashtriya Garima Abhiyan [www.dalits.nl/pdf/120328.pdf](http://www.dalits.nl/pdf/120328.pdf)



3. **Defaulters:** Most of the loans under SRMS are through banks and it has been observed that most of these loan sizes are around Rs.25000 out of which 50% or Rs.12500 is the subsidy component. Most of the subsidy amount is spent on taking the loan due to the red tape and the loan amount (apart from the subsidy) is interest chargeable by the bank. Individuals who are not able to pay back this amount therefore become 'Defaulters'.
4. **Rural Areas:** According to our survey around 60% of those involved in 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.
5. **Corruption:** There was large scale corruption involved in preparing the list for rehabilitation by the states. If we talk about Madhya Pradesh alone we found that in districts where more than 165 women are involved in manual scavenging not a single name was included in the list and in districts having 302 such women 2186 names were included. Our surveys say that only 10% of those involved in manual scavenging were actually included in the list and the rest were left out. This has resulted in many eligible individuals not getting the benefits and at the same time many who were not eligible benefiting out of the scheme.
6. In many areas it was found that rampant corruption had taken place with respect to the scheme. Almost all or most of the subsidy portion of the loan has gone into corruption and there was lack of any monitoring system. Issues related to corruption have surfaced openly in many of the states.

### **Self-contradiction and non implementation of scholarship scheme for manual scavengers<sup>7</sup>:**

An example of a particularly self-defeating government programme is a scholarship for the children of the manual scavengers, (Scholarship for the Children of Families involved in incline occupation) which require the families seeking the benefit to have been engaged in manual scavenging for at least 100 days in a year. This scholarship scheme provides a perverse incentive to the Dalit households to continue in this occupation. Recently government had done some policy level changes. But, these changes are not implementing by the many state governments.

### **Caste aspect:**

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.

### **The Issue of Dalit Muslims:**

Many Dalit Muslims are also involved in manual scavenging in many areas and their situation is also critical. Like other Dalits they also face untouchability and discrimination and not being included in the Scheduled Castes they are also deprived of the legislations like SC, ST prevention of Atrocities Act 1989 and other schemes of the government for Scheduled Castes. Due to the lack of understanding of the local administration that even Muslims are involved in manual scavenging they are even deprived of the benefits of schemes like SRMS. We want to recommend that the Government of India forms a special package for the Dalit Muslim families involved and liberated from the practice of manual scavenging which should include issues like rehabilitation, education, housing and other similar issues of concern.

<sup>7</sup> National Public Hearing on Rehabilitation of Manual Scavengers and their Children in India organized by Rashtriya Garima Abhiyan – Jan Sahas <http://www.thehindu.com/news/national/article3261450.ece>



## 6. Recommendations regarding to “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012”

It is now proved that “The Employment of Manual Scavengers and Dry latrines construction (Prohibition) Act 1993” has failed to eradicate inhuman practice of manual scavenging from the country. Keeping this fact in mind the Government of India proposed new bill “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012”. Government of India should immediately pass new effective law and added these points in the new law:

- A. A viable and formidable rehabilitation scheme should be developed under the proposed Act which must have provision for social and economic rehabilitation of families liberated from scavenging since 1993 and later, and those who will be liberated in future as well. The scheme should have adequate provision for compensation, education, accommodation and employment.
- B. The proposed law must seek apology for historical social injustice meted out to people employed in manual scavenging from generation.
- C. Ensure participation of community and organizations working on issues related to scavenging in a national level survey, which must be organized under this Act
- D. National scholarship programme should be initiated for the children of liberated families. The scholarship with other necessary facilities should be given from standard one to post-graduate level.
- E. Five acre of land should be provided by the Government to family liberated from manual scavenging.
- F. Participation of men and women from manual scavenger community should be ensured in any committee constituted for development of people engaged in manual scavenging and those who liberated from the practice.
- G. One-time grant of Rs 5 lakh should be provided for dignified self-employment with adequate training for skill development.
- H. Employment for 365 days should be ensured for the people engaged in manual scavenging.
- I. Programme for rehabilitation of people liberated from scavenging must be gender sensitive as mostly women are engaged in scavenging work.
- J. Under the proposed law provision should be made for housing schemes, including Indira Awas Yojna that houses for Dalit community should be inside the village rather than in separate hemlets.
- K. In appointment of worker, assistant and cook in ICDS (Anganwadi) centres, only women from Dalit community should be appointed. Among Dalit, manual scavenging community should be preferred.
- L. Non- schedule caste like Dalit Muslim and Dalit Christian community engaged in manual scavenging should get all facilities and security as in case of scavengers from scheduled castes.
- M. People liberated from scavenging and their families should be made entitle for all government schemes on priority basis.
- N. Dry latrines or it vestiges in any urban bodies, panchayats and government office should be immediately demolished. Action should be taken on officer responsible for violation.

**Indian Railway** is the largest institution in the country who uses dry latrines. Railway Ministry must immediately prohibit this practice and for next three years must present progress report in every



session of Parliament. So that Government of India can ensure abolishment of scavenging in Indian Railway in stipulated time.

**Inclusion of manual scavengers' families and those families who have left manual scavenging in BPL**

**List:** Socio-Economic survey conducted by Government of India has an automatic provision for including manual scavengers in BPL list. But no State Government wants to admit the existence of manual scavengers in their State and hence they are knowingly omitted from the list. Thus, there should be a provision that the families which were engaged in manual scavenging till 5<sup>th</sup> June 1993 {date of the implementation of "The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993"} or after that should be automatically included in BPL list.

Such provision has been done by Ministry of Social Justice and Empowerment. In the letter from Ministry dated 8<sup>th</sup> June 2011 (No 1014/28/2007 – SCD-V), sent to Secretaries of SC Welfare Department of all States and Union Territories, a provision has been done regarding scholarship of children of families engaged in 'unclean occupations'. Earlier, scholarships of children whose families left the practice of manual scavenging was stopped but according to this letter, there is a provision for scholarship for children whose families were engaged till the enabling of Act of 1993 or after that.

**Rehabilitation of freed families to include Indira Awas Yojana:** In Rural areas, the problem of housing of families freed from and engaged in manual scavenging is very serious. Looking at this, these families should be given priority in getting the benefit of Indira Awas Yojna. There should also be provision of providing them land plot as well. It should be ensured that such plots should be in mainstream village and not excluded or outside the village.

**Formation of a Coordination Committee:** Ministry of Social Justice and Empowerment, Ministry of Drinking Water and Sanitation, Ministry of Rural Development, Ministry of Housing and Poverty Alleviation, Ministry of Urban Development, Ministry of Railways, Planning Commission etc have a key role to play in eradication of practice of manual scavenging and rehabilitation of families freed from it. Ministry of Women and Child Development and Ministry of Labour are also key elements as mostly women are engaged in this practice. Thus, we recommend that a coordination committee should be formed with representation of all eight ministries so as to work together.

**National level monitoring system:** Government of India should form a national level monitoring committee which keeps a constant eye on the practice of manual scavenging. This committee may consist of representative from Ministry, public representatives, state representatives, community representatives as well as representatives from civil society organizations.

**Complete audit:** Complete audit of all schemes made after 1993 for rehabilitation and abolishment of manual scavenging by the Government of India. This audit should be organized by higher level authority or Auditor General of India (CAG) in participation with community and their organizations.

**Survey in rural India through community participation:** Census 2011 shows that states of Madhya Pradesh, Gujarat, Chattisgarh, Maharashtra, Andhra Pradesh, Haryana, Delhi NCR, Rajasthan and Jharkhand have very few dry latrines. But surveys conducted by *Rashtriya Garima Abhiyan* and other organizations have clearly shown the existence of dry latrines in these states as well and the practice of manual scavenging is going on in these states at large scale. Number of dry latrines is shown negligible in states where manual scavenging is clearly seen. This is not surprising because State Governments do not want to accept the fact that the practice of manual scavenging is going on in their states. Rural

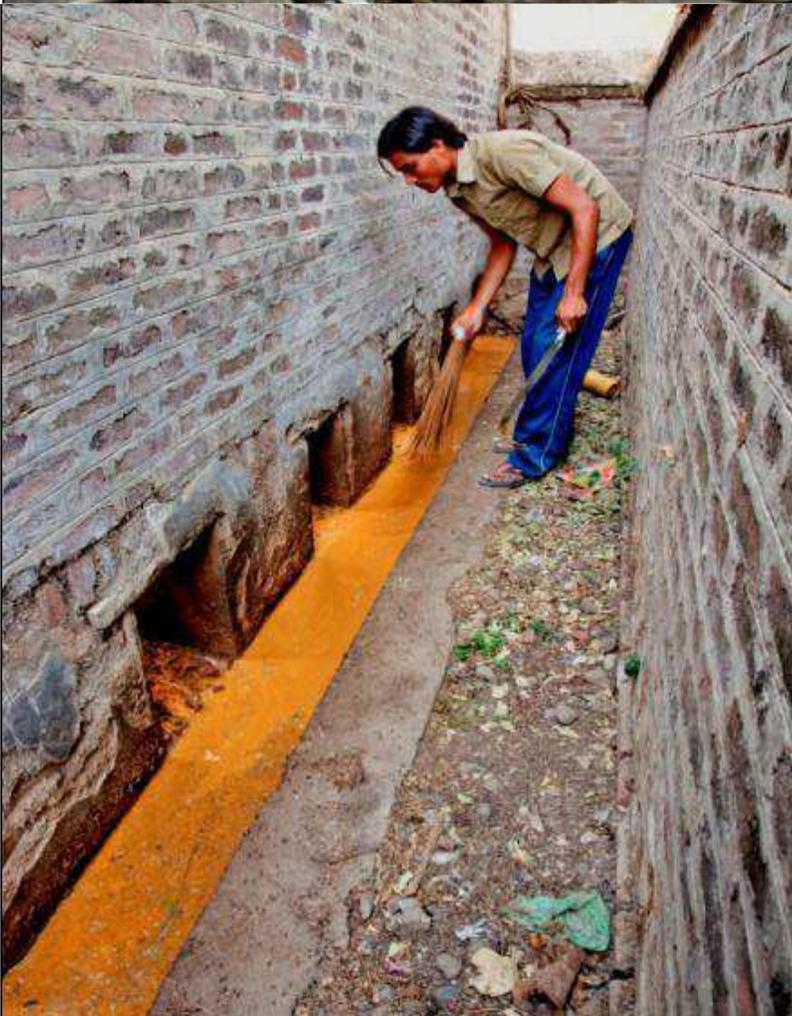


areas are more prone to this thus Ministry should undertake a nationwide survey to come out with authentic data which will help in better planning of laws and schemes.

**Gender aspect:** All rehabilitation schemes and programmes must be totally redesigned for the women that make up 98 per cent of the workforce enslaved by this exploitative tradition.

**Status Report:** The Centre and each state government should draw up and publish a white paper every six months up to April 2013 on the situation as regards manual scavenging and dry latrines in their jurisdictions. A national task force consisting of the liberated women and representatives of the government (ministries/departments of social justice, urban development, rural development) and the concerned NGOs should be formed that will closely monitor the progress in eradication of manual scavenging over the next two years.





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