Neglect of Sewage WorkersConcerns about the New Act

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The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 does not give the same rights to those who manually clean drains and septic tanks in urban areas. This is also manual labour and involves the use of hands in cleaning excreta. Workers have to enter manholes to physically clean blockages. Government bodies have brazenly ignored court orders on mechanisation and bans on manual cleaning of sewage pipes. Unfortunately, the much-awaited new law also ignores the plight of sewage workers.

■ ven after 65 years of Independence the country is struggling to ■ban the most inhuman and undignified human activity - manual scavenging. All the while, we have completely neglected another equally degrading work, sewage cleaning, for which workers are employed on a regular basis by state governments and local bodies. In this context, after much deliberations and interventions by the apex court, activists and human rights groups, the union government has finally passed a new law, The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, in both houses of Parliament during the monsoon session. The Act was referred to the Parliamentary Standing Committee on Social Justice and Empowerment on 9 September 2012 for further discussion.

However, the present Act has included sewage workers who were completely left out in the previous Act, titled Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Despite this law the twin evils of manual scavenging and sewage work have not been eliminated.

This article focuses on sewage workers and argues that this inhuman activity must be treated on par with manual scavenging and these twin evils must be banned. Sewage work also causes serious health problems and threatens the life of those engaged in it every day. This study also proposes alternative methods to cleaning sewers.

New Act on Sewage Workers

The new Act has not clearly defined sewage work. It says: "...the Act to provide for the prohibition of employment as manual scavengers, rehabilitation of manual scavengers and their families". According to Section 2(g)(b), the Act

selectively mandates that a person handling excreta with the help of "protective gear" shall not be deemed a manual scavenger, and will work as a sewage worker. The definition of in the Act and Section 2(g) is narrowly focused on manual scavenging, and no attention has been paid to the work of sewage workers.

Till now the definition of manual scavengers was different from sewage workers and all authorities adhered to the definition of manual scavenging as given in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. Sewage workers are engaged in one of the most hazardous occupations, defined under Section 2(d) as "hazardous cleaning".1 Yet, the Act excludes persons engaged or employed to clear excreta with the help of devises. A sewage worker using protective gear shall not be recognised as a person doing an inhuman occupation that is hazardous.

Interestingly, the Act has not defined the term "protective gear", which can be interpreted to even include mere gloves or protective clothing, thus, providing a gaping hole in the law that will allow the practice to continue with a few insufficient changes in apparel. This escape route in the law defeats the purpose of protecting human dignity and the integrity of sewage workers, and does little to uplift them, thus defeating the very purpose of the law.

The Act, in its present form, is very confusing. Under Section (7), it states that

no person, local authority or any agency shall, from such date as the state government may notify, which shall not be later than one year from the date of commencement of this act, engage or employ, either directly or indirectly any person for hazardous cleaning of sewer or a septic tank.

This clause in the Act makes it clear that manual cleaning of sewers or septic tanks is impermissible, even while wearing protective gear. Why then does the Act, under Section 2(g)(b) allow workers to engage in this occupation by using protective gear? Hence, it seems evident

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that the government has really not applied its mind and does not care whether this inhuman occupation is actually abolished or not.

Widen the Definition

Why has the Act not included sewage workers in its long title? It has been limited to manual scavenging. Is sewage work not a form of scavenging? These are some crucial questions that arise from the reading of the Act. The present Act hardly mentions any specific definitions. The National Advisory Council (NAC), which proposed a wider definition in its recommendation, said,

We agree with and welcome the revised wider definition of manual scavenging in the Government of India draft which says: person engaged in or employed by an individual or urban local body or any public or private agency, for manually cleaning, carrying or disposing or dealing in any other manner with human excreta in a latrine, a tank, a drain or a sewer line on open spaces including railway tracks (NAC 2010).

The last few lines of the recommended definition by the NAC has said workers "dealing in any manner" with human excreta should be considered as manual scavengers. This can surely be interpreted to mean those who are working manually or even those working with any kind of protective gear.

Hence, the Act must be retitled as "the Act to provide for the Prohibition of Employment as Manual Scavengers and Sewage Workers, Rehabilitation of Manual Scavengers and Sewage workers and their Families". Only then would the Act be clear in its approach and address the issue in its proper context. Additionally, the Act must define the sewage worker, clarify what it means by the term "protective gear" and what items this gear include and what it excludes.

Gravity of the Issue

The existing provisions of the Act, which seek the prohibition of sewage work, must be seen in the context of the experience in Karnataka. We have conducted a study on sewage workers (Sathyaseelan 2010) that brings to light some major issues concerning this inhuman occupation. Sewage workers have hardly been provided with any proper protective gear.

Contract workers are not even aware of the existence of such gear. It is not possible to work in sewerage drains and manholes with the protective gear given to them, such as gloves, masks, helmets, etc. So workers are forced to work without the protective gear, or end up just ignoring the use of the gear to complete their work quickly.

In this study 96% of the workers were scheduled castes belonging to the Madiga/adi Karnataka community. Most of them (94%), were designated sewage workers, but without any hope of getting promoted. Half of the workers interviewed were engaged in this work because their ancestors were doing the same job. However, they were still unable to take care of the basic requirements of food, shelter, clothing and education of their families with their meagre incomes from sewerage cleaning.

Sewage workers are hardly able to demand any kind of occupational safety measures from their employers. This is because half the sanitary workers we interviewed work on contract and are not entitled to any benefits that are given by the Bangalore Water Supply and Sewage Board (BWSSB) to its permanent workers. All the 50 workers we interviewed said that their present job was not safe and that they are not provided any safety equipment. Twenty of these workers interviewed said that they had taken up this job only because there is no other job available for them. Additionally, these workers are prone to serious accidents during this kind of work.

Backward Technology

The BWSSB had engaged jetting machines to reduce the burden on the workers and also provided them with transport facilities during work. But all the workers we interviewed felt their job was overloaded because of the increasing number of complaints that they have to attend to per day. It has been made mandatory for them to complete the task, and they cannot refuse or delay work. They cannot depend upon the use of jetting machines in all circumstances, because these machines are unable to clear all the blockages, once again forcing workers to enter manholes to clear

obstructions. No other technology has been developed so far to clean drains through manholes.

A number of occupational hazards have been pointed out by different institutions (Tiwari 2008) and government committees. This study also highlighted that the workers are prone to many diseases and suffer from symptoms of illness during or after work, such as body ache, headache, irritation, watering and burning of eyes, cut injuries, metallic taste in mouth and the general symptoms of tiredness and fatigue. All the workers reported that they felt that their lifespan is shortened because they are exposed to numerous poisonous gases and toxic elements.2 The absence of professional or technical training before entering into this job also leaves workers prone to accidents and death. Above all, this job creates and perpetuates social stigma.

It is important to note that these workers who were interviewed call themselves sewage workers. But as they are still outside the ambit of the Act of 1993,3 they are eligible for the benefits provided by the government for safai karmacharis such as (a) National Scheme of Liberation and Rehabilitation of Scavengers and their Dependents; (b) centrallysponsored scheme of pre-matric scholarship for children of those engaged in unclean occupation; or (c) the integrated low-cost sanitation scheme, Valmiki Ambedkar Malin Basti Awas Yojana (VAMBAY).4 The case study shows that BWSSB has deprived its workers of their rights and privileges due to the drawback of the existing 1993 Act. The new Act as passed in its present form will continue to deprive sewage workers all over the country of their rights and opportunities as they will continue to be outside the ambit of the new Act.

Court Directions

There have been many authorities such as the Supreme Court, high courts, human rights commissions, and committees appointed from time to time, which have been asking for guidelines to be issued for the upliftment of these poor and vulnerable workers. The Supreme Court in its judgment⁵ dated 12 July 2011 has recognised the plight of sewage

workers, who risk their lives by going inside drains without any safety equipment and are denied their fundamental rights of equality, life and liberty. The Court had also criticised the government for being insensitive to the safety and well-being of these workers. This direction was passed on a pending case in the High Court of Delhi⁶ that had issued numerous directions in its interim order dated 20 August 2008. We can also see similar directions that have been issued in other courts, for example, the High Court of Gujarat in Praveen Rashtrapal vs Chief Officer Kadi Municipality (SCA Nos 8989/2001 and 11706/2004), where a series of directions were issued.

In A Narayanan vs The Chief Secretary and Others, the petitioner pleaded for an interim order⁷ directing the respondents to discontinue the employment of human beings in cleaning manholes and sewerage lines and septic tanks in Tamil Nadu, with a further direction to the respondents to adequately rehabilitate those who were currently employed in cleaning manholes and sewerage lines. The Madras High Court order said the following:

[T]his Court reiterates its previous direction that for the purpose of clearing the blocks in the sewerage and drainage lines, no human being should be allowed to get inside the drainage/sewerage lines and if any drain is chocked, it is the responsibility of the authorities to get it cleared by employing mechanical devices.

Interestingly, unlike the other courts, the High Court of Karnataka in its Order (WP 41076/2010) dated 4 July 2012, hearing the case of the sewage workers⁸ said, "Chairman, BWSSB, in his affidavit dated 02.02.2012, wherein he has undertaken as to effectively implement the prohibition of manual entry into manholes and sewage lines by securing all means at my disposal." The court has received affidavits from the respective respondents that no manual labour shall be engaged for clearing, cleaning or unblocking any underground sewerage system. Apart from court directions there have been a number of committees9 constituted to give recommendations for the upliftment of these poor and vulnerable workers. The National Human Rights Commission has also given comprehensive guidelines to regulate the employment of sewage workers.10

"Only lip service is being done to a national cause and social malaise which has continued for centuries and it has not been alleviated despite constitutional provisions",11 the Karnataka court observed. The Constitution of India has guaranteed protection to labourers from exploitation and deprivation under the fundamental rights, which includes the rights to life, health, safe working conditions and the right to livelihood. Making sewage workers enter manholes and septic tanks, hazardous or non-hazardous, with or without protective gear is a violation of the fundamental rights under Article 14 (equality before law), Article 17 (abolition of untouchability), Article 21 (right to life) and Article 23 (right against exploitation) of the Constitution.

Alternatives

In an editorial, The Hindu, says that "Laws count for nothing when some of the worst offenders are government-run bodies, agencies and enterprises" (The Hindu 2012a). It will be a difficult challenge ahead as the Act is passed in its present form to tackle the plight of sewage workers as most of these workers are employed by the state directly or on contract basis. The state employs these workers, some regularised, but a majority of them are under contracts for such bodies as the BWSSB, the Karnataka Urban Water Supply and Sewerage Board (KUWSSB), and the Chennai Metro Water Supply and Sewerage Board (CMWSSB)12 among others. Even after repeated reminders and guidelines given by the apex court and high courts for complete mechanisation, most of the work continues to be done manually, for the sake of either convenience or cost. In Karnataka, the court has directed government authorities not to allow any worker to enter manholes even if they are wearing safety gear. Workers have rarely received any safety equipment or gear, as the Bangalore workers testified. However, due to the intervention by the High Court of Karnataka, the government has purchased some jetting and sucking machines, but these implements are still not enough. There are less than 100 such machines for a city with more than 1.5 lakh manholes (The Hindu 2012b).

When the Act envisages that no person should be engaged or employed directly or indirectly,13 it is better for the government to ban this occupation entirely as mentioned in Section 7 of the Act. Recently in the Supreme Court, during the hearing of the Union of India vs A Narayanan and Others case,14 Attorney General Goolam E Vahanvati submitted that the government may consider deleting the word "hazardous" from Section 7 of the bill (Ghosh 2013), and that this must be read with Section 2(d). It is to be noted that most urban authorities have employed these workers on a regular-cum-contract basis and need them to directly engage in cleaning sewers. During my research the workers have revealed that none of them received or used safety gear. Further they said that the new jetting machines that have been procured are useless most of the time; they do not help clean blockages, forcing humans to once again enter the manholes.

Implications with the States

The implications of totally banning the use of human beings in the cleaning of sewers and septic tanks for most state governments and urban authorities is going to be very big. As few states have formally adopted even the 1993 Act. Even the new Act allows states a lot of flexibility in making rules and enforcing various parts of it. This will allow states to be selective. The term "protective gear" will also allow states to continue getting this job done manually by sewage workers by only giving some token equipment. This will leave the questions of what equipment is being provided, its usefulness in stopping workers from manually entering drains and cleaning refuse with their hands, unanswered and gives states sufficient leeway to escape the proper implementation of the Act.

As the example of Bangalore illustrates, despite the interim orders passed by the High Court of Karnataka prohibiting any worker from entering manholes, each and every day the government authorities continue to send workers inside these manholes to manually clean blockages. One of the respondents of our study told us that, "there is no change

and we are working for our livelihood". The Supreme Court said

human beings who are employed for doing the work in the sewers cannot be treated as mechanical robots, who will not be affected by poisonous gases in the manholes. The State and its agencies/instrumentalities or the contractors engaged by them are under a constitutional obligation to ensure the safety of the persons who are asked to undertake hazardous jobs (*Court News* 2011).

Hence, every state not only is dutybound to eradicate this inhuman practice, but unfortunately they stand in direct contravention of judicial orders each time they allow human beings to enter and clear sewers manually.

Concluding Remarks

This article has focused on sewage workers in order to give this community equal rights and opportunities. Sewage workers are more prone to accidents and deaths every time they engage in their work. When one Member of Parliament raised his voice for these voiceless people on the floor of the House in 2011, the then minister of social justice and empowerment, Mukul Wasnik said,

so far as social justice is concerned, if we are able to protect the Fundamental Rights and right to live with dignity then we can say that we have achieved the goal of social justice. But, if a section of society is not living with dignity then it means we are not doing social justice to it. It is not the job of the Government only to change social circumstances, the people's representatives will have to work in this direction and the society should become more sensitive towards this.¹⁵

This is a state subject¹⁶ but the new Act has been brought under Entry 24 (Welfare of Labour and Working Conditions of the Concurrent List) by the union government. The centre now has to assume responsibility to protect the rights of these vulnerable workers, implement its remedies, rehabilitate these workers, protect their rights and keep an eye on state governments.

The present Act cannot achieve its objective without a road map for rehabilitation. Significantly, the judiciary has been monitoring and has been examining all kinds of violations. However, in the long run this cannot be a solution; the state has to prioritise its agenda to phaseout this dehumanising practice.

Before the Act was passed it was sent to the Standing Committee on Social Justice and Empowerment 2012-13 (2013). In its recommendations, it had asked the government to amend the definition of manual scavenging on other aspects, but had not asked for the inclusion of sewage workers within its definition. This is unfortunate, and is a myopic view of the matter. The committee in its general observations/recommendations had openly agreed that sewage work should continue with protective gear and the incorporation of modern machines, "the Committee recommend that the scheme on 'Assistance for Mechanical Cleaning of Sewers and Septic Tanks' should be finalised and executed within the timeframe as stipulated in the new Bill" (ibid). This is to note that the above recommendation is a part of the Ministry of Urban Development which had been entrusted with the responsibility to formulate a scheme on "Assistance for Mechanical Cleaning of Sewers and Septic Tanks" as well as keeping in view the Supreme Court's direction¹⁷ for providing equipment, adequate protection and safety gear to those who enter the manholes to clean blockages.

Very recently the Government of Delhi decided to upgrade the status of workers engaged in de-silting and cleaning of sewer lines by changing the designation of the workers and granting them more pay. Henceforth workers engaged in cleaning sewer lines manually will be termed as semi-skilled workers instead of unskilled workers and will get a minimum wage of Rs 8,528 per month instead of Rs 7,722 per month. Those engaged in mechanical cleaning will be termed as skilled instead of unskilled workers and will be paid Rs 9,386 per month instead of Rs 7,722 per month by upgraded the status of workers under the Minimum Wages Act, 1948 (The Hindu 2013). This is a very positive step taken by the government, but it has not banned manual cleaning of sewage.

List of Recommendations

(i) Remove Section 2(d): The term "hazardous cleaning" itself gave the state an upper hand to ban all direct

human labour in cleaning sewage. As Agrima Bhasin (2012) cogently states

the new Bill dilutes the significance of the clause that prohibits the employment of persons for hazardous cleaning of sewer and septic tanks. It selectively mandates that a person handling excreta with the help of 'protective gear' shall not be deemed a manual scavenger. This is problematic insofar as such 'protective gear' becomes a mediating technology that helps sustain, if not perpetuate, the employment of persons for hazardous cleaning. It contradicts the stated intention of rehabilitating these workers out of such dehumanising squalor.

(ii) Liberation and Rehabilitation: Sewer workers' liberation will come only when we acquire necessary technological changes, which will then render the occupation humane, dignified and safe in ways which completely avoid any direct human contact with excreta. The liberation of these workers cannot be conceptualised in isolation because they will lose their only source of income without a meticulous road map for meaningful rehabilitation as proposed for manual scavengers. The workers in regular or contract employment must not be terminated; rather they must all be given regular employment.

(iii) Protection of Human Rights: Sewage workers, who do more hazardous work as compared to manual scavengers, face a very specific form of human right violation. Their human dignity needs to be protected and this can happen only when they get opportunities through rehabilitation equal to what manual scavengers will be getting.

(iv) Introduce Proper Technology: The bill must make it obligatory that the latest technology should be provided for persons attending sewage disposal and it shall be the responsibility of the union and state governments to provide sufficient funds for the purchase of machines and equipment under Article 266 (3)¹⁸ read with Article 39(e),¹⁹ and Article 256²⁰ of the Indian Constitution.

NOTES

1 "Hazardous cleaning" by 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 ensure observance of safety precautions, as may be prescribed or provided in any other law, for the time being in force or rules made thereunder.
- 2 Ibid, Deadly gases in the manholes are: hydrogen sulphide (sewer gas), methane, carbon dioxide, carbon monoxide and other toxic elements.
- 3 The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.
- 4 See National Commission for Safai Karamcharis website, viewed on 7 October 2013 http://ncsk.nic.in/index2.asp
- 5 SC-Civil Appellate Jurisdiction Civil Appeal No 5322 of 2011 (Arising out of Special Leave Petition (Civil) No 12345 of 2009), Delhi Jal Board vs National Campaign for Dignity and Rights of Sewerage and Allied Workers & others.
- 6 High Court of Delhi WP No 5232/2007: National Campaign for Dignity & Rights of Sewerage and Allied Workers vs MCD and others.
- 7 Madras High Court in A Narayanan vs The Chief Secretary and others WPN024403 of 2008.
- 8 WP 30221/2009: PUCL-Karnataka vs State of Karnataka and others and WP 41076/2010 RN Narasimhamurthy vs State of Karnataka.
- 9 IPD Salappa Committee report on the improvement of living and working conditions of scavengers – 1976; Brave Committee 1948-1951; Malkani Committee 1957-1960; Renuka Roy Committee 1958; Pandya Committee 1967-69.
- 10 National Human Rights Commission Report on "Guidelines and Safety Code for Operations and Maintenance of Sewerage System".
- 11 The High Court of Karnataka Orders dated 28 February 2012 of the Case No WP 30221/2009 PUCL-Karnataka vs State of Karnataka and others dated 28 February 2012.
- 12 Bangalore Water Supply and Sewage Board, Karnataka Urban Water Supply and Sewage Board, Chennai Metropolitan Water Supply and Sewerage Board.
- 13 Section (7) of 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012".

- 14 This case is an appeal by the government against an order of the Madras High Court Order WP No 24403 of 2008.
- 15 Lok Sabha-Synopsis of Debates (Proceedings other than Questions and Answers): Tuesday, December 20, 2011/Agrahayana 29, 1933 (Saka) Calling Attention. Statement by the Minister of Social Justice and Empowerment, Mukul Wasnik.
- 16 Under the 7th Schedule of the Constitution (Article 246) List III concurrent list "the welfare of the labourers both centre and state are responsible, however under List II – State list (6) Public health and sanitation is part of the states obligation.
- 17 SC-Civil Appellate Jurisdiction Civil Appeal No 5322 of 2011, Delhi Jal Board vs National Campaign for Dignity and Rights of Sewerage and Allied Workers and Others.
- 18 No moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.
- 19 That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- 20 Obligation of states and the union The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that state, and the executive power of the union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose (Bakshi 2000).

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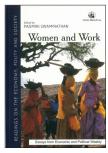
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Women and Work

Edited by

PADMINI SWAMINATHAN



The notion of 'work and employment' for women is complex. In India, fewer women participate in employment compared to men. While economic factors determine men's participation in employment, women's participation depends on diverse reasons and is often rooted in a complex interplay of economic, cultural, social and personal factors.

The introduction talks of the oppression faced by wage-earning women due to patriarchal norms and capitalist relations of production, while demonstrating how policies and programmes based on national income accounts and labour force surveys seriously disadvantage women.

This volume analyses the concept of 'work', the economic contribution of women, and the consequences of gendering of work, while focusing on women engaged in varied work in different parts of India, living and working in dismal conditions, and earning paltry incomes.

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