**Law, Ethics and Manual Scavenging**

The attempts to end the practice of manual scavenging have a hoary history. Beginning with the *Report of the Scavengers' Living Condition Enquiry Committee* (also referred to as the V N Barve Committee) set-up by the Bombay administration in the early years after independence till now, at least 8 Committees have gone into the measures required for ending the practice of manual scavenging. Karnataka was probably the first state to ban the practice in 1976. Subsequently state governments passed their laws to prohibit the employment of human beings for cleaning human excreta. In 1993, the Union government enacted *The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act* under Entry 6 (public health and sanitation) of the State List. This required resolution to be passed by two or more states, in favour of the Parliament enacting a law on an entry in the State List. After six state governments passed such resolutions, the law was enacted in 1993 but it could come to force only in January 1997. By the time other State governments adopted the law, a decade had passed since the enactment of the law. By this time, rapid urbanization had expanded the various forms in which manual scavenging was taking place, beyond the most undignified form of carrying and disposing of night soil. It had also become clear that the 1993 Act had proven completely ineffective, since not a single conviction had been reported under the Act across the country. Amendment to the existing 1993 Act would have required a lengthy process of consent from all the state governments, and hence a new law called *The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act* was enacted in 2013 under Entry 24 (welfare of labour and working conditions) of the Concurrent List. Another legislative process has been initiated by the Ministry of Social Justice and Empowerment to amend the 2013 Act without seeking any comments from the public. The general sense among the civil society groups who engage with the issue of manual scavenging is that the 2013 Act also has proved to be generally ineffective in making a dent in the rampant incidence of manual scavenging. In this article, we attempt to locate the failure of multiple legislations to put an end to the practice of manual scavenging at the plane of societal morality and ethics informed by caste ideology. Further, we visualize an appropriate role for the law.

**Manual Scavenging and Societal Ethics**

To anticipate the argument made in this section, our basic contention is that the failure of the law prohibiting the practice of manual scavenging in actually ‘prohibiting’ the practice can be attributed to a lack of an ethical consensus at the level of society in general about the immorality of the existence of this practice.

It is important to first explore the relationship between the caste system and the practice of manual scavenging. At the most fundamental level, is the fact the most of those engaged as manual scavengers belong to specific *dalit* castes. A recent study conducted by National Law School of Indian University, Bengaluru showed that about 93% of the manual scavengers across 30 districts in Karnataka were *dalits* and among them 74% belonged to the madiga community. Beyond this bare fact, the purity-pollution principle which undergirds the caste ideology, marks certain material substances like human waste, menstrual blood etc. as polluted as well as polluting, i.e. these substances are not only polluted themselves, but are capable of transferring this property to human beings who come in contact with them. Further, while those belonging to non-Dalit castes, on coming in contact with these polluting substances, can revert back to non-polluted state through ritual practices like bathing, washing, fire treatment etc., those whose traditional occupation involved regular contact with these polluting substances were ascribed permanent polluted and polluted status.

This caste ideology based on the pollution-purity principle persists in the society in the form of an attitude towards human excreta where people want to maintain physical distance from the excreta and social distance from those who handle this waste. So while people in general may express their opposition to the practice of manual scavenging per se, but when it comes to choosing between getting a human being to clear an overflowing chamber inside one’s house or waiting for a few days for a government agency to respond to complaints, most people would choose the former. For a majority of people in Indian society, the choice between bearing the presence of waste in one’s own vicinity and the dignity of the worker doing manual scavenging, is heavily loaded in favor of the former. The choice of dealing with one’s own waste by yourself hardly enters such considerations. This widely shared ethic, something that is considered undignified for oneself is actively visited upon others is predicated upon the caste-based social distance between those who clean and those who get others to clean.

Thus putting an end to the practice of manual scavenging is not simply a question of replicating the sanitation systems available in developed countries in India. To take significant steps towards elimination of the practice of manual scavenging requires a socio-ethical consensus against the practice which is simply absent from India’s casteist society. Members of society regularly get *dalit* workers to come and empty tanks and pits filled with sewage that they themselves would never go anywhere near. There is a consensus in the society that lives and dignity of the *dalit* workers don’t matter. The officials who implement these policies – PDOs, EOs, Commissioners, Health Inspectors – also belong to the same society and carry the same casteist mindset wherein the lives and dignity of the workers doesn’t matter.

One can provide numerous examples of this. In 2016, the Deputy Commissioner of Hassan district allowed construction of insanitary latrines for a religious festival because the saints refused to use pour-flush latrines. Dalit workers from Uttar Pradesh were brough in to clean these insanitary latrines. All of this is expressly prohibited under the 2013 Act, whose overall implementation is the responsibility of none other than the Deputy Commissioner of the district. The whole administration stood and watched, but nobody stopped this blatantly illegal act. In 2017, in the then CM Siddaramaiah’s constituency, a PDO of Chamundi Hills Gram Panchayath had forcefully made a *pourakarmika* to clean a manhole. Recently, a worker who regularly cleans septic tanks in Bengaluru, after trying out a machine which mechanically pumps out sewage from the tanks, expressed that unless they enter the tanks and clean them with their hands, their ‘customers’ won’t feel ‘satisfied’.

**Fraternity and Constitutional Morality**

At a fundamental level, this lack of a socio-ethical consensus in favor of complete end to a practice which forces fellow citizens to do something which violates their right to a life of dignity, is a manifestation of an absence of *fraternity,* the third of the tripartite demoratic ideals that emerged from the French Revolution viz. *liberty, equality and fraternity*. As Dr. Ambedkar had remarked in his last speech to the Constituent Assembly delivered on Nov 25, 1949:-

*On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life?*

He was of course referring to the caste system in India, which was the antithesis of his idea of a democratic society based on the ideals of l*iberty, equality and fraternity*. In his speech, Dr. Ambedkar singled out fraternity for emphasis:-

*The second thing we are wanting in is recognition of the principle of fraternity. What does fraternity mean? Fraternity means a sense of common brotherhood of all Indians-if Indians being one people. It is the principle which gives unity and solidarity to social life. It is a difficult thing to achieve.*

*I am of opinion that in believing that we are a nation, we are cherishing a great delusion. How can people divided into several thousands of castes be a nation? The sooner we realize that we are not as yet a nation in the social and psychological sense of the world, the better for us.*

Between these three democratic virtues - *liberty, equality and fraternity* - the last one is arguably the most difficult to achieve. Liberty and Equality can be legislated and inscribed into the law, as the Constitution of India does through granting all Indian citizens Fundamental Rights, but how do you legislate on *Fraternity*? The State can enact laws making mandatory for children from different castes to study in the same school, but how does the State ensure that a child from one caste invites children from other castes for his birthday celebration?

In absence of the feeling of fraternity within the society, the coercive aspect of the law can still play a role in curbing societal behaviour which leads to the violation of the basic human rights of a section of the society, if the administrative machinery, implements the provisions of the law in its letter and spirit. But since the administrative machinery is also drawn from the same society which has little consideration for rights of those forced into handling human excreta, the implementation of the law against the ethical grain of the society, requires what Dr. Ambedkar had referred to as ‘constitutional morality’. In a speech titled ‘The Draft Constitution’ delivered on 4 November 1948 to the Constituent Assembly, Dr. Ambedkar quoted George Grote who defined Constitutional Morality as

"a paramount reverence for the *forms* of the Constitution, enforcing obedience to authority *acting under* and *within these forms* yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrained censure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own."

In terms of the prospect of constitutional morality in Indian society, Dr. Ambedkar makes following damning observations in his speech

“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.”

For our purpose, adherence to constitutional morality by the State (executive and judiciary in particular) embedded in a society which lacks widespread socio-ethical concern for those who engage in manual scavenging implies enforcement of public law even when the personal values and beliefs of the enforcer militate against the provisions of the public law. To illustrate, even if an Engineer of a public utility has no fellow feeling for those engaged in entering manholes, an institutional culture based on constitutional morality should move the Engineer to put an end to this practice since the public law says so. But the all pervading nature of the caste ideology has hindered the development of constitutional morality even among those who hold the levers of the State and take an oath to adhere to the Constitution and the law.

**The Limits and Possibilities of Social Legislations**

So is the law and its provisions of no use at all for the struggle to end the practice of manual scavenging? Writing in a different context, K Balagopal indicated two scenarios where law can play an effective role:-[[1]](#footnote-1)

“It is not that the law is irrelevant for a democratic resolution of social problems. After the social process of resolution has worked itself through to a broad consensus, the law can enter and consolidate what is already resolved and thereby give it permanence, continuity and the assurance of authority. This would ensure that each new generation need not struggle for it again until an alteration of the solution is desired. In a situation where there is as yet no consensus the law if used judiciously and to a strictly limited extent can also exert the pressure of authority and impel the social groups concerned to resolve the problem. If nothing else, it can make it an enforced habit to look the problem in the face.”

Thus, in those situations where there is no social consensus yet, the law through its norm-setting role, make the society countenance the daily violations of these norms and thus make moral-ethical appeals for stricter pursuance of the norms. In addition to this, we would also like to suggest a role for the law in empowering those groups within the society, which are committed to complete eradication of manual scavenging practice including first and foremost those who engage in the practice. This can be achieved by including provisions that shift the balance of power in the favour of the interests of those who engage in the practice of manual scavenging. For example, a major obstacle in those who engage in manual scavenging leaving this occupation for an alternative occupation is the extreme reluctance of the officials to recognise these workers as ‘manual scavengers’. Introducing a provision wherein, in-action by authorities on an self-declaration application filed by someone claiming to be engaged in the practice should be deemed to be accepted. Similarly, the provisions for rehabilitation should all be time-bound, with the authority who is to be held accountable for delay specified in the law along with the process for punishment in the instances of the delay. With this change in orientation, the law can aid in the struggle towards ending the practice of manual scavenging pending annihilation of caste itself.

1. Balagopal, K. (2000). A tangled web: Subdivision of sc reservations in AP. *Economic and Political*

   *Weekly*, pages 1075–1081. [↑](#footnote-ref-1)