

Legal Discourses on Manual Scavenging in India: From ‘Right’ to a ‘Crime’

Sujith Koonan

Abstract

Manual scavenging in India has a long history. It is an unacceptable sanitation practice and a violation of a number of rights of the persons involved. Abolition of manual scavenging is an imperative from sanitation and human rights points of view. The legal discourses relating to manual scavenging in India grew, over a long period of time, out of a complex interplay of a number of factors such as caste, gender and poverty. They have undergone transformation from being an accepted ‘customary right’ to the present stage where it is a ‘crime’. Various social and economic factors prevalent at different point of time in the history shaped the legal discourse from time to time. This paper analyses these legal discourses from pre-colonial to the present through a textual and contextual analysis.

Keywords: manual scavenging, customary right, human dignity, *safai Karamchari Andolan*, legal discourses

Introduction

Manual scavenging amounts to a serious infringement of human rights, including various fundamental rights guaranteed under the Constitution of India. It is an unacceptable sanitation practice because of its adverse implications for public health and environment. As the Supreme Court of India said, it is a practice ‘squarely rooted in the concept of the caste system and untouchability’.ⁱ The practice of manual scavenging is to be condemned and not to be tolerated. These implications and contexts eventually led to progressive social and legal responses including legal prohibition of manual scavenging in any form.

The interface between manual scavenging and law is complex and it grew, over a long period of time, out of a nuanced interplay of a number of factors such as caste, gender and poverty. The legal discourses in this regard have undergone a drastic transformation from being an accepted ‘customary right’ to the present stage where it is regarded as a ‘crime’. The role of culture and social institutions (most importantly caste and religion) in shaping or influencing sanitation

SUJITH KOONAN, Assistant Professor, Faculty of Law, University of Delhi. Email: sujithkoonan@gmail.com