OCCUPATIONAL IMPACT ON THE RIGHTS OF THE CHILDREN OF MANUAL SCAVENGERS: A CRITICAL ANALYSIS

John Kennedy¹
Ishita Chatterjee²

RESUMO

Objective: The Children of Manual Scavengers suffer socio-legal exclusion based on their traditional occupation of manually remove human excreta. As it is inhuman practice enforced by the caste system they are stigmatized as socially untouchable, economically disadvantaged, and legally neglected. Moreover it leads to continuous human rights violations. The aim of this study is to examine the occupational impact on the rights of children of manual scavengers and critically analyse the legislative protection and judicial consciousness on the empowerment and protection of these children’s rights.

Methods: The legal research as it aims to analyse the legislative provisions, precedents along with legal principles and programs this research is a type of normative legal research.

Results and Conclusion: Despite the Constitutional protection of child rights, the children of manual scavengers suffer on the violation of their right as right to education, wellbeing, social inclusion and protection against child. The legislative protection on child rights and judicial activism on the empowerment of child rights are not positively effected in the life of the children of manual scavengers against the occupational impact. Therefore it is imperative to have special legislative measures along with executive mechanism to effectively enforce and special judicial care in protecting and promoting the rights of these children whose rights are violated due to the occupation of manual scavenging as traditional and caste forced work.

Research implications: The research highlights that the traditional occupation of manually removing the human excreta as caste forced occupation impacts in the violation of child rights in the entire facet.

Keywords: Occupational Impact, Manual Scavenging, Child Rights, Effective Legislations and Judicial Protection.

IMPACTO OCUPACIONAL NOS DIREITOS DAS CRIANÇAS DE necrófagos manuais: UMA ANÁLISE CRÍTICA

ABSTRACT

Objetivo: Os Filhos de Catadores Manuais sofrem exclusão sócio-jurídica com base na sua ocupação tradicional de remover manualmente excrementos humanos. Como se trata de uma prática desumana imposto pelo sistema de castas, eles são estigmatizados como socialmente intocáveis, economicamente desfavorecidos e legalmente negligenciados. Além disso, conduz a violações contínuas dos direitos humanos. O objetivo deste estudo é examinar o impacto ocupacional nos direitos dos filhos de catadores manuais e analisar criticamente a proteção legislativa e a consciência judicial sobre o empoderamento e proteção dos direitos dessas crianças.

Métodos: A pesquisa jurídica por ter como objetivo analisar os dispositivos legislativos, os precedentes juntamente com os princípios e programas jurídicos esta pesquisa é um tipo de pesquisa jurídica normativa.

¹ School of Law, SRM Institute of Science and Technology, Kattankulathur, Chengalpattu, Tamil Nadu. India.
E-mail: jj2639@srmist.edu.in Orcid: https://orcid.org/0009-0006-5226-2549

² School of Law, SRM Institute of Science and Technology, Kattankulathur, Chengalpattu, Tamil Nadu. India.
E-mail: ishitac1@srmist.edu.in Orcid: https://orcid.org/0000-0002-2927-0069
Resultados e Conclusão: Apesar da proteção constitucional dos direitos da criança, os filhos dos catadores manuais sofrem com a violação do seu direito como direito à educação, ao bem-estar, à inclusão social e à proteção infantil. A proteção legislativa sobre os direitos da criança e o activismo judicial sobre o fortalecimento dos direitos da criança não são afectados positivamente na vida dos filhos de catadores manuais contra o impacto ocupacional. Portanto, é imperativo ter medidas legislativas especiais juntamente com mecanismos executivos para fazer cumprir eficazmente e cuidados judiciais especiais na protecção e promoção dos direitos destas crianças cujos direitos são violados devido à ocupação de recolha manual de lixo como trabalho tradicional e forçado de castas.

Implicações da pesquisa: A pesquisa destaca que a ocupação tradicional de remoção manual de excrementos humanos como ocupação forçada de casta impacta na violação dos direitos da criança em toda a faceta.


IMPACTO LABORAL EN LOS DERECHOS DE LOS HIJOS DE RECOLECTORES MANUALES: UN ANÁLISIS CRÍTICO

RESUMEN

Objetivo: Los hijos de recolectores de basura manuales sufren exclusión sociojurídica por su ocupación tradicional de retirar manualmente excrementos humanos. Como se trata de una práctica inhumana impuesta por el sistema de castas, se les estigmatiza como socialmente intocables, económicamente desfavorecidos y legalmente abandonados. Además, conduce a continuas violaciones de los derechos humanos. El objetivo de este estudio es examinar el impacto ocupacional sobre los derechos de los niños de los recolectores de basura manuales y analizar críticamente la protección legislativa y la conciencia judicial sobre el empoderamiento y la protección de los derechos de estos niños.

Métodos: La investigación jurídica ya que tiene como objetivo analizar las disposiciones legislativas, los precedentes junto con los principios y programas jurídicos, esta investigación es un tipo de investigación jurídica normativa.

Resultados y Conclusión: A pesar de la protección constitucional de los derechos del niño, los hijos de recolectores manuales sufren la vulneración de su derecho como derecho a la educación, al bienestar, a la inclusión social y a la protección de la infancia. La protección legislativa de los derechos del niño y el activismo judicial para el empoderamiento de los derechos del niño no tienen un efecto positivo en la vida de los hijos de los recolectores de basura manuales frente al impacto laboral. Por lo tanto, es imperativo contar con medidas legislativas especiales junto con un mecanismo ejecutivo para hacer cumplir eficazmente y una atención judicial especial para proteger y promover los derechos de estos niños cuyos derechos son violados debido a la ocupación de la recolección manual de basura como trabajo tradicional y forzado por castas.

Implicaciones de la investigación: La investigación destaca que la ocupación tradicional de retirar manualmente los excrementos humanos como ocupación forzada de casta impacta en la violación de los derechos del niño en toda su faceta.


RGSA adota a Licença de Atribuição CC BY do Creative Commons (https://creativecommons.org/licenses/by/4.0/).
1 INTRODUCTION

We, the people of India at times support the caste system as it has a structured mechanism for discriminating people based on their occupation and lineage for many years. The practice of manual scavenging as traditional occupation based on caste is shouldered on group of people who are excluded from the ‘Varna’ and identified as 'panchamas' or out-caste. They are still socially stigmatised as untouchable and experience political marginalisation in their daily lives. Despite the nation’s economic progress and scientific advancements, modern forms of discrimination are increasing. The manual scavengers are inherently economically disadvantaged and reliant on their oppressors, and they lack political power. They face several atrocities from all aspects of socio-economic, political, and religious dimensions for which the children become victim. Despite the Constitutional protection of child rights, the children of manual scavengers continue to suffer in various ways, which violates their rights. Therefore it is imperative to aim for the protection of the rights of children of manual scavenging analyzing the legislative, executive and judicial consciousness on safeguarding child rights and forbidding any violations of the rights of children of manual scavengers and upholding their human rights.

The Caste system derives its essence from segregating people based on their employment. Manual scavengers are individuals who are responsible for tasks like sweeping, cleaning, leatherwork, and disposing of dead animals and human bodies that are deemed inherently impure by some caste groups. They have to manually clean up human and animal waste using brooms, small tinplates, and baskets carried on their heads. Individuals trapped in the practice of manual scavenging are compelled to carry out various menial duties.

Manual scavengers, considered the most marginalised, are known by various names in different states. For example: Bhangis in Uttar Pradesh and Gujarat. The term signifies a fractured sense of self and is considered offensive and degrading. Phakis reside in Andhra Pradesh, Balmiki in Haryana, and Sakkiliars in Tamil Nadu (Terra Green, 2019).

Manual scavenging is the act of removing excreta from dry toilets, which lack a contemporary flush system and water seal (Rashtriya Garima Abhiyan, 2011). Manual scavenging is the hazardous and disrespectful practice of manually removing raw human excreta (night soil) from dry toilets or toilets without water.

Manual scavenging is the manual cleaning, carrying, discarding, or handling of human excreta from dry latrines and sewers. This profession involves utilising fundamental tools including buckets, brooms, and baskets.
The 1993 Indian law defines a manual scavenger as a worker who is regularly employed to manually clean by an individual, local government, or public or commercial body. They transport 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 word manual scavenging defined accordingly (The Employment of Manual Scavengers and Construction of Dry Latrines Act, 1993).

The 2013 Act broadened the definition of manual scavengers to include anyone hired to clean septic tanks, open sewers, and railway lines. (The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013). The term "safai karamchari" in Hindi refers to a wide range of sanitation workers, including manual scavengers, toilet cleaners, caretakers, pit emptiers, sewer cleaners, and workers at sewage treatment plants and disposal sites (Walters & Vicky, 2019).

The National Human Rights Commission of India advocated for the term to include other types of hazardous cleaning (Hindustan Times, 2021), 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.

Manual scavenging persists in several regions of India lacking adequate sewage infrastructure. Gujarat, Madhya Pradesh, Uttar Pradesh, and Rajasthan are considered to have the poorest sanitation conditions (The Times of India, 2014). Within this structured caste-based system, there are individuals known as outcasts or untouchables who face severe caste discrimination and social exclusion based on the concepts of contamination and purity. Discrimination and untouchability persist as a perpetual source of suffering for individuals regardless of gender or age.

Manual scavengers are at the bottom of the caste structure and also have the lowest economic position. Due to traditional caste-based discrimination, the wages for this type of job are not defined but determined by individuals from higher castes, and can be in the form of money, food, clothing, etc. Generational poverty significantly impacts them economically, becoming their defining economic characteristic.

Manual Scavengers, known by various names, are compelled to perform tasks such as sweeping, cleaning drains, and disposing of human waste, leading to their social stigma as filthy or untouchable. Impure works include:

- disposing of animal excrement and deceased animals such as cattle, cats, and dogs;
Women from manual scavenger communities are expected to clean blood and placenta after childbirth, which is deemed as dirty by society;

Performing menial tasks for the upper caste at their death, such as handling garments, cleaning the body, and assisting with cremation rituals.

The condition of the children of those who engage in manual scavenging is the primary worry that needs to be investigated as a matter of urgency. There was no exception made for the children of this group when it came to the evils of caste untouchability that these people endured. Children are forced to engage in the inhumane practice of clearing human excreta by hand as part of the caste-based employment of manual scavenging. In addition, they are subjected to untouchability and other forms of prejudice. Exclusion from society, economic hardship, and prejudice in the workplace are all factors that contribute to the continuous suffering that children experience during childhood. On top of that, they are subjected to societal discrimination and poverty. The Children out of school is an as usual event in the life of these children who take part in their parental work as bread winners and contributors.

2 RESEARCH METHODS

According to the normative legal research technique, this study was conducted. In order to investigate the legal laws that are in place to protect the rights of children and to evaluate the level of judicial activism that is in place to prevent children of manual scavengers from occupational impact that violates the rights and dignity of these children, this method is utilised. Different points of view, such as socioeconomic and legal considerations, are taken into consideration when analysing it. The statutory approach and the regulatory approach, as well as the case approach, were the primary focuses of the research.

3 DISCUSSION

3.1 OCCUPATIONAL IMPACT

The occupation is determinate for the particular caste in the society. So this caste based traditional occupation impacts in different ways and means in the life of the children of manual scavengers. They surrender themselves into the occupational impact and face the challenges in their day to day life. Some of such challenges are as below:
3.1.1 Socio-economic Impact

The manual scavenging as the caste based traditional occupation with caste forced discrimination pulls the children of manual scavengers into the life of social tragedy. They suffer social discrimination based on this caste forced occupation (Sabale, 2019). The inhuman way of occupation makes them to suffer undignified way of life. 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.

3.1.2 Impact on Educational

The education or educational awareness is still unimaginable in the life of the children of manual scavengers who suffer and live as untouchables among untouchables in the caste society and education was a mirage in the life of the children of manual scavengers who later considered education as something out of their life. The present scenario where we have lots of facilities and legislative measures for educational empowerment and concept like free and compulsory education and adult education and so on, but still the people stay as illiterate and they are not willing to send their children to schools (Sabale, 2019). In most of the cases the female education is not considered to be an important issue in the life of manual scavengers. The economic and educational backwardness has deprived many scavenger families from taking advantage of the privileges meant for the welfare of the dispossessed. Most scavengers are illiterate and thus the children suffer educationally backwardness and stay out of school.

3.1.3 Impact on Health

Good health in the life of the children of manual scavengers is a mirage. These children become victim of very many health issues due to this occupation of manual scavenging. They suffer mainly the sickness based on the malnutrition and other such as:

- Skin diseases,
- Anemia,
- Lung disease,
- Typhoid,
• Tuberculosis and so on.

3.1.4 Child Abuse

The children of manual scavengers undergo all forms of abuses due to this traditional occupation which could be grouped into mental, physical and socio-economic and much more the sexual abuse is the 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.

3.1.5 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. These children become victims of child marriage by force of their life condition.

3.1.6 Child Labour

Child labour is an inevitable reality for the children of manual scavengers, primarily due to causes such as food scarcity, extreme poverty, and socio-economic conditions (Ibid, p. 210.). Another cause may be the lack of understanding regarding the detrimental impacts of child labour and the importance of child education. Due to socio-economic circumstances, the offspring of manual scavengers are compelled to engage in this hereditary caste-specific profession. Children under 12, particularly females, are being employed as manual scavengers in rural and urban areas through unidentified intermediaries, as indicated by the survey (The Wire, n.d.).

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 (Ibid). 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 (Down to Earth, n.d.).

3.2 LEGISLATIVE PROTECTION

There is a constant effort from the legislative in protecting the children and prohibiting the children from all forms of discrimination and vulnerabilities in India. There are very many legislative measures in different forum in promoting and protecting the child rights and aims for the welfare of the children. Such legislative provisions in curtailing the child labour and promoting the right of children as compulsory education, pre-childhood care, nutrition and other such protective measures in India can be understood from constitutional and other Acts and policies.

3.2.1 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.

3.2.1.1 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.
3.2.1.2 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.

3.3 JUDICIAL ACTIVISM

Judiciary is one of the prime organs in promoting and protecting the human life and dignity, and thus played a vital role on protecting the rights and dignity of children as a whole. Moreover, the judiciary has acted enough in directing the state to take appropriate action in protecting the rights of children.

The Supreme Court ruled that minors should not be engaged in any dangerous activities, such as manufacturing fireworks or matchboxes, that pose a risk to their lives. The Court ruled that the employer is obligated to provide compensation for breaking the law (M.C Mehta v. State of Tamil Nadu and others, 1996). The court has imposed restrictions on children under 14 years of age, prohibiting them from engaging in any form of construction labour, which is deemed risky and hazardous (Peoples Union for Democratic Rights v. Union of India, 1982).

Justice Bhagwati stated that the Directive Principles of State Policy require the Central and State Governments to take actions and implement measures to provide social justice for the less privileged. The government should not ignore the inhumane exploitation of bonded labourers and must make every effort to eliminate it and outlaw such barbaric practices (Bandhua Mukti Morcha v. Union of India and others, 1984).

The Judiciary has played an important role in a wide range of situations, expressing its fervent views on a number of issues, including the prohibition of child labour in all its forms, the guarantee of compulsory education, the concentration on the welfare of children, health concerns, and proper childhood care with nutrition, and the direction of the states to have
appropriate legal measures for the welfare of children and the promotion of child rights. In its order, the Court instructed the states to assume exclusive responsibility for ensuring that the personality is developed in an appropriate manner (Sheela Barse v. Union of India, 1986).

The court also instructed the states that it is necessary for them to take action to halt the trend of employing children and educate people in order to prevent child abuse and child labour. In addition, the court mandated that the state establish a separate independent department that is concerned with child welfare (Srirama Babu v. The Chief Secretary, 1997).

On the contrary to the above judicial intervention on the protection of child rights, it is true that in matter of protecting the children and prohibiting discrimination of the children of manual scavengers in specific it has failed or its role is not up to the expectations. The role played as ultimately aim to curb the vulnerability of children in India is not effected in the life of children of manual scavengers.

4 CONCLUSION

Children are essential for the future of every nation, and ensuring their welfare, protection, promotion, and empowerment are crucial and indispensable. India is unique in its efforts to promote and protect the rights of children in an inclusive way. However, despite these efforts, the rights of the children are violated as an impact of the traditional occupation of manual scavenging. They suffer the occupational impact on the educational rights, health rights and in addition they suffer encountering abuse, exploitation, humiliation, violence, and child labour associated with the hazardous traditional practice of manual scavenging. They lack access to health, education, food, shelter, and other basic necessities, leading to discrimination and a deprivation of human dignity due to this occupation of manual scavenging. The needs of children of manual scavengers in India are to be addressed with proper legislation specifically for the empowerment of these children.

REFERENCES


Walters, Vicky. (Year of publication not provided). "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.


"Manual Scavenging Is Continuing Unabated In India – And Even Children Are Forced Into It." Retrieved from https://thewire.in/

Down to Earth. Retrieved from https://www.downtoearth.org.in/


Peoples Union for Democratic Rights v. Union of India, 1982.


Srirama Babu v. The Chief Secretary, 1997.