

Policy Brief 3

**STRENGTHENING THE IMPLEMENTATION OF
THE PEMSR ACT, 2013**

Ensuring effective Enrolment and
Inclusion of everyone engaged in
Manual Scavenging



Constitutional Foundations

In the 64th year of the Republic the nation, it was recognized formally through a legislative act, for the second time after the initial 1993 act, that the “dehumanising practice of manual scavenging, arising from the continuing existence of insanitary latrines and a highly iniquitous caste system” that “still persists in various parts of the country” needs to be eradicated and those in this work need to be rehabilitated. It recognized that the existing law of 1993 have not proved adequate in eliminating the “twin evils of insanitary latrines and manual scavenging” and finally considered it imperative that the “historical injustice and indignity suffered by the manual scavengers” be corrected through a process of rehabilitation to a sustainable life of dignity.

It also broadened the definition of manual scavenging in order to include few more categories of sanitation workers who, as part of their work, come to direct contact with human excreta, such as cleaning/ emptying insanitary latrines, open drains, pits, railway tracks, or in such other spaces or premises, with a scope open for including other similar categories of workers that the central or state governments may notify in future. This was called The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013¹ (Henceforth PEMSR 2013).

In 2014, The Supreme Court of India further underscored the role of state governments in implementing this act and added compensating workers risking or losing their lives as part of working in sewers, into the ambit of this Act.

The three Constitutional foundations that formed the basis of the Act were:

- 1) Promoting among citizens **fraternity assuring the dignity of the individual** is enshrined as one of the goals in the Preamble of the Constitution.
- 2) The **right to live with dignity** is also implicit in the fundamental rights guaranteed in Part III of the Constitution.
- 3) Article 46 of the Constitution, inter alia, provides that the **state shall protect the weaker sections**, and, particularly, the Scheduled Castes and the Scheduled Tribes from social injustice and all forms of exploitation.

In more ways than one it remains one of the landmark legislations that in fact connected one’s right to free or uplift oneself from the degrading occupation of manual scavenging as a fundamental right guaranteed by the Constitution. The task of assuring dignity to each and every citizen and the task of social justice for SC and ST communities – all of it was stated outrightly as constitutional obligations thereby laying the foundations for the Act. So, this makes a proper survey and identification of the affected parties imperative and a constitutional obligation. Because, after all, none of the purposes or the purported aims of the Act would be achieved without this crucial first step.

¹ <http://legislative.gov.in/sites/default/files/A2013-25.pdf>

Problem Statement

To arrive at the statement of the problem, we ought to first glance through some of the realities as observed both through snippets of some secondary studies and also our own field visits while evaluating the implementation of the PEMS Act, 2013.

Review of existing data and secondary information:

While reviewing the available data, it clearly suggests huge discrepancies in the existing enumerations of persons engaged in manual scavenging:

- a) As per the National Safai Karamchari Finance and Development Corporation's (NSKFDC) 20th Annual Report (2016-2017) there were 26 lakh insanitary latrines in the country, of which 13.29 lakh were in urban areas and 12.71 lakh in rural areas. The report states that as of 31st March 2017, the number of manual scavengers identified in 13 states had been 12,742, which, as is obvious, a gross mismatch. It is inconceivable that 13,000 manual scavengers can excavate 26 lakh insanitary latrines.
- b) An inter-ministerial task force in 2018 has released figures on manual scavengers and has counted up to 53,236 people involved in manual scavenging in 121 out of 600 districts in India, making a four-fold rise from the figure above.
- c) The 2011 Census records the presence of 740,078 households where waste and excreta is cleared out by manual scavengers. This number does not include septic tanks, sewer lines and railway tracks which are also cleaned by manual scavengers. In addition, around 21 lakh households disposed of their wastes in dry latrines or drains, which also are cleaned by manual scavengers.
- d) The Socio-Economic Caste Census of 2011, which identified the number of people belonging to specific vulnerable sections of the society, counted over 1.82 lakh families that had at least one member employed in manual scavenging.
- e) In the most recent survey conducted in 2018-2019, the government identified 54,130 manual scavengers in 170 districts spread in 18 states.²
- f) In Andhra Pradesh, the Ministry of Social Justice and Empowerment (MSJE) survey [of 2017](#) reported that there are 6,77,8225 urban households and a total of 1,73,690 insanitary latrines. However, the ministry identified only 124 manual scavengers in the state.³
- g) In Tamil Nadu, the State Government identified only 363 manual scavengers, but as per the National Commission for Safai Karamcharis 2013 survey, there were 3032 manual scavengers in eight districts of the state alone.⁴ (ibid)
- h) In Karnataka, the State Government submitted an affidavit before the Supreme Court in 2018 stating that the practice of manual scavenging had been eradicated in the State. However, the National Commission for Safai Karamcharis (NCSK) said that it

² <https://www.thehindu.com/data/manual-scavenging-exists-in-india-despite-being-outlawed-in-2013/article29508476.ece>

³ <https://clpr.org.in/blog/review-of-data-on-survey-and-identification-of-manual-scavengers/#:~:text=In%20Andhra%20Pradesh%2C%20the%20Ministry,identified%20only%20124%20manual%20scavengers.>

⁴ ibid

had identified as many as 1,720 manual scavengers in 6 of the 30 districts of Karnataka and suggested that the count might have been over 10,000 if the survey to be conducted as per the Act had been conducted in all districts. ⁵(ibid)

- i) An RTI filed by *The Wire* revealed details on the new survey, like the fact that there are a total of 41,420 manual scavengers in the 84 districts surveyed. Combining the results of the 2013 and 2018 surveys, government records say there are 55,625 manual scavengers in 14 states of the country.
- j) The NSKFDC, which works under the Ministry of Social Justice and Empowerment, had conducted a survey in 170 districts of 18 states. In those districts, a total of 86,528 people described their work as “manual cleaning of waste.”⁶
- k) According to the Supreme Court, the surveys on manual scavengers have been ineffective. In particular, the court noted that the 2013 survey “has shown remarkably little progress” and has identified “only a miniscule proportion of the number of people engaged in manual scavenging.” The Supreme Court noted that, while the Rajasthan state report, which did not extend to the entire state and excluded rural areas where manual scavenging is prevalent, identified only 46 people engaged in manual scavenging, whereas in the very same area, the Safai Karmchari Andolan identified 816 people engaged in the practice.

Empirical observations from the field:

Our field experience, as part of the implementation review of the PEMSAR Act, 2013 in four states of India, only corroborates the same.

- a) The response to our RTI (dated 14.8.18) by NSKFDC states that “no manual scavengers were identified in Jharkhand”. However, we have another RTI response from the Dhanbad Nagar Nigam, that identifies 34 manual scavengers in Dhanbad as per a 2014 survey. In contrary, the Safai Karamchari Andolan and the Nagar Palika together identified 355 manual scavengers (signed by a NSKFDC official) in a joint survey conducted in Dhanbad, in July 2018.
- b) In Powai and Amanganj in Panna district, when the field researchers reached the Nagar Parishad offices for inspection as part of the provisions under the RTI act, they could not find any files pertaining to the data or paper work around the PEMSAR 2013, in both these offices. When asked particular questions as per our RTI inspection, the officials simply wrote “*nirank*” or zero next to all the questions by field researchers. Further observations revealed somewhat similar situations in other locations too.
- c) Clearly contradicting with the data provided by the local administrations, a baseline survey conducted in 2018 by the Safai Karamchari Andolan identified 1686 manual scavengers just in 36 peri-urban locations of 12 districts in the states of Madhya Pradesh, Uttar Pradesh, Bihar and Jharkhand.

⁵ ibid

⁶ <https://thewire.in/labour/delhi-manual-scavenging-sewer-deaths>

Key issues identified

The available data on manual scavenging, prepared by various government agencies are grossly underestimating the actual situation of manual scavenging and the data available with different agencies are contradicting with each other

There is a gross mismatch between the number of manual scavengers identified by the government and civil society organisations.

There is a clear need to initiate a fresh process of enumeration of persons engaged in manual scavenging, in order to do justice to this most marginalised section of society and to fulfil the mandate of the law and subsequent obligations.

Review of the PEMSR Act, 2013

Reviewing the PEMSR Act, 2013, the provisions seem fool-proof in terms of the checks and balances it prescribes, towards ensuring complete identification of manual scavengers. Instead of leaving it completely into the hands of the local authorities, it provides ample scope for the general public to participate in the survey process to the extent of self-identification. By design, the PEMSR Act, 2013 also involves local civil society or campaigns that can facilitate the process by deepening the administration's capability to better identify manual scavengers.

Directions given in the 2013 Act for survey and identification:

- (1) **In urban areas:** In urban areas the Chief Executive Officer in the Municipality may cause a survey to be undertaken which ought to be undertaken within two months in Municipal corporations and in a month in Municipalities. A provisional list ought to be displayed so as to invite objections in any from the general public for both inclusion or exclusion. The final list ought to be published only after the objections are enquired into. One can also self-identify as a manual scavenger at any point subject to enquiry.
- (2) **In rural areas:** Similarly, the Chief Executive Officer of a Panchayat may cause a survey to be undertaken. And similarly one can also self-identify oneself subject to enquiry.

But the fact is that there is much of a void that remains between what is prescribed and the reality, as suggested by the evident gaps in the data on manual scavenging.

It may be important to assess the effectiveness of the law from design to implementation processes, looking at each of the clauses under Chapter III 'Survey of Manual Scavengers' in the Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules, 2013⁷.

⁷ Available here: <http://www.iclrc.org/content/e1314.pdf>. Accessed 12th December 2019

A. Were there design flaws in the Act that account for this exclusion?

- (1) **Definitional vagueness that reduces scope of identification of beneficiaries:** There is an overall tendency to equate manual scavenging only with dry latrine cleaning which makes it easy to assume that there are no manual scavengers if there were no dry latrines. Though the new definition is a marked improvement on the earlier, but it is still has not clearly defined various categories of work that constitutes manual scavenging, other than those clean human excreta from insanitary dry latrines. This not only led to exclusion of other kinds of manual scavengers who typically handle human waste from surveys, (such as people cleaning pits, open drains, railway lines, sewer lines or septic tanks) but also gave spaces for not covering the people, mainly women, engaged in cleaning of insanitary dry latrines.
- (2) **Under-identification of beneficiaries:** The survey to identify beneficiaries was to be conducted *only if* the local authorities have “reason to believe” that there are manual scavengers in the area. This design flaw, giving the choice and discretion to the very authorities with the responsibility to identify, has led to some conflicts of interest, leading to no-identification or under-identification of beneficiaries to be enrolled under the law, both for freeing them from the work and for their rehabilitation and other benefits, as prescribed in the Act.
- (3) **Cut-off date:** Clause (23) the act stipulates that manual scavengers be engaged or employed *at the commencement of the Act* which effectively disregards all manual scavengers who might have been engaged in this work prior to the Act. For instance, in Dhanbad and Loni field researchers encountered several people who had left the work of manual scavenging less than a year before the commencement of the Act and therefore were not included in the survey lists or entitled to any rehabilitation provisions under the Act, which they are in much need of and deserving.
- (4) **Tenure of employment:** The rationale behind stipulating that they should have worked *continuously for not less than three months* is unclear. How is a person supposed to prove that they have been *continuously* employed as a manual scavenger for three months when the work is entirely if informal nature and there are no formal contracts exist between the employer and the manual scavenger.

B. Were there flaws in the implementation of the Act?

- (1) **Training/Sensitization scuttled:** Clear instructions are given in the Act about the requirement of training and sensitization of those engaged in survey. But during field visits researchers found enough instances where survey was conducted without any prior training. it is to be noted that no manual scavengers were identified during such surveys.
- (2) **Fate of Advertising and awareness towards identification of beneficiaries:** The Act details very elaborate awareness campaigns ranging from pamphlets to advertisements in newspaper to TV, towards identification of people engaged in manual scavenging. However, when researchers met concerned authorities in a few towns and showed the prescribed matter for printing pamphlets and advertising in newspapers, they were not even aware of such requirements or formats prescribed for the same.

- (3) **Self-identification remains impeded:** In places where self-identification processes for manual scavengers did take place, there was no further process of enquiry and the process remained incomplete. While the Act in its design has been mindful enough to keep several steps in the process of identification, the last being a provision of self-declaration even after the final list is made. Nevertheless, in practice it was found that the verification and upgradation that ought to follow such identification has been scuttled in most instances.
- (4) **Failure of checks from below - Involving community organizations:** While the Act envisioned the involvement of community based organizations, campaigns and NGOs to fulfil its aims, but this element is almost lost in action. For instance, in one of the towns, the Safai Karamchari Andolan had organised a camp for identification of manual scavengers in July 2018, but the cooperation from the authorities was absent. Later, despite successful in identifying 355 manual scavengers, the Nagar Palika simply refused to accept the list of identified people, leaving aside the need of verifying them as required under the provision 11 (5) of the PEMSR 2013 Rules.
- (5) **Failure of checks from above – such as by the District Magistrates:** As per the act, the concerned District Magistrates are obliged to notify a designated officer not below the level of Tehsildar or BDO, for inquiring into the claims and objections. But we could not gather any information about adherence to such processes, despite objections were filed in the required fashion by several people.
- (6) **Enumeration of dry latrines:** The fact, that no data was available as to the number of insanitary dry latrines in all districts verified, points towards a gross anomaly in the very enumeration of the same. And without that, the cross verification processes (as intended in the clause) became meaningless. Respondents from communities did not recall any house to house survey on this issues, as mandated by the act.

C. Was there active bias from government functionaries?

- (1) In one of the towns we visited as part of our study, a Dalit community leader told us that he was harassed by the local administrative officers whenever he approached them with legitimate grievances or when he pointed out issues about non-compliance of the PEMSR 2013. “They heckle me telling, ‘What is your problem? Do you want to become the next Ambedkar?’, he said. “the betrayal (of manual scavenging communities) starts from those very same offices where they hang Ambedkar’s photo on walls.” So, despite having provisions kept in the law, implementation will continue to suffer as long as such strong and active bias persists.
- (2) Systemic as well as structural apathy towards the most marginalised populations are important issues too. Thoughts and worldviews influenced by the caste-hierarchy of the officials running the administrative machinery and the institutions stands as another issue, resulting on apathy around the burning issues faced by people engaged in manual scavenging and in similar situations. For instance, of a senior administrator of a city asked the research team that “If these

people (Dalits of specific castes) do not do this work, what will they eat? *Kisi ko ko toh tyag karna padega* (someone will have to do sacrifice).”

- (3) Another important dynamic to understand here is the power relation between community members and local authorities. The act says clearly in one of its clause that manual scavengers must self-identify in front of local authorities. However, field researchers heard from one of the persons engaged in manual scavenging in one town that he was apprehensive and underconfident in approaching the local authorities, as people from his community were ill-treated by the local government officials, who, in most instances, belonged to dominant castes. In another town, the local activists of the Safai Karmchari Andolan informed the researchers that whenever manual scavengers attempted to initiate self-declaration with local authorities, the officials used different tactics to turn down their requests, such as repeatedly asking them to come back on another day, harass them, ill-treat them and so on. Therefore, it can be said that the implementation arrangements for the act, which has been made mainly for supporting and uplifting a specific downtrodden community, are not only unable to fulfil its mandate, but it goes against the very spirit of the Act.

Recommendations

Having the survey and identification of manual scavengers is one of the (if not the most) crucial aspect of the PEMSR Act, 2013. Any of the subsequent rehabilitative efforts cannot even be possible and effective, unless enumeration processes were duly conducted, both in letter and spirit. However, as discussed above, our study and the available data is showing a very dismal picture. Towards improving the situation, we hereby suggest the following important measures:

- 1) As a primary measure, revise the PEMSR Act, 2013 rules to address the vagueness around definitions of manual scavenging, by way of listing all the categories of manual scavenging, and providing clear and distinct definitions for each one of the categories of workers. In the eligibility criteria, the correlation with just insanitary latrines needs to be removed, and it should include all who were currently or previously engaged in those categories of work, removing the clause on maximum years after leaving the work and the clause to identify those engaged in such work ‘since the commencement of the act’.
- 2) So as to make enumeration of people engaged in all categories of manual scavenging compulsory for all local bodies, it is important to remove the “reason to believe” clause that currently gives discretion to the authorities, to conduct or not conduct such identification or survey processes.
- 3) Since most forms of manual scavenging are informal engagements without any legal instrument or contract as such to show proof of engagement, the clause on minimum tenure of employment of three months as specified in the Act needs to be removed, so as to enhance the chances of identification all those who are into this work.

- 4) All previous declarations, legal submissions or affidavits by the local or district or state governments should be nullified in order to give opportunities for all those who got missed out in getting enrolled as result of the hurried-up processes.
- 5) Following this, a fresh as well as strictly time-bound campaign should be mandated and launched across the country, with adequate participation of civil society for identifying and finalising the beneficiaries under the act, supported by a grievance redressal mechanism that will take calls on the process within a fixed time period. The local and district authorities should be made accountable for missing out any eligible persons. A recent example for this is the ‘Garima’⁸ Scheme for Safety and Dignity of Core Sanitation Persons, introduced by the Odisha state government in 2020, wherein an identification and enrolment drive was undertaken by the state authorities, with support from civil society organizations. This was supplemented with regular monitoring and review at the state level.
- 6) The data evolved out of the survey should be put into a triangulation as well as community verification process.
- 7) Engagement of organisations working on Dalit and SC/ST welfare, and local community leaders, should be mandated on the survey processes, and the final list prepared, even if to state that there are no manual scavengers in the locality, should be jointly endorsed by these organisations and the local authorities and published prominently.
- 8) The identification process should be supervised by an officer appointed by the District Magistrate, preferably from the same backgrounds who are historically forced into such professions. This does not automatically ensure fairness, as possibility of corruption or dereliction can still remain, which the presence of civil society organisations can take care of.

⁸ <http://www.urbanodisha.gov.in/pdf/GARIMA-Scheme-Booklet.pdf>



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SAFAI KARMACHARI ANDOLAN
A movement for elimination of manual scavenging

WaterAid