

Legislative Brief

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012

Highlights of the Bill

The Bill was introduced in the Lok Sabha on September 3, 2012 by the Minister of Social Justice and Empowerment, Mukul Wasnik.

The Standing Committee on Social Justice and Empowerment (Chairperson: Dara Singh Chauhan) submitted its report on March 4, 2013.

- ◆ The Bill prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.
- ◆ It seeks to rehabilitate manual scavengers and provide for their alternative employment.
- ◆ Each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction. They shall also construct a number of sanitary community latrines.
- ◆ Each occupier of insanitary latrines shall be responsible for converting or demolishing the latrine at his own cost. If he fails to do so, the local authority shall convert the latrine and recover the cost from him.
- ◆ The District Magistrate and the local authority shall be the implementing authorities.
- ◆ Offences under the Bill shall be cognizable and non-bailable, and may be tried summarily.

Key Issues and Analysis

- ◆ The existing law prohibiting manual scavenging was enacted under the State List. There could be an argument for Parliament's jurisdiction to enact this Bill as this regulates conditions of work, and is thus a Concurrent List item.
- ◆ Neither the state nor the centre is mandated under the Bill to provide financial assistance for the conversion of insanitary latrines. This may adversely impact implementation of the Bill.
- ◆ Offences under the Bill may be tried summarily though the penalty could be five years imprisonment. However, under the CrPC, only offences with a maximum imprisonment of two years can be tried summarily.
- ◆ A state government can grant the Executive Magistrate the judicial power to try offences under the Bill. This may create a conflict of interest if the Executive Magistrate is also the implementing authority.
- ◆ The Bill has a wider scope and higher penalties than the 1993 Act.

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June 21, 2013

PART A: HIGHLIGHTS OF THE BILL¹

Context

Manual scavenging is defined as the manual cleaning of latrines or the disposal of human excreta. Currently, manual scavenging is prohibited by the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, which was passed by Parliament after six states passed resolutions requesting the centre to frame a law. Over time, the Act was adopted by 23 states and all union territories. Two other states have enacted their own laws, which are similar to the central Act.² Yet, as per the 2011 Census, about 23 lakh pit latrines (which are insanitary latrines) continue to exist in the country.³

The central government implemented two schemes, namely, the Integrated Low Cost Sanitation Scheme (ILCS) in 1981, and the Self-Employment Scheme for Rehabilitation of Manual Scavengers (SRMS) in 2007. ILCS seeks to provide funds to poor urban households to convert dry latrines to water flush latrines.⁴ SRMS was launched to provide manual scavengers with skill training, a loan and subsidy for undertaking alternative occupations.⁵ In 2003, the Safai Karamchari Andolan filed a writ petition requesting the Supreme Court to direct the centre and states to take effective steps to eliminate manual scavenging and implement the 1993 Act.⁶

In 2011, the National Advisory Council recommended steps to eradicate manual scavenging and prohibit the employment of manual scavengers.⁷ On September 3, 2012, a Bill was introduced in the Lok Sabha to create more stringent provisions for the prohibition of insanitary latrines and the rehabilitation of manual scavengers. The Standing Committee examining the Bill submitted its report on March 4, 2013.

Key Features

- The Bill prohibits: (a) the employment of a person as a manual scavenger, (b) the employment of an individual for the hazardous cleaning (manual cleaning without protective gear and other safety precautions) of a sewer or a septic tank, and (c) the construction of insanitary latrines. It provides for the rehabilitation of people currently engaged in the profession.
- A “manual scavenger” is a person who manually cleans or disposes of human excreta in an insanitary latrine, an open drain, or a railway track. An “insanitary latrine” requires human excreta to be cleaned manually.
- The Bill shall override the 1993 Act and state laws on manual scavenging.

Identification of insanitary latrines and manual scavengers

- Every local authority (municipality, Panchayat, cantonment board or railway authority) has to carry out a survey of insanitary latrines within its jurisdiction. The authorities have to publish a list of such latrines within two months of the law coming into force and give notice to the occupiers to either demolish or convert them into sanitary latrines within six months.
- The Chief Executive Officer of a municipality or a Panchayat may conduct a survey to identify manual scavengers. Individuals may also self-identify as manual scavengers.

Prohibition and conversion of insanitary latrines

- Every occupier (and in some cases, owner) of an insanitary latrine shall demolish or convert the latrine into a sanitary latrine at his own cost within six months of the Act. If he fails to do so, the local authority shall convert or demolish the latrine and be entitled to recover the cost from the occupier.
- State governments may provide assistance to occupiers for converting latrines. However, non-receipt of assistance shall not be a valid ground to use an insanitary latrine beyond nine months of the law in force.
- Each local authority shall carry out an awareness campaign to enforce the above provisions of the Bill.

Prohibition and rehabilitation of manual scavengers

- Existing contracts with manual scavengers shall be void once the law is in force. However, the employer shall retain full-time scavengers on the same salary and assign them to different work.
- All persons listed as manual scavengers shall be rehabilitated with a one time cash assistance, scholarship for their children, and a residential plot with financial assistance for constructing a house. One adult member of the family will be trained in a livelihood skill and given a monthly stipend of at least Rs 3,000 during training. A subsidy and concessional loan shall also be given for taking up an alternative occupation.

Implementing authorities

- Each District Magistrate and local authority is responsible for ensuring that: (i) no person within his jurisdiction is engaged as a manual scavenger, (ii) no insanitary latrines are constructed, and (iii) manual scavengers are rehabilitated.
- The Bill creates provisions for the construction of an adequate number of sanitary community latrines and the use of appropriate technological appliances for cleaning sewers and septic tanks.
- The state government may appoint inspectors. They shall be responsible for examining premises for latrines, persons employed as manual scavengers and seizing relevant records.
- Central and State Monitoring Committees, and Vigilance Committees in each district shall be established to oversee implementation. The National Commission for Safai Karamcharis (a statutory body) shall monitor implementation and inquire into complaints against contraventions of the Act.

Penalty

- The penalty for employing manual scavengers or failing to demolish insanitary latrines is imprisonment of one year and/or a fine of Rs 50,000 for the first offence. Subsequent offences will be punished with imprisonment up to two years and/or a fine of Rs one lakh. The penalty for the hazardous cleaning of septic tanks and sewers is imprisonment of two years and/or a fine of Rs two lakh for the first offence, and five years and/or a fine of Rs five lakh for subsequent offences.
- Offences under this Bill are cognizable and non-bailable. The Bill permits the state government to confer powers of a Judicial Magistrate of the first class on an Executive Magistrate to conduct trials. Complaints have to be made before the court within three months of the offence.

PART B: KEY ISSUES AND ANALYSIS

Jurisdiction of Parliament to legislate on manual scavenging

Clause 3

In 1993, six states passed resolutions under Article 252 of the Constitution requesting the centre to formulate a law on manual scavenging, an issue under Item 6 of the State List, public health and sanitation. Since the previous law was enacted under the State List, the question arises whether Parliament has the jurisdiction to enact this Bill. It could be argued that the objective of the Bill is to protect weaker sections of society, including Scheduled Castes and Scheduled Tribes from the practice of manual scavenging, that is, it is primarily about preventing employment in hazardous occupations. In view of this interpretation, Parliament may be empowered to legislate on the issue through Entry 23 (employment and unemployment) and Entry 24 (welfare of labour including condition of work) of the Concurrent List.

Cost of converting insanitary latrines borne by occupiers

Clauses 5, 8, 9

The Bill places an obligation on every occupier of an insanitary latrine to convert or demolish the latrine within six months or be penalised with imprisonment up to one year and/or a fine of Rs 50,000. The Bill does not make it mandatory for states or the central government to provide financial assistance for conversion or demolition. This is at variance with the current policy on conversion of insanitary latrines. Under the Integrated Low Cost Sanitation Scheme, the owner has to bear only 10 percent of the cost, while the centre bears the remaining 75 percent and the state 15 percent of the cost. The Standing Committee recommended that the centre coordinate with states to fund the entire cost of conversion to sanitary latrines.⁸ In the absence of financial assistance from the government, implementation of the Bill might be affected adversely.

Offences and procedure for trial

Applicability of summary procedure to trial of offences

Clauses 21(2) and 22

Offences under the Bill are non-bailable, and in some cases, punishable with imprisonment up to five years. The Bill allows offences to be tried summarily. The concept of summary trials was introduced in India through an amendment to the Code of Criminal Procedure (CrPC) in 2008. Summary trials were permitted for certain types of offences, particularly those of a minor nature for which the maximum imprisonment was two years.⁹ According to the CrPC, the maximum sentence of imprisonment for an offence that is tried summarily cannot

exceed three months.¹⁰ Given the nature of summary trials under the CrPC, it is unclear how offences carrying punishment of five years, as is the case in the Bill, will fit into this framework.

Conflict of interest between implementing and judicial authorities

Clauses 18
and 21 (1)

The Bill permits state governments to grant an Executive Magistrate the power of a Judicial Magistrate of the first class to conduct trials for offences under the Bill. The District Magistrate is the authority responsible for implementing the provisions of the Bill. Often, the District Magistrate is a member of the civil services (and in some states, the same person as the District Collector) and has powers of an Executive Magistrate. Several other Executive Magistrates would be in his chain of command. Granting the Executive Magistrate the power to try cases for non-implementation of provisions of the Bill could lead to a situation where the judge is trying a case against himself or against a person who falls within the same administrative set-up. It is unclear how this conflict of interest will be resolved.

Comparison with the 1993 Act and state Acts

Twenty-three states and all union territories have adopted the 1993 Act. Two other states, Rajasthan and Himachal Pradesh, have enacted their own laws that are similar to the 1993 Act. In case of any inconsistency, the provisions of this Bill will override the 1993 Act and the state laws. Some of the Bill's features include:

- Prohibiting the cleaning of sewers or septic tanks without protective gear.
- Prohibiting insanitary latrines in comparison to the Act, which prohibited dry latrines.
- A survey of manual scavengers and insanitary latrines, and conversion of insanitary latrines.
- Provisions for the rehabilitation of manual scavengers.
- Offences under the 1993 Act were cognizable, now they shall be non-bailable as well. The penalty for offences have been increased from a year of imprisonment and fine up to Rs 2,000 to up to a maximum penalty of five years of imprisonment and/or a fine up to Rs five lakh.
- Extending its application to railways and cantonment boards.

Notes

1. This Brief has been written on the basis of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012, introduced in the Lok Sabha on September 3, 2012.
2. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 was passed by Parliament after six states passed resolutions under Article 252(1) of the Constitution, requesting the centre to frame a law. Subsequently, all but five states have adopted the Act. Of the remaining five states, Manipur and Mizoram reported that there were no dry latrines and manual scavengers, Rajasthan and Himachal Pradesh enacted their own Acts (which are similar to the 1993 Act) and it is not clear if a similar Act is applicable in Jammu & Kashmir. (Source: Unstarred Question No. 59, Lok Sabha, Answered on February 22, 2011.)
3. "Availability and type of latrine facility", Census of India 2011.
4. Integrated Low Cost Sanitation Scheme, Ministry of Housing and Urban Poverty Alleviation.
5. Self Employment Scheme for Rehabilitation of Manual Scavengers, Ministry of Social Justice and Empowerment.
6. *Safai Karamchhari Andolan v. Union of India*, Supreme Court Writ Petition (Civil) No. 583 of 2003.
7. "Note on Recommendations for Follow-Up Measures to Eradicate Manual Scavengers", National Advisory Council, June 9, 2011.
8. "Thirty Second Report: The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012", Standing Committee on Social Justice and Empowerment, April 3, 2013.
9. Section 260, Code of Criminal Procedure, 1973.
10. Section 262, Code of Criminal Procedure, 1973.

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