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DIGNITY BENEATH THE MANHOLE: CASTE, LAW AND MANUAL SCAVENGING IN INDIA

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Abstract:

India outlawed untouchability in 1950 and banned manual scavenging twice, in 1993 and 2013. Men still go down into sewers and septic tanks to clean them by hand, and some of them die there. This paper asks why the law has done so little. It looks at the constitutional guarantees, the 2013 statute and the Supreme Court's decisions, and compares what they promise with how sanitation work is actually organised. The answer it reaches is that the statute leaves a gap in its own definition of hazardous cleaning, that outsourcing leaves no employer to hold responsible, and that caste still decides who does this work. The paper closes with reforms aimed at each of these.

Keywords: manual scavenging; caste; dignity; Article 17; sanitation workers; law in action.

I. INTRODUCTION

Most Indian newspapers have run the same small item at some point: two or three men dead in a septic tank, overcome by gas while cleaning it for a housing society, a hotel or a private home. The reports are short because the story is familiar. The dead are almost always from a few Scheduled Castes, the ones that history assigned to the handling of human waste.[1]

What makes this hard to explain is how much the law has said on the subject. The Constitution abolishes untouchability, guarantees a life of dignity and forbids forced labour.[2] Parliament banned manual scavenging in 1993 and passed a much wider statute in 2013.[3] The Supreme Court has ordered compensation and told the State, more than once, to end the practice. Workers keep dying anyway.

This paper tries to account for that. Its view is that the problem lies less in a shortage of law

[1] Vijay Prashad, *Untouchable Freedom: A Social History of a Dalit Community* (OUP 2000).
[2] Constitution of India 1950, arts 17, 21 and 23.
[3] Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993; Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 (Act 25 of 2013) ('2013 Act').

ISSN: 2582-6433

than in how the law is drafted, who is made answerable under it, and the social order it operates in. Three things are examined. One is the statutory line between 'manual scavenging' and 'hazardous cleaning', which leaves room for people to be sent into sewers. Another is the way municipal work is contracted out until nobody is plainly the employer. The last is caste, which still marks the work and the worker. The method is socio-legal in the old sense that Roscoe Pound gave the term, setting the law in the books beside the law in action.[4] Part II deals with the link between caste and labour, Part III with the statute, Part IV with the courts, and Part V with the gap in implementation. Part VI makes proposals.

II. CASTE, POLLUTION AND WHO DOES THE WORK

Manual scavenging is not an ordinary occupational hazard that happens to be dangerous. It survives from a system in which work was fixed by birth and ranked by ritual purity. Ambedkar called caste a 'graded inequality' and pointed out that it divides labourers and not only labour.[5] Mary Douglas's work on pollution helps explain the mechanism: societies treat matter that crosses a boundary as dangerous, and then attach that danger to particular people.[6] Ethnographers of the so-called untouchable castes found just this. Those who handle waste are treated as impure themselves, and not only while they are doing the job.[7]

Two things follow for the law. The first is that people do not really choose this work. They are shut out of land, schooling and other employment, and the evidence on caste discrimination in Indian labour markets is considerable.[8] Talk of consent and contract sits badly beside that. It is why the Constitution deals with the practice under Articles 17 and 23 and does not leave it to labour regulation.

The second is that stigma makes people invisible. A death that happens to someone who is not seen as a full rights-holder does not demand an explanation. The Supreme Court has said that the right to life under Article 21 includes living with human dignity.[9] For sanitation workers there is a plain distance between that statement and the way they are treated by municipal offices, contractors and the police. That distance is the subject of this paper.

There is also a historical shift worth noticing. The older picture of manual scavenging was the dry latrine, cleaned by a woman carrying the waste away in a basket. As cities built sewers and

[4] Roscoe Pound, 'Law in Books and Law in Action' (1910) 44 American Law Review 12.
[5] BR Ambedkar, *Annihilation of Caste* (first published 1936; Navayana 2014).
[6] Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (Routledge 1966).
[7] Robert Deliège, *The Untouchables of India* (Berg 1999).
[8] Sukhadeo Thorat and Katherine S Newman (eds), *Blocked by Caste: Economic Discrimination in Modern India* (OUP 2010).
[9] *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

ISSN: 2582-6433

septic tanks, the work moved underground and took on the look of municipal maintenance. It sounds like engineering now, but the people sent into the pit are the same people. Modernising the infrastructure has changed where the work happens without changing who is made to do it.

III. WHAT THE LAW SAYS

A. The constitutional position

Article 17 abolishes untouchability and forbids its practice in any form. It is one of the few fundamental rights that bind private persons as well as the State. Article 23 bars traffic in human beings, *begar* and similar forced labour, and Article 21 supplies the guarantee of dignity. Article 46 adds a directive to protect Scheduled Castes from social injustice. Together they make manual scavenging indefensible without any statute at all. Galanter's account of the 'competing equalities' in the Indian Constitution shows why the guarantees were drafted in broad terms, and why putting them into practice has been so uneven.[10]

B. The 1993 and 2013 Acts

The first statute, passed in 1993, was narrow. It covered dry latrines and little else, and it was hardly enforced.[11] Sewers and septic tanks, where most deaths now happen, were outside its reach.

The 2013 Act is wider. A 'manual scavenger' is anyone engaged or employed by an individual, local authority, agency or contractor to clean, carry, dispose of or otherwise handle human excreta in an insanitary latrine, open drain or pit, or on a railway track.[12] The Act forbids such employment, makes contracts for it void, and prohibits engaging anyone for the 'hazardous cleaning' of a sewer or septic tank.[13] Breaches are punishable with imprisonment and fine, with heavier penalties for repeat offences, and the offences are cognizable and non-bailable.[14] A separate chapter promises surveys, cash assistance, training, scholarships for children and help in finding other work.

C. The gap in the definition

The most important choice in the Act is also the most troubling one. 'Hazardous cleaning' is defined by what is missing: protective gear and the precautions the Rules lay down.[15] So the ban depends on the conditions of entry, and not on entry itself. Read literally, a worker who is

[10] Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (OUP 1984).
[11] The 1993 Act dealt only with dry latrines and was, by most accounts, almost never enforced.
[12] 2013 Act, s 2(1)(d) and s 2(1)(g).
[13] ibid s 7.
[14] ibid ss 8–9 and s 22.

ISSN: 2582-6433

given the prescribed equipment is not doing 'hazardous cleaning' at all.[16]

In practice the equipment seldom arrives. Workers are sent down on a supervisor's word, with no training and often no mask. But the legal point stands apart from the practical one. A law that regulates how a person is lowered into a sewer, when it could forbid it, treats as acceptable something the Constitution treats as an affront to dignity. The distinction has an administrative use as well. Officials can say that a man who died in a septic tank was not a 'manual scavenger' and so falls outside the rehabilitation provisions. Part V returns to this.

D. Schemes

The State has added welfare and rehabilitation schemes and, lately, schemes that push mechanisation and bring sewer and septic tank workers into some kind of formal system.[17] The aim is sound. The trouble, discussed below, is that they reach few people and say little about the caste barriers that face anyone leaving the work.

IV. WHAT THE COURTS HAVE DONE

The Supreme Court laid the groundwork in its forced labour cases. In *People's Union for Democratic Rights* it held that Article 23 covers economic as well as physical compulsion, so that work done by someone with no real alternative is forced even if it is paid.[18] *Bandhua Mukti Morcha* carried the idea into bonded labour and spelled out the State's duty to identify and rehabilitate workers.[19] Both cases refuse to accept free contract as an answer where deprivation is built into the situation, and that is exactly the position of sewer workers.

The key decision on manual scavenging is *Safai Karamchari Andolan* (2014). The Court ordered full implementation of the 2013 Act, directed that the practice be ended, required identification and rehabilitation of those still in it, and fixed compensation of ten lakh rupees for the family of each person who had died in a sewer since 1993.[20] It also treated entry into sewers without safety gear as a matter with criminal consequences, which signalled that supplying equipment should not become a licence to keep sending people down. In that respect the judgment supplied a reading oriented to eradication that the text of the Act does not itself carry.

Dr Balram Singh (2023) came almost ten years later, after deaths had continued. The Court

[16] Prohibition of Employment as Manual Scavengers and their Rehabilitation Rules 2013.

[17] Self-Employment Scheme for Rehabilitation of Manual Scavengers (2007); National Action for Mechanised Sanitation Ecosystem (NAMASTE), run jointly by the Ministries of Social Justice and Empowerment and of Housing and Urban Affairs.

[18] *People's Union for Democratic Rights v Union of India* (1982) 3 SCC 235.

[19] *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161.

[20] *Safai Karamchari Andolan v Union of India* (2014) 11 SCC 224.

ISSN: 2582-6433

directed the Union and the States to work towards ending manual sewer cleaning altogether, raised the compensation payable for deaths, and set graded amounts for disability.[21] It rooted its reasoning in equality, non-discrimination, the abolition of untouchability and dignity, and so treated the matter as one of constitutional status and not of municipal safety.

A related ruling is *Sukanya Shantha* (2024), where the Court struck down prison manual provisions that allocated cleaning and sweeping work by caste.[22] The setting was a prison, but the point carries further. Caste-based allocation of 'unclean' work can be unconstitutional even when it is written into rules and defended as custom.

These decisions are powerful, and they have raised the price of non-compliance. They share a limit, though. Most of the remedies come after the harm: compensation follows a death, and it is only as good as the office that pays it. The Court can state the principle forcefully, but it cannot supervise every municipality and every contractor. The doctrine is strongest where implementation is weakest.

V. WHY IT KEEPS HAPPENING

A. Counting the problem out of existence

Enforcement needs a count. Official identification of manual scavengers has been thin and disputed, and the narrow definition allows deaths in sewers and septic tanks to be filed outside the category that triggers rehabilitation.[23] When the State counts only people who fit a definition that leaves out the commonest case, the numbers seem to show a small problem. Small numbers justify small budgets, and small budgets keep enforcement weak.

B. Nobody's employee

Sanitation work is also organised in a way that scatters responsibility. Municipal bodies often hand sewer and septic tank maintenance to contractors, who take on casual workers with no written contract, wage record or insurance. When a worker dies the municipality points to the contractor, the contractor to the supervisor, and the supervisor to the household that asked for the job. Where a First Information Report is registered at all, it is commonly for causing death by negligence under the general criminal law,[24] and not under the 2013 Act, whose penal provisions are rarely used. A statute written to deal with caste-based labour is set aside, and the

[21] *Dr Balram Singh v Union of India*, WP (C) 324/2020, decided 20 October 2023.
[22] *Sukanya Shantha v Union of India*, WP (C) 1404/2023, decided 3 October 2024.
[23] Replies in Parliament have put the number of identified manual scavengers at roughly 58,000, a figure civil-society groups consider an undercount. The same replies have separated deaths during 'hazardous cleaning' of sewers and septic tanks from deaths of 'manual scavengers' as the Act defines them.
[24] Indian Penal Code 1860, s 304A, now Bharatiya Nyaya Sanhita 2023, s 106(1).

ISSN: 2582-6433

death is recorded as an accident.

The emergency is the usual excuse. A tank overflows on a Sunday, the machine is in another ward, and a worker is told to go in just this once. Because the Act's own wording lets the arrangement pass as acceptable when gear is nominally available, the excuse is rarely tested. Nobody records who gave the instruction, and by the time anyone asks, the only person who could say is dead.

C. Toilets and the demand for cleaners

A less noticed cause lies in sanitation policy itself. Toilet coverage has grown fast, much of it through pits and septic tanks that must be emptied from time to time. Unless sewerage networks, mechanised desludging and regulated disposal grow alongside, every new toilet adds to the demand for cleaning labour, and that demand falls on the same communities as before.[25] Coffey and Spears argue that India's sanitation record cannot be understood without looking at caste attitudes to pit emptying and the reluctance to adopt designs that would cut the need for it.[26] If that is right, the ban on manual scavenging and the physical design of sanitation are pulling in opposite directions.

D. Compensation, rehabilitation and getting out

Even where compensation has been ordered, families struggle to get it. They meet document requirements, indifferent police and contractors who deny that the dead man worked for them. Some wait for years, and some are never paid. Rehabilitation has its own problems. Training is often unrelated to the local labour market, loans for new enterprises ask for collateral and contacts that former scavengers do not have, and customers and employers may turn away anyone associated with the work. Leaving manual scavenging is a social move as well as an economic one, and a scheme that deals only with the economic side will not work.

E. The social sanction

Finally, the law operates in a society that still tends to see this work as the natural duty of certain castes. Householders, builders and officials who send a man into a tank seldom think they are committing an offence. Until that changes, the prohibition remains a statement of intent. The legal rules are, for the most part, good enough to name the wrong. They cannot by themselves dislodge the habits that keep it going.

[25] Ministry of Housing and Urban Affairs, *National Policy on Faecal Sludge and Septage Management* (2017).
[26] Diane Coffey and Dean Spears, *Where India Goes: Abandoned Toilets, Stunted Development and the Costs of Caste* (HarperCollins 2017).

ISSN: 2582-6433

VI. WHAT COULD CHANGE

Reform has to work on the drafting, on accountability and on support for workers together. Five changes are suggested.

The definitional gap should be closed. The 2013 Act should prohibit human entry into sewers and septic tanks for cleaning, with a narrow emergency exception that requires documented protocols, a mechanical alternative where one exists, and prior authorisation by a named officer. If the distinction between 'manual scavenging' and 'hazardous cleaning' is kept at all, both should carry the same protective and rehabilitative consequences.

Responsibility should rest with a principal employer. Municipal bodies and other agencies that contract out sewer and septic tank maintenance should be jointly liable with the contractor for compliance, compensation and prosecution. Registration of contractors, a written engagement for every worker and digital maintenance logs should be conditions of any such contract, and officials who award or oversee non-compliant contracts should answer personally.

Enforcement should go through the specialised statute. A death in a sewer or septic tank should lead to a mandatory case under the 2013 Act, and, where the victim is a member of a Scheduled Caste or Scheduled Tribe, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 should be considered as well. Police need training in these offences so that they stop defaulting to negligence.

Compensation should be automatic and fast. A dedicated fund could pay the amounts fixed by the Court within a set period after a death or injury, whatever the state of any prosecution, and the State could then recover the money from the responsible contractor or agency. That would turn a remedy now won through litigation into an entitlement that is simply administered.

Rehabilitation should take account of caste and be judged by results. The priorities should be secure formal employment, including mechanised sanitation roles in which workers own or operate the equipment and do not merely attend it, support for children's education, and preferential credit with institutional guarantees. Independent social audits, district vigilance committees with civil-society members, and time-bound reporting to the High Courts under a continuing mandamus would help connect the norm to the practice.

None of this is cheap, and the obvious objection is cost. Municipal budgets are stretched, machines need trained operators and maintenance, and smaller towns may not have the capacity for any of it quickly. That is a real constraint, and it argues for phasing, with the largest cities and the highest-risk districts going first. It does not argue for leaving the present rule in place. A government that can find money for compensation after each death can find it to prevent some of them, and a deadline in the statute would at least make the delay something that

ISSN: 2582-6433

officials have to explain.

VII. CONCLUSION

That manual scavenging survives in India shows that abolishing untouchability on paper is not the same as ending it in society. The 2013 Act and the Supreme Court's decisions describe the wrong clearly. A permissive definition of hazardous cleaning, outsourced labour with no accountable employer, and a caste order that has not broken keep it going. The law in the books treats the sewer worker as a rights-holder. The law in action too often treats him as an inexpensive convenience.

More prohibitions will not close that distance. What is needed is a statute that forbids the entry itself, a rule of liability that finds an employer behind every death, a remedy that reaches families without a court case, and a rehabilitation policy that deals with caste as well as poverty. Underneath all of it is what Articles 17 and 21 already require: that no citizen be assigned, by birth or by want, to work that the rest of us would refuse for ourselves.

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