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STATE APATHY, NON-IMPLEMENTATION OF LAWS AND RESISTANCE BY THE COMMUNITY

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MANUAL SCAVENGING IN INDIA: STATE APATHY, NON-IMPLEMENTATION OF LAWS AND RESISTANCE BY THE COMMUNITY

Sujith Koonan

Abstract

Manual scavenging has a long history in India and it continues even now in different forms. Legal responses to manual scavenging varied from time to time. In the contemporary context, it is seen as a violation of human dignity and many other human rights as well as an unacceptable sanitation practice. Nevertheless, the process towards elimination of manual scavenging has been slow, which led to organised resistance and protest, including litigation, by the manual scavenging community. This paper examines the issue of manual scavenging in India from a legal perspective. It analyses the ways in which the law has addressed the issue of manual scavenging and the strategies used by the manual scavenging community to get the law passed and implemented. It presents a complex scenario on how historical and social perceptions have shaped the legal discourse and the role of social movements in re-shaping or deconstructing the discourse.

Keywords: manual scavenging, *Safai Karamchhari Andolan*, dry latrine, sanitation workers, human dignity.

I. Introduction

On 28 June 2018, while a colleague of mine and I were in Rajasthan, we saw a man cleaning a sewer. He was carrying a long stick as his ‘working tool’, wearing only underwear. In a brief conversation, he shared the fact that he belongs to the Valmiki community¹ and got that job after the death of his father who was also a sewage worker. He also revealed that he encounters ‘difficulties’ such as sharp edged materials like blades or nails and sometimes even snakes

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¹ Valmiki is one of the notified scheduled castes in Rajasthan. See Ministry of Social Justice and Empowerment, Department of Social Justice and Economic Empowerment, Government of India, ‘State wise list of Scheduled Castes updated up to 26-10-2017’ <<http://socialjustice.nic.in/writereaddata/UploadFile/Scan-0016.jpg>> accessed 1 March 2021.

while at ‘work’. Which other workforce in this country might be facing such ‘difficulties’ and ‘encounters’ on a daily basis while at ‘work’?

While different sources record the magnitude of the problem differently, there seems to be a consensus on the fact that the practice continues even now in different forms.² The term ‘manual scavenging’ refers to the practice of manually removing human excreta with bare hands, brooms or metal scrapers into baskets or buckets and carrying it to a dumping site.³ This definition has evolved in the context of dry latrines.⁴ A dry latrine, as the term indicates, is a latrine without a flush. Human excreta gets deposited on a pan or a surface and to be emptied and cleaned manually.⁵ In addition to the practice of removal of human excreta from dry latrines, the practice of manual scavenging also includes cleaning of septic tanks, gutters and sewers.⁶ The existing legal definition of the term ‘manual scavenging’ is broad to cover all these aspects.⁷

The practice of manual scavenging involves violence, oppression and violation of rights. This paper examines the issue of manual scavenging in India from a legal perspective. It analyses the ways in which the law has addressed the issue of manual scavenging and the strategies used by the manual scavenging community to get the law implemented.

II. Manual scavenging and law: from ‘right’ to a ‘crime’

The interface between law and manual scavenging has undergone dramatic transformations at least since the early 20th century. This section examines that history in a linear qualitative way.

² For a state-wise data on manual scavenging, see Press Information Bureau, ‘Manual Scavenging’ (Delhi, 15 December 2015) <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=133286>> accessed 1 March 2021; S. Senthilir, ‘Manual Scavenging: An Indelible Blot on Urban Life’ *The Hindu* (25 March 2017) <<https://www.thehindu.com/news/national/tamil-nadu/an-indelible-blot-on-urban-life/article17664714.ece>> accessed 1 March 2021; The Hindu Net Desk, ‘India’s Manual Scavenging Problem’, *The Hindu* (16 February 2020) <<https://www.thehindu.com/news/national/indias-manual-scavenging-problem/article30834545.ece>> accessed 20 May 2020.

³ For a detailed description of dry latrines and the process of cleaning them and transporting the human excreta collected to the dumping site, see Takashi Shinoda, *Marginalization in the Midst of Modernization: A Study of Sweepers in Western India* (Manohar Publishers 2005) 56-58.

⁴ See Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, section 2(j).

⁵ *ibid* section 2(c): “dry latrine” means a latrine other than a water-seal latrine.

⁶ Human Rights Watch, ‘Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India’ (*Human Rights Watch*, 25 August 2014) 13 <https://www.hrw.org/sites/default/files/reports/india0814_ForUpload_0.pdf> accessed 1 March 2021 (“Human Rights Watch”); Gita Ramaswamy, *India Stinking: Manual Scavengers in Andhra Pradesh and their Work* (Navayana Publishers 2005)1.

⁷ See Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013, section 2(1)(g).

The history, in this regard, is characterised by two extreme positions of recognising manual scavenging as a right and the present position of legal prohibition and criminalisation.

A. Manual scavenging as a customary right

Till the first half of the 20th century, the practice of manual scavenging was not only seen as acceptable, but as a customary right including by manual scavengers.⁸ The customary right in this regard was known by different names such as *Gharaki*, *Gharagi*, *Jagirdari*, *Jijmani*, *Dastoori* or *Virat*.⁹ This means, a scavenger had the right to provide services to a fixed number of households. The households were not allowed to change the scavengers unilaterally. Another important feature of the customary right was that they could be transferred by the right-holders. In other words, the rights could be sold, bought, inherited and mortgaged. The scope of the customary right was extended to the night-soil collected. Thus, the customary right had two aspects— right to clean latrines in certain private households or particular localities and the right to sell and dispose the night-soil collected.¹⁰

Different actors perceived the practice of customary rights in the context of manual scavenging differently at different point of time. Despite the social ostracism and the economic backwardness associated with manual scavenging, manual scavengers understood it as a monopoly transferable right to service certain area(s) or certain households as well as a property that could be bought, sold or mortgaged. Certain litigations in the first half of the 20th century are illustrative of this perception. They also highlight how the legal system viewed manual scavenging and manual scavengers.

The binding nature of the customary right had come before the Madras High Court in 1938 and the Court held that ‘the right to scavenge cannot be a valid custom because, if allowed, it would

⁸ A custom is a rule which in a particular family or particular class or community or in a particular district has from long usage obtained the force of law. It must be ancient, certain and reasonable, and being in derogation of general rules of law, must be construed strictly. It must not be opposed to morality or public policy. It is further essential that it should be established to be so by clear and unambiguous evidence. A single instance or even two or three instances will not prove a custom because the very essence of a custom is that it derives its force from long usage. See Government of India, Report of the Committee on Customary Rights to Scavenging, 1966, 13 (“Malkani Committee Report 1966”).

⁹ The Malkani Committee Report observes that customary rights in the context of manual scavenging prevailed in central and western regions in India, at the same time admits that it did not have any information as to the existence of customary rights in other states. See Malkani Committee Report 1966 (n 8 above) 6-7.

¹⁰ Government of India, Report of the Scavenging Conditions Enquiry Committee, 1960, 79 (“Malkani Committee Report 1960”).

‘turn out to be an oppressive monopoly’.¹¹ The major reason for arriving at this conclusion was the concern of affecting the choices of an owner or occupier of a house. The court expressed the concern that, if allowed, such a custom would lead to an enforceable right against owners or occupants of houses which, in the opinion of the court, was a right to prevent households from pursuing their legitimate calling.

A 1957 decision by the Allahabad High Court is further illustrative of the nature of contestations and consequently the nature of customary rights.¹² The Court explained the nature of the customary right in the following words:

Evidently therefore where the right cannot possibly be traced to a grant of an irrevocable character by the owner of the houses or to usage and prescription proved by evidence to be binding on the owner of the house, the right of *birt-jajmani* though enforceable between the rival claimants cannot prevail against the wishes of the owner, as was observed by the Calcutta High Court in the decision cited above. A voluntary consent of the people to the employment of the plaintiff or his predecessors as scavengers cannot confer upon them any exclusive right and the continuance of this state of things even for generations (about which there is of course no evidence in the present case) cannot confer upon the plaintiff a legally enforceable right.¹³

This decision clarifies certain key features of the customary right. First, it, establishes the fact that customary rights were not just a matter of internal or informal arrangement among manual scavengers, but a matter of legal dispute which the manual scavengers, house owners and the judiciary had engaged with. Second, it exemplifies the way in which law understood such rights. According to the court, customary rights could be enforced against households only if there is evidence to establish irrevocable grant by the owner or occupant of the house. Otherwise, the court was categorical in denying the existence of an enforceable right of manual scavengers against house owners. In fact, the court, more than once, underlined the position that generally such practices cannot be seen as binding upon owners or occupants. It appears that the court was more concerned about the implications of such a system of customary rights on the power of owners or occupants of the houses to choose *service providers* of their choice. This is evident from the following words that the Court borrowed from a 1914 decision of the Allahabad High Court that ‘in practice it is seldom that a grant or usage and prescription binding on the owner of a house can be established. It is unnecessary to speculate and to illustrate cases in which the owner can be considered bound to recognize the *birt-jajmani* rights of menial classes’. The words used here are illustrative of certain social/class perceptions of the court as the court considered it *unnecessary* to establish the existence of an enforceable

¹¹ *Palapatti Raghudu and Ors. v Nallagadda Erraiya and Ors.*, MANU/TN/0458/1938 (High Court of Madras, 22 April 1938).

¹² *Buddha & Ors v Balwanta & Ors*, MANU/UP/0178/1958 (High Court of Allahabad, 29 November 1957).

¹³ *ibid.*

right against *owners by menial classes*. Third, the court recognised the enforceable nature of the right between rival scavengers.

In another case relating to the enforceability of the mortgaging of customary rights, the High Court of Madhya Pradesh answered in negative on the basis of statutory provisions and custom. On statute, the Court said: ‘...there is no such thing as a right to scavenge, and the recognition of any such right in any individual to the exclusion of others would be repugnant to law. A mortgage or a sale of such a right cannot be enforced by any Court of law’.¹⁴ The court, by relying on the Transfer of Property Act, 1882 said ‘It is clear from this provision that the mortgage of the income derivable in future from the scavenging work to be done would be invalid being an expectancy or a possibility within the meaning of S. 6 (a), T.P. Act’. The court denied the transferable nature in the form of mortgaging of the customary right because it amounts to ‘future income’ and therefore not permissible under the law.

Regarding the question whether it could be a customary right, the court held that it cannot be treated as a custom because:

the custom to claim a right to scavenge and to mortgage or sell such a right cannot be recognised by a Court of law as such a custom is *prima facie* unreasonable. I do not think that it can be contended with any force that such a custom could have been reasonable at its commencement. That it would not be reasonable today under the Constitution of India giving all citizens the fundamental right to practice any profession, or to carry on any occupation, trade or business, is clear enough.¹⁵

Clearly, the Court understood manual scavenging as an occupation and the system of customary rights and the associated monopoly were considered *unreasonable* in the light of the constitutional right to practice any profession, or to carry on any occupation, trade or business. While the court reduced the whole issue to a question of profession or occupation as envisaged under the Constitution of India, it failed to see the larger and deeper questions of dignity and other fundamental rights. Manual scavengers’ ‘right’ to carry out manual scavenging (subject to similar rights of others and the right of owners of houses to change service providers) was upheld, but not their right to human dignity and the right to be free from untouchability! The dignity aspects of manual scavenging and its constitutional dimensions are apparently missing in this whole discourse.

The government, at the same time, looked at the system of customary rights as ‘an obstacle to the municipalisation of scavenging services’.¹⁶ It appears that the manual scavenging

¹⁴ *Radhya v. Kamraya and Ors.*, MANU/MP/0082/1951 (High Court of Madhya Pradesh, 16 April 1951).

¹⁵ *Ibid.*

¹⁶ See Malkani Committee Report 1960 (n 10 above) 79.

community had also resisted the initiatives to municipalise scavenging services. In this context, the Malkani Committee Report notes that:

Proper maintenance of the conditions of sanitation and keeping an eye over the health and hygiene of the towns is a primary responsibility of the local bodies and a few private scavengers and their 'Jagirdars' should not hold the community to ransom. The Committee is of the firm opinion that the customary rights must not in any case be allowed to continue but be abrogated immediately.¹⁷

The Barve Committee report also recommended abolition of customary rights for both scavengers (who lost the capacity to realise the indignity) and also in the interest of public sanitation (because the monopoly led to bad quality sanitation work and therefore insanitation). It says:

Bhangis who had customary rights had the upper hand over the residents of town and villages because they would do the cleansing work only as and when they are pleased and at the same time they would not allow other scavengers to enter into their sphere of work to carry on the work in case of strikes etc. This led to high degree of insanitation in many cases.¹⁸

The discussion in both the reports cited above reveals that the major focus was on the so-called indiscipline and arrogance of manual scavengers and therefore municipalisation was seen as a measure to bring manual scavenging under the administrative and punitive powers of local bodies. This underlying objective is clear from some of the old municipality acts that empower owners of houses to complain unsatisfactory nature of manual scavenging and prescribe punishment for manual scavengers for failure to fulfil their 'legal obligation', that is manual scavenging.¹⁹

Different government reports, court cases and statutes point to the existence of customary right to scavenge or service certain areas or households. They also point to the fact that manual scavengers understood the customary right as a monopoly claim to service and as a property with transactional value. At the same time, the judiciary showed reluctance to recognise it as a legally enforceable right or a claim because of its impact on the freedom of house owners to choose the service providers and because the monopoly to scavenge one area was held against the constitutionally guaranteed freedom to practice an occupation of one's choice. Thus, the legal discourse was centred around the perception of manual scavenging as an occupation and in certain cases a legal obligation deriving from municipality acts. Implications for dignity of

¹⁷ *ibid* 78.

¹⁸ See Barve Committee Report, as reproduced in BN Srivastava, *Manual Scavenging in India: A Disgrace to the Country* (Concept Publishing 1997), 107.

¹⁹ See eg UP Municipalities Act, 1916, section 201 & Punjab Municipalities Act, 1911, section 165. For a critical discussion on these statutes, see PUCL-K, 'A Millennial Struggle for Dignity: Manual Scavenging in Karnataka' (PUCL-K, 5 June 2019) 143-4 <http://puclkarnataka.org/wp-content/uploads/2019/06/ManualScavengingReport_May-25-Final.pdf> accessed 1 March 2021 ("PUCL-K").

manual scavengers were not part of the legal discourse, but the constitutional rights of house owners; and health and hygiene of towns were.

B. Towards humanization of scavenging work

The discourse shifted, after independence, to issues related to living and working conditions of manual scavengers. It appears that manual scavenging was still seen as ‘inevitable’ probably because of the existence of insanitary latrines particularly in urban areas and the inadequate development of mechanization of sanitation work. Efforts, in the first couple of decades after the independence, were to address concerns such as wages and living conditions of manual scavengers, rather than eliminating the practice on the basis of fundamental values of the Constitution of India such as human dignity and prohibition of untouchability.

In the first couple of decades after independence, a few committees were constituted by the central government and different state governments to study the working and living conditions of scavengers. The major focus was the question of *humanization* of scavenging work in India. Thus, among other things, the focus was on how to eliminate the practice of carrying the load of human excreta on head as it was seen as an indignity.²⁰ As a result, the recommendations included the introduction of wheel barrows or bullock carts, standardized pan to collect human excreta from the toilet; long boots and rubber gloves for workers at disposal sites. However, the recommendations were, by and large, ignored by the relevant authorities.²¹

Certain features of these efforts are worth mentioning. First, it is clear that the goal was not to abolish manual scavenging. This could be due to the practical difficulty in doing that before the conversion of existing dry latrines into sanitary latrines that do not require manual scavenging. In other words, the system was more concerned about the plights of users of dry latrines and the human excreta crisis ensuing from a quick abolition of manual scavenging. The violence of manual scavenging was not visible to those in power or the prevailing socio-economic system led them to be conveniently and structurally myopic. There may have been some resistance from the manual scavenging community also because of the fear of losing their only income and the difficulty in finding another source of livelihood. Second, the humanization effort mainly focused on abolition of the practice of carrying human excreta on head by manual scavengers. It appears that the early efforts in this regard followed a narrow

²⁰ See Srivastava (n 18 above)143 & Shinoda (n 3 above).

²¹ See Srivastava (n 18 above) 60.

definition of human dignity because carrying of human excreta on head and the possibility of spill-over were treated as unacceptable and the rest was, by implication, allowed to continue albeit with some devices to avoid the direct physical contact between the scavenger and the waste. It was fine and acceptable, at least temporarily, to let scavengers see and smell human excreta on a daily basis. Third, the reports focused on scavengers who were working directly under urban local bodies. The so-called private scavengers were, by and large, left to be governed by customary rules and practices with some exceptions such as suggesting the local bodies to provide devices to avoid carrying human excreta on head.

C. Legal prohibition and criminalisation

The legal discourse took a dramatic transformation in the late 1980s. By then, manual scavenging as a *work* was seen as unacceptable. The recommendation by a Committee constituted by the Government of India in the early 1990s to enact a law to prohibit manual scavenging could be seen as a landmark in the transformation of the legal discourse. Another equally important factor is the gradual emergence of a collective movement by the manual scavenging community, since 1980s, with a progressive understanding of manual scavenging as a source of indignity and violation of human rights.

While an explicit statute came into existence in 1993, it would be incorrect to say that the legal system in India approved the practice of manual scavenging until then. In fact, there were laws since the 1950s that made employing of manual scavengers impermissible.

The Constitution of India, in no uncertain terms, abolishes untouchability and its practice in any form.²² The makers of the Constitution of India were abundantly clear about, and there was overwhelming consensus on, the need for the explicit prohibition of untouchability.²³ Given the fact that the practice of manual scavenging derives from the practice of untouchability, the constitutional ban could be interpreted as a ban on manual scavenging.²⁴ In other words, it would be reductionist to argue that the constitutional ban of untouchability does not cover the practice of manual scavenging. The Constitution of India also requires the government to criminalise the practice of untouchability. The specific prohibition of untouchability in the

²² Constitution of India, 1950, article 17.

²³ Constitution Assembly Debates (29 November 1948) <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C29111948.html>> accessed 1 March 2021.

²⁴ Harsh Mander, *Resource Handbook for Ending Manual Scavenging* (International Labour Organisation 2014) 15

Constitution of India is in addition to the general prohibition of discrimination on the basis of caste among other things.²⁵

The constitutional ban on untouchability and the consequential ban on manual scavenging have been further elaborated and effectuated through statutes. Thus, compelling any person to practice manual scavenging is a criminal offence under the Protection of Civil Rights Act, 1955.²⁶ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was adopted to tackle the instances of organised violence against dalits. This statute, as it was originally adopted, did not include the practice of manual scavenging under the definition of ‘atrocities’. However, it addressed the issue indirectly by prohibiting all forms of forced or bonded labour by persons belonging to Scheduled Castes and Scheduled Tribes. Given the fact that the practice of manual scavenging is in a way a bonded labour, it could be treated as a punishable offence under this law.²⁷

It is surprising that the term ‘manual scavenging’ did not find a place explicitly in the statute although the objective of the law was to prevent atrocities against the members of Scheduled Castes and Scheduled Tribes. A plain reading of the list of offences mentioned in this statute indicates that the law sought to address physical violence and oppression. The practice of manual scavenging was probably seen as a ‘work’ and not a manifestation of caste-based ‘violence’ or ‘oppression’. However, this approach has undergone a drastic change and led to the inclusion of manual scavenging as an explicit form of atrocity through an amendment in 2015.²⁸

The statutes mentioned above were apparently not effective in addressing the issue of manual scavenging. The late 1980s and the early 1990s were the time when the manual scavengers’ movement began to take shape.²⁹ The issue slowly started appearing in the media and there was a manifold increase in the visibility of the issue. In 1989, the Planning Commission of India constituted a Task Force which submitted its report in 1991. The report recommended adoption of law to ban carrying of human excreta as head-load and legal prohibition of construction of dry latrines in the existing or new buildings. These developments led to the

²⁵ Constitution of India 1950, article 15.

²⁶ Protection of Civil Rights Act 1955, section 17A.

²⁷ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, section 3(1)(vi).

²⁸ Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act 2015, section 3(1)(j).

²⁹ For an account of the development of the organised resistance by the manual scavenging community, see Bezwada Wilson, ‘Safai Karmachari Anodal: An Insider’s Account (Conversation with Bezwada Wilson)’, in Philippe Cullet, Sujith Koonan and Lovleen Bhullar (eds.), *The Right to Sanitation in India: Critical Perspectives* (Oxford University Press 2019) 287.

adoption of a specific law on manual scavenging in 1993, that is, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (1993 Act).

The 1993 Act prohibits the employment of manual scavengers and construction or continued use of dry latrines.³⁰ It also focuses on conversion of dry latrines into water-based flush latrines as a means to end manual scavenging. In this regard, the 1993 Act requires state governments to implement schemes for conversion of dry latrines into water-seal latrines.³¹ It empowers state governments to appoint a District Magistrate or a Sub-Divisional Magistrate as the Executive Authority to implement the law.³² The 1993 Act also envisages an institutional mechanism at the union and state levels (committees) to look after different schemes to convert dry latrines into water seal toilets.³³ An interesting aspect of the 1993 Act is the way in which it views the issue of dry latrines. It focuses significantly on the environmental implications of the operation of dry latrines. For instance, it authorises the Executive Authority to take measures to prevent or mitigate the environmental pollution caused by dry latrines.³⁴ The Act prescribes penalties for violation, which could extend to imprisonment up to one year or fine up to rupees 2,000 or both.³⁵

One of the major criticisms of the 1993 Act by the manual scavenging community and its sympathisers is that it prioritises sanitation over the human dignity of manual scavengers. The existence of adequate facilities for use of water seal latrines is a pre-condition for demolishing dry latrines.³⁶ It has been argued that the 1993 Act ignores the issue of human dignity, which is mentioned in the preamble of the Act itself.³⁷ Another major drawback of the 1993 Act is that individuals are not allowed to file complaints.³⁸ Specifically appointed authorities have the power to initiate legal actions.³⁹ As a result, very few criminal cases have been filed under the 1993 Act.

The failure of the laws in eliminating the practice of manual scavenging has been explicitly acknowledged in the Parliamentary Standing Committee report on the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill, 2012 in the following words:

³⁰ Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, section 3.

³¹ *ibid* section 6.

³² *ibid* section 5.

³³ *ibid* section 13.

³⁴ *ibid* section 10.

³⁵ *ibid* section 14.

³⁶ Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, section 3(2).

³⁷ Mander (n 24 above)17.

³⁸ Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993, sections 17(2) & 17(3).

³⁹ *ibid*.

‘Existing laws have not proved adequate in eliminating the twin evils of insanitary latrines and manual scavenging from the country. These evils are inconsistent with the right to live with dignity which is an essence of the Fundamental Rights guaranteed in Part III of the Constitution’.⁴⁰ This scenario along with many other factors (discussed in the next section) led to the adoption of a new law in 2013, that is, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (2013 Act).⁴¹

There are several changes from the 1993 Act to the 2013 Act. While the 1993 Act was neutral and blind to the link between caste and manual scavenging, the 2013 Act is explicitly premised upon the ‘historical injustice and indignity’ inflicted upon manual scavengers.⁴² It recognises the ‘iniquitous caste system’ as a major reason for the continuance of manual scavenging.⁴³ It explicitly adopts an understanding that manual scavenging is an *evil* and that is against the spirit and essence of the Constitution of India.

It is also worth emphasising that the 2013 Act has brought the issue of rehabilitation to the front along with the objective of criminalising the employment of manual scavengers. The 2013 Act entitles individuals who have been engaged as manual scavengers to one-time cash assistance, scholarships for their children, housing, alternative livelihood support, and other legal and programmatic assistance. The 2013 Act, however, leaves rehabilitation under the existing schemes of the Union Government and state governments to be implemented by local authorities.⁴⁴

Like the 1993 Act, this Act also prohibits the construction or maintenance of insanitary toilets and the engagement or employment of anyone as a manual scavenger. It has expanded the definition of the term ‘manual scavenger’ to include not only the practice of manual scavenging in the context of dry latrines but also other forms of the practice such as cleaning of sewers and septic tanks.⁴⁵ This is a significant development to the extent of recognising the practice of manual cleaning of sewers and septic tanks as ‘manual scavenging’. It could be seen as a response to an interpretative doubt on the question whether the practice of unsafe sanitation work such as manual cleaning of sewers and septic tanks comes under the definition of ‘manual

⁴⁰ Standing Committee on Social Justice and Empowerment— the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill, 2012 (Thirty Second Report, March 2013) <https://www.prsindia.org/sites/default/files/bill_files/Standing%20Committee%20Report_7.pdf> accessed 1 March 2021.

⁴¹ Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013.

⁴² *ibid*, Preamble.

⁴³ *ibid*.

⁴⁴ *ibid* section 13(1).

⁴⁵ *ibid* section 2(1)(g).

scavenging’ under the 1993 Act probably because of a view that the 1993 Act is applicable only in the context of dry latrines.⁴⁶ While it may well be the dominant view of different governmental agencies, it does not make any sense if the provisions of the 1993 Act were to be interpreted purposively.

Unlike the 1993 Act, the 2013 Act specifically imposes obligations upon state governments (most importantly local authorities) to provide adequate sanitation facilities particularly community toilets to eliminate dry latrines as well as open defecation—two important reasons that lead to manual scavenging.⁴⁷

While the 2013 Act is a big step forward from the 1993 Act in terms of its substance, it still is far from adequate. For instance, Bezwada Wilson underlines that the 2013 Act does not prescribe a cut-off date for the elimination of manual scavenging and therefore there could be more delays and excuses before the practice of manual scavenging is totally eliminated.⁴⁸ According to a commentator, the 2013 Act has watered down ‘the unambiguous illegality of the practice of manual scavenging’ with ‘exemptions, exceptions and provisos’.⁴⁹

III. Manual Scavengers’ Movement: Unhelpful state and self-realisation of rights

In 2015-16, the manual scavenging community organised a countrywide procession (*Bhim Yatra*) to protest against the slow and weak implementation of the law prohibiting the practice of manual scavenging.⁵⁰ It indicates the continuing practice of manual scavenging and it also points to the fact that the community is grossly unsatisfied with the way they are being treated by the society as well as the legal system in the country. The number of dry latrines has reduced significantly and flush-toilets have taken that place both in urban and rural areas. In fact, different sanitation programmes in the last few decades have promoted the construction and use of flush toilets with the twin objectives of elimination of the practice of open defecation and manual scavenging. However, the practice of manual scavenging continues in different forms. The slow and weak implementation of law led the manual scavenging community to

⁴⁶ Samuel Sathyaseelan, ‘Neglect of Sewage Workers: Concerns about the New Act’ (2013) 48(49) Economic and Political Weekly 33 [observes that the plights of sewage workers were completely left out from the purview of the 1993 Act.]

⁴⁷ *ibid* section 4(1).

⁴⁸ Personal interview with Bezwada Wilson, National Convener, Safai Karamchari Andolan (Delhi, 26 March 2015).

⁴⁹ Shomona Khanna, ‘Invisible Inequalities: An Analysis of the Safai Karmachari Andolan Case’, in Cullet, Koonan and Bhullar (eds.) (n 29 above) 299, 313.

⁵⁰ *See generally* Safai Karamchari Andolan, ‘Bhim Yatra’ (2016) 51 (1) Economic and Political Weekly 4.

take initiatives to get the law implemented. This section looks at the lived experience of the law and analyses the community's response to it.

A. Implementation of law: denialism, insensitivity and indifference

There has been unconditional commitment at the policy level to eliminate manual scavenging at least since the 1950s.⁵¹ Manual scavenging is an explicitly illegal activity since 1993. Nevertheless, manual scavenging continues which leaves us to wonder about the reasons. Explanations in this regard can come only through empirically grounded socio-legal studies. However, a rational analysis of certain available facts may provide us with tentative explanations.

The lived experience of law relating to manual scavenging is characterised with denialism, insensitivity and indifference from the part of implementing agencies. The trajectory of the 1993 Act provides ample proof to illustrate the indifference and denialism of the government.

The law was passed in 1993 and it received the President's assent in 1997. Initially, only five state governments gave their prior approval for the law and no other states showed any interest until 2005. Many states had to be forced to even make the law applicable in their jurisdictions. For example, Delhi decided to recognise the 1993 Act only in 2010 after the Supreme Court of India had issued directions to all states (the Supreme Court case is discussed in the next section). A number of states were reluctant even after the Supreme Court of India's directions in this regard.⁵² The reluctance to even recognise the issue of manual scavenging probably explains why the existing laws prior to 1993 were not properly implemented and why the 1993 Act was poorly implemented in the subsequent years. The government repeatedly extended the

⁵¹ The proposal to abolish manual scavenging has a long history. For instance, one of the Union ministers (GB Pant), in 1959, appealed to chief ministers in a meeting to abolish the practice of carrying of human waste on the head 'immediately and completely' [See Shinoda (n 3 above), 46]. In 2010, the Sonia Gandhi-led National Advisory Council (NAC) urged the Central Government to coordinate with all State, local and Central government departments to ensure that the pernicious practice of manual scavenging is fully abolished by the end of the 11th Plan period at the latest. See Special Correspondent, 'NAC to Monitor Abolition of Manual Scavenging' *The Hindu* (New Delhi, 25 October 2010) <<https://www.thehindu.com/news/national/NAC-to-monitor-abolition-of-manual-scavenging/article15792090.ece>> accessed 1 March 2021. Similar commitments have been repeated as recent as in 2019. See Express News Service, 'Govt Committed to End Manual Scavenging: Minister', *The Indian Express* (New Delhi, 29 June 2019) <<https://indianexpress.com/article/india/govt-committed-to-end-manual-scavenging-thawarchand-gehlot-minister-5805769/>> accessed 1 March 2021.

⁵² Bhasha Singh, *Unseen: The Truth about India's Manual Scavengers* (Penguin 2014) 207-8.

time limit for completely eliminating manual scavenging and a report points out that the government extended the time limit eight times till 2014.⁵³

The insensitivity of state governments is to the extent that certain implementing agencies were not even aware of the 1993 Act. For example, the High Court of Patna observed in a case that:

It is startling that the state administration in Bihar except one Municipality of Muzaffarpur does not even know that there is the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993.⁵⁴

The Court went on to direct ‘the administrators and the Ministry go back to their desks and take their Constitution of India out and reorient themselves on the subject’.⁵⁵

State governments and various public sector undertakings that were accused of employing manual scavengers had almost always denied the existence of manual scavenging. For example, principal secretaries of seven state governments testified through affidavits before the Supreme Court of India that the practice of manual scavenging did not exist in their concerned states. The affidavits were proved to be incorrect when the petitioner in the case—*Safai Karamachari Andolan*—submitted photographic and video evidence from several states.⁵⁶ Indian Railways, a public sector enterprise, is perhaps the largest employer of manual scavengers and at the same time it consistently denied the fact for many years.⁵⁷ An extreme version of the attitude of denial and indifference could be seen when the Indian Railways argued that no action under the 1993 Act was needed as long as people are not carrying human excreta on their head.⁵⁸ In other words, the Indian Railways treated only the act of carrying human excreta as headload manual scavenging. All other forms of direct contact with human excreta was irrelevant or legally permissible for the agency. It is difficult to imagine a worse reductionist and cruel understanding of human dignity and human rights.

Whenever the government recognised the existence of manual scavenging, the magnitude of the issue was almost always downplayed. For instance, there is a huge disparity between the facts and figures in government data and reports by independent studies.⁵⁹ It appears that either

⁵³ Human Rights Watch (n 6 above) 33.

⁵⁴ *Lalit Kishore and MP Gupta v State of Bihar*, MANU/BH/0225/2003 (High Court of Patna, 14 August 2003), [5].

⁵⁵ *Lalit Kishore and MP Gupta v State of Bihar*, (note 54 above) [12].

⁵⁶ Bezwada Wilson, ‘Why is it so Difficult to Free India of Manual Scavenging?’ (*Kafila*, 22 December 2010) <<https://kafila.online/2010/12/22/why-is-it-so-difficult-to-free-india-of-manual-scavenging/>> accessed 1 March 2021; See Singh (n 52 above) 212.

⁵⁷ Singh (n 52 above) 218.

⁵⁸ *ibid* 210.

⁵⁹ Human Rights Watch (n 6 above) 52.

state governments did not make efforts to ascertain the magnitude of the issue or deliberately trivialised it. In either case, there was no serious intention to address the issue.

There could be two explanations for the weak or non-implementation of law. First, the implementing agencies could be genuinely unable to implement the law due to a variety of reasons including the lack of financial and human resources. Second, implementing agencies could be unwilling to implement a law due to reasons such as their insensitivity and indifference which could be a result of larger social indifference and insensitivity to the issue. The former is unlikely to be the major reason as there has been policy initiatives and financial support to build improved sanitation facilities in rural and urban areas and the Swachh Bharat Mission is the latest in this regard. Thus, the latter seems a more probable explanation for the slow and weak implementation of law relating to manual scavenging.

A related question in this regard is why would the society and implementing agencies be indifferent and insensitive to the issue of manual scavenging? A probable explanation may be derived from the link between manual scavenging and caste. The pervasive nature of caste coupled with the domination of members of upper castes in various positions in the public administration may make the whole system carrying the upper-caste upper-class consciousness.⁶⁰ As a result, the rules of the caste system including the division of labour may not look like a problem. A commentator notes, in this context, that ‘the rule of law lives in the shadow of the rule of caste’.⁶¹ This probably explains the huge gap between constitutional and statutory norms and aspirations on the one hand and the social reality on the other hand. It also explains the low or no registration of criminal cases and the low conviction rate under the 1993 Act, despite the high number of instances of atrocities.⁶²

This could be attributed to the caste bias of the whole system.⁶³ For instance, the police may refuse to register and investigate crimes against lower castes if the perpetrators are from upper

⁶⁰ A. Ramaiah, ‘Growing Crimes Against Dalits in India Despite Special Laws: Relevance of Ambedkar’s Demand for Special Settlement’ (2011) 3(9) *Journal of Law and Conflict Resolution* 151.

⁶¹ Smita Narula, ‘Equal by Law, Unequal by Caste: the “Untouchable” Condition in Critical Race Perspective’ (2008) 26(2) *Wisconsin International Law Journal* 255, 267.

⁶² There is no systematic data available on the cases filed under the 1993 Act. However, the manual scavengers’ movement and its supporters have been highlighting this issue and the available information points to the negligible number of cases filed under this law when compared to the practice which is widespread. For instance, Mander notes that “[I]n Haryana, for the first time anywhere in the country since this law was enacted 17 years ago, 22 people were sent to jail for employing manual scavengers”. See Harsh Mander, ‘Barefoot: Burning Baskets of Shame’ *The Hindu* (Place, 8 May 2010) <https://www.thehindu.com/opinion/columns/Harsh_Mander/Barefoot-Burning-baskets-of-shame/article16123459.ece> accessed 1 March 2021; See also PUCL-K (note 19 above) 173.

⁶³ See Samuel D. Permutt, ‘The Manual Scavenging Problem: A Case for the Supreme Court of India’, (2011) 20 *Cardozo Journal of International and Comparative Journal* 277, 293; Jenny Schauman, ‘From Slavery to

castes.⁶⁴ The police, in some cases, closes the complaint at the preliminary stage of investigation citing technical grounds, for instance if witnesses are also from the same community as that of the victim(s).⁶⁵ Further, the members of the manual scavenging community face threat and pressure when they try to leave the practice of manual scavenging. There are also instances where the pressure from people of upper castes coupled with the lack of support from government agencies forced the people who had left the practice of manual scavenging to return to it.⁶⁶

One may wonder if caste continues to be a determining factor in contemporary India. An anecdotal evidence from fieldwork might be instructive. An organisation working with sanitation workers in Rajasthan revealed a practice in the offices of the urban local bodies where sanitation workers were not even allowed to organise their retirement parties inside the conference hall in the office building. They used to organise such functions outside the office or near sewer till 2018. The practice has been changed with a lot of struggle by sanitation workers. However, he said, the officers hardly attend such functions even now.

Another probable explanation is the fact that manual scavenging in its various forms occurs under the nose of, or under the auspices of, various government agencies such as urban local bodies and Indian Railways. For instance, local bodies (both rural and urban) in various places employ people to manually clean sewers, toilets and open defecation areas often through contractors.⁶⁷ Local bodies also indulge in pressure tactics such as withholding payments, threat of eviction from government housing and disconnection of water supply to force manual scavengers to stay on in the 'work'.⁶⁸ These pressure tactics are likely to work given the fact that manual scavengers are already living in dire poverty and they face lack of alternative employment opportunities.

The fact that the government and public sector undertakings have been relying on the practice of manual scavenging to fulfil their statutory duties or maintain their premises (eg the Indian Railways) illustrates a dangerous scenario where protectors are also the main perpetrators. It is quite natural that the law has been, by and large, a failure as little can be expected from law

Dignity: How Critical Thinking and Empowerment Among Dalit Women Working with Manual Scavenging is Implemented' (Bachelor dissertation, Södertörn University, 2012).

⁶⁴ Human Rights Watch (n 6 above) 47; Ramaiah (n 60 above) 153.

⁶⁵ Sthabir Khora, 'Final Reports under Sec-498A and the SC/ST Atrocities Act' (2014) 49(41) Economic and Political Weekly 17.

⁶⁶ Rajeev Kumar Singh and Ziyauddin, 'Manual Scavenging as Social Exclusion: A Case Study' (2009) 44 (26&27) Economic and Political Weekly 521, 523.

⁶⁷ See Human Rights Watch (n 6 above) 52.

⁶⁸ *ibid* 59.

when the government and its agencies are complicit in the violation of the rights of manual scavengers.

The denialism, indifference and insensitivity of implementing agencies prompted the emergence of movements by the manual scavenging community.⁶⁹ The proactive responses and protests of the manual scavenging community have been a major driving force that triggered significant changes towards the eradication of manual scavenging. In fact, the work of the Movement led to shred, at least to some extent, the nihilism to law and advances a point that there are still certain opportunities available within law that social movements can effectively explore to achieve their goals. The following two sections illustrate how the manual scavenging community adopted a new understanding of manual scavenging as a violation of dignity and how they used law and legal institutions to demand elimination of the practice respectively.

B. Uncovering systemic causes and reclaiming dignity and rights

Manual scavenging had been an invisible issue and the manual scavenging community remained a set of people without voice. It appears that even manual scavengers had internalised the narratives that justified or normalised the oppression they suffered and violence inflicted on them. According to Bezwada Wilson, the National Convener of the *Safai Karamachari Andolan*, the acceptance of the oppressed status by the manual scavenging community was one of the major hurdles the Movement had to overcome first. He admitted that he had also believed that manual scavengers are responsible for their plights and sufferings and consequently there were no fingers pointed at systemic factors including caste. The initial effort of the Movement, therefore, was to help the manual scavenging community realise that they are as much human as others and are worthy of all the rights and freedoms enjoyed by others. In a way, it was a process of destroying their own deep-rooted understanding of their social, political and legal status and re-conceptualising their life as that of human beings and citizens. This process also involved a radical change in their perception by unravelling the systemic factors behind their life with indignity and rightlessness.

⁶⁹ The manual scavengers' movement is a collective of several organisations and individuals such as *Safai Karamachari Andolan*, *Jan Sahas* (Madhya Pradesh), *Navsarjan* (Gujarat) and the National Campaign on Dalit Human Rights. It is a collective of movements from different parts of the country. The term 'movement' is used in this chapter in a broad sense to indicate their collective efforts in totality and not to indicate a particular campaign or protest by a particular organization or group of individuals.

One of the landmark developments in the trajectory of the Movement was its transformation to project itself as a struggle for dignity and rights. The language of dignity and rights helped the Movement to locate the struggle of the community in the larger domain of anti-caste and human rights movements in India as well as in the context of resistance against untouchability. The emancipatory power of the idea of dignity and rights as enshrined in the Constitution of India was used by the Movement significantly and it led to the projection of baskets and brooms as symbols of indignity as opposed to *work tools*.

The association of baskets and brooms with indignity eventually found its way into one of the popular manifestations of the public protest by the Movement called *daliya jalao* (burning the basket) campaign. This could be seen as a revival of a slogan Dr B.R. Ambedkar raised many decades ago, that is, *Bhangi Jharoo Choro* (Bhangi, Leave the Broom).⁷⁰ Soon the Movement began highlighting brooms and baskets as symbols of their oppressed status and the act of burning them a mark of liberation.⁷¹ The narrative is extremely compelling in a context where brooms and baskets were seen by the manual scavenging community as ‘essential work tools or property’ that they even used to bequeath to their next generations. The bequeathing of basket and broom by a mother-in-law to a daughter-in-law after marriage as part of the wedding rituals was not uncommon among the manual scavenging community.⁷² Manual scavengers, particularly women, publicly burnt their brooms and baskets in several places to symbolically declare their freedom from a centuries-old hegemonic and oppressive practice. Thus, the Movement transformed the discourse from treating manual scavenging as an ‘occupation’ to projecting it as a practice perpetrating violation of dignity and many other human rights guaranteed under the Constitution of India.

C. The Safai Karmachari Andolan (SKA) case and implementation of laws by the right-holders

The issue of manual scavenging shows that in some cases laws do not get implemented easily especially when the issues at stake are rights of historically marginalised classes. The right-holders often need to take proactive steps to get the laws implemented. The Movement is a

⁷⁰ Vijay Prashad, *Untouchable Freedom: A Social History of a Dalit Community* (Oxford University Press 2000)168.

⁷¹ Amit Gupta, ‘Daliya Jalao: Liberating Manual Scavengers and Moving Towards Total Sanitation’ (2013) 1(2) *Journal of Land and Rural Studies* 145, 155.

⁷² Agrima Bhasin, ‘Burning the Basket of Indignity’ *Uday India* (16 February 2013) <<https://udayindia.in/burning-the-basket-of-indignity/>> accessed 1 March 2021.

classic example in this regard as it has been playing a leading role to ensure the implementation of the law.

The slow and weak implementation of laws coupled with the indifference of implementing agencies led the Movement to approach the judiciary to seek proper implementation of the laws. In this context, *Safai Karmachari Andolan v Union of India (SKA case)* is a landmark step mainly because the Movement strategically used this litigation to achieve their goals. In 2003, the *SKA case* was filed as a public interest litigation in the Supreme Court of India. The Supreme Court of India treated the writ petition as a continuing mandamus for eleven years and issued a number of orders and directions. The case was finally disposed of by the Court in March 2014 in the light of the 2013 Act.⁷³ The Court explicitly stated that ‘inasmuch as the Act 2013 occupies the entire field, we are of the view that no further monitoring is required by this Court’.⁷⁴ The Court further re-emphasised the duty of state governments and union territories to fully implement the law and to take action against the violators.

The history of the *SKA case* illustrates the role played by the Movement to claim their rights and achieve their goals. The Movement used the *SKA case* as a tool or a strategy to force the implementation of the 1993 Act. According to Bezwada Wilson, the initial experiences of the Movement with different state governments were disappointing as nobody took them seriously.⁷⁵ He underlined the fact that various orders of the Supreme Court of India have provided the Movement with a powerful weapon to negotiate with state governments and to force them to implement the law. The active role of the Supreme Court of India and the use of its orders by the Movement have even led some commentators to argue for a more positive role to be played by the Court.⁷⁶

The case pushed state governments and different ministries of the Union Government to submit affidavits regarding the status of manual scavenging in their respective jurisdictions. Given the fact that various government departments and agencies had been categorically denying the existence of manual scavengers, the case provided an opportunity for the Movement to expose the denialism of the government. When various government departments and agencies filed affidavits that denied the issue of manual scavenging, the Movement disproved it by providing evidence through what Ms Shomona Khanna—one of the lawyers who represented the *Safai*

⁷³ *Safai Karmachari Andolan v Union of India*, Writ Petition (Civil) No. 538 of 2003 (Supreme Court of India, 27 March 2014) (“*SKA case*”)

⁷⁴ *id.*, para 15.

⁷⁵ See n 48.

⁷⁶ See Permutt (n 63 above) 284.

Karamchari Andolan before the Supreme Court of India—described as a ‘ground-truthing exercise’.⁷⁷ The *SKA* case provided a platform for the Movement to expose the insensitivity and insincerity of the government. It also provided an opportunity to the community to obtain more information and to demand accountability from the government. It appears that, to some extent, the litigation provided a space for the Movement to overcome the power and resource asymmetry they had been struggling with.

At the local level, the Movement directly initiated the implementation of the 1993 Act by destroying dry latrines. In some cases, volunteers of the SKA took photos of dry latrines and warned the owners of the legal consequences by citing the 1993 Act. The volunteers had to fight even judges at the local level as dry latrines were also found in court premises. For instance, in 2004, in the pre-bifurcation State of Andhra Pradesh, a junior civil Judge prevented volunteers from demolishing a dry latrine situated in court premises on the ground that it was government property. The junior civil Judge also issued an order asking the volunteers to get permission from the concerned District Judge to demolish the dry latrine. The movement used this opportunity and highlighted this issue as an instance of insensitivity and unawareness even amongst judicial officers. The direct implementation of the law by the Movement in certain villages had wider impacts as it led local bodies in the neighbouring areas to destroy dry latrines in their jurisdictions.⁷⁸

The Movement has also played a significant role in educating the general public as well as government agencies who were responsible for implementation of the law. There were occasions where volunteers, mainly women, took copies of the statute and the Supreme Court’s orders to the administration and demanded rehabilitation. According to Mr Wilson, volunteers personally went and gave a copy of the 1993 Act and various orders of the Supreme Court of India to District Collectors and Magistrates in not less than 240 districts.⁷⁹

The SKA’s (and other similar collectives’) struggle continues. Radical changes in favour of some of the most marginalised classes of people may come primarily as a result of proactive and collective claim by them rather than as a conscious initiative by the elites in power.

IV. Conclusion

⁷⁷ See Khanna (n 49 above) 322.

⁷⁸ Ramaswami (n 6 above) 63.

⁷⁹ See n 48.

The practice of manual scavenging has a long history in India. It continued for several centuries, if not more. The systemic indifference and insensitivity may have effectively covered the elements of oppression, exploitation and violence involved in it and made them look natural and normal. The extent of the normalisation process was such that even the oppressed classes psychologically accepted their so-called inferior status.

The practice of manual scavenging violates several basic tenets of human rights of the concerned manual scavengers such as the right to dignity, the right against untouchability and the right against discrimination. At a broader level, the practice of manual scavenging also exposes the lack of concern for the safety of certain classes of people while they earn their livelihood.

Over the years, a number of statutory and policy initiatives have been taken to address the issue. From a legal point of view, employing a manual scavenger is a criminal act as per both the 1993 Act and the 2013 Act. Overall the legal message is loud and clear that manual scavenging must be eliminated. Constitutional provisions, statutes and the policy framework have managed progress, but inadequate, in eradicating the practice of manual scavenging.

A plausible explanation could be found by linking the issue of poor implementation of laws with caste. It is probable that the caste factor has captured the system significantly where the rights of manual scavengers could be violated with impunity and welfare benefits could be denied to them with little or no question on accountability. A worrying factor in this regard is the fact that the 2013 Act might also face similar challenges. The experience from the history of the implementation of the 1993 Act does not support an optimistic expectation about the working of the 2013 Act. Therefore, the success of the statutory framework will be contingent upon how strongly the manual scavenging community will assert their rights politically, socially and legally.

An examination of the practice of manual scavenging from a legal perspective exposes a complex link between law and caste. An important aspect of this link is the influence of caste on the making, implementation and enforcement of laws. Caste, being a core institution of social organisation in India, has the potential in determining the normative contents of law and influencing the implementation and enforcement of law. The history of law relating to manual scavenging underlines the probable instances of such potentialities.

The domino effect of several extra-legal factors including caste on law may indeed lead to a nihilistic approach to law, particularly by the marginalised classes. However, the story of

manual scavenging movement unveils the space, probably limited, available for social movements to contest the domino effect of extra-legal factors on law with at least some degree of success. Indeed, the different orders of the Supreme Court of India in the *SKA* case empowered the Movement to overcome, at least to some extent, the power asymmetry. It could also be seen as an instance where a social movement has used legal and constitutional norms and principles for emancipation and empowering of a historically marginalised class. At the same time, the marginalised classes and their movements may need to realise that law is not an either-or option, but it is a site for deliberation and contestations. They may need to keep other non-legal options available as law is not fully an autonomous normative framework, but a normative system that is vulnerable to be influenced by different social, economic and political factors and actors.