TRANSFORMATIVE CONSTITUTIONALISM AND THE UNFINISHED EMANCIPATION OF SAFAI KARAMCHARIS: RE-READING ARTICLES 14, 17, AND 21 THROUGH THE LENS OF MANUAL SCAVENGING

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ABSTRACT

Manual scavenging, the manual collection of human excreta from dry latrines, open drains, septic tanks and sewers, still continues in India more than 32 years after its first statutory prohibition and over 10 years after the Supreme Court declared it to be a continuing constitutional wrong. This paper places the practice in the context of the theory of transformative constitutionalism, which interprets the Indian Constitution not merely as a static document holding social status quo but as a tool that can be used to very effectively shift the power, dignity and opportunity from entrenched hierarchies of caste. In a literal sense, the practice of manual scavenging is overwhelmingly done by members of the Scheduled Caste sub-groups that are defined as "untouchable" in the Constitution, thereby making it the paradigm case that Article 17 of the Constitution is meant to eradicate. It follows the doctrinal edifice built around each of these practices in The Right to Privacy v. Union of India, the intertwining of these rights in Article 14 and the elimination of untouchability in Article 17, the prohibition on forced labour in Article 23, and the right to life with dignity in Article 21, and how the Supreme Court has tried to transform these textual promises into binding rehabilitative duties in Safai Karamchari Andolan v. Union of India and later in Dr. Balram Singh v. Union of India. It then poses the recurrent disconnect between this doctrinal system and the actual situation that is exposed in government and civil-society surveys, which it ascribes not only to implementation failures but to deeper constraints on the role of the adjudicator in the absence of parallel changes in the incentive systems of the bureaucracy, ways of outsourcing work in municipalities, and social perceptions of caste designated labour. The paper also takes a brief look at comparative lessons from anti-caste jurisprudence on forced and degrading labour, and suggests a framework of three key areas-enhanced statutory enforcement, forced mechanisation of dangerous cleaning, and self-monitoring by affected communities-as complementary to judicial action. It finds that the provision of dignity for safai karamcharis is not being realized unless courts, legislatures and the municipal executives take it as an ongoing constitutional duty, not a legislative one.

I.INTRODUCTION

The Constitution of India speaks to the practice of manual scavenging with unusual directness. Article 17 abolishes "untouchability" and forbids its practice "in any form", making its enforcement an offence punishable by law.[1] Manual scavenging is the practice of manually handling, carrying, or disposing of human excreta from insanitary latrines, open drains, septic tanks, and sewers, ordinarily with buckets, brooms and shovels. They usually carry it away without proper safety gear. In India, it is inseparable from caste of people specifically belong to the Scheduled Caste sub-groups historically confined to occupations treated as polluting under the logic of ritual untouchability.[2] Article 14 guarantees equality before the law, and Article 21 guarantees the right to life, which the Supreme Court has in his depth writing includes right to live means right to live with human dignity.[3] Article 23 prohibits traffic in human beings, beggar, and other similar forms of forced labour.[4]

However, decades after independence and two key statutes, manual scavenging still exists, despite the Supreme Court's body of jurisprudence, begs the question, which is as much theoretical as empirical: What does it mean for a constitutional guarantee to be transformative when the social practice that it condemns is largely unimpeded on the ground? This paper attempts to answer this question by placing manual scavenging in the context of transformative constitutionalism, the jurisprudential prism most closely associated with the following decisions in the Indian context: Navtej Singh Johar v. Union of India[5] and National Legal Services Authority v. Union of India.[6] It further explores how courts have tried, albeit with some success, to give a practical shape to the concept of transformative constitutionalism in the context of the duty to rehabilitate manual scavengers.

Part II sets out the conceptual framework of transformative constitutionalism. Part III examines the constitutional text applicable to manual scavenging in greater detail. Part IV traces the legislative trajectory from the 1993 Act to the 2013 Act. Part V analyses the two principal Supreme Court interventions - Safai Karamchari Andolan and Dr. Balram Singh - as case

[1] INDIA CONST. art. 17.
[2] Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶¶ 2–5 (India) (tracing the historical linkage between specific caste designations and sanitation labour, and the persistence of that linkage despite statutory prohibition).
[3] See Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 S.C.C. 608 (India) (holding that the right to life under Article 21 includes the right to live with human dignity).
[4] INDIA CONST. art. 23.
[5] Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).
[6] Nat'l Legal Servs. Auth. v. Union of India, (2014) 5 S.C.C. 438 (India).

studies in judicially driven transformative constitutionalism. Part VI identifies the persistent gap between doctrine and ground reality. Part VII proposes a framework for closing that gap, and Part VIII concludes.

II. TRANSFORMATIVE CONSTITUTIONALISM: A CONCEPTUAL FRAMEWORK

Transformative constitutionalism describes a mode of constitutional interpretation in which the text is read not as a device for preserving an existing social order but as an instrument for its deliberate alteration.[7] Transformative constitutionalism expects the states and the courts to actively dismantle inequalities and caste hierarchies or colonial legacies. In the Indian context, the Supreme Court of India has increasingly invoked the idea of transformative constitutionalism to justify readings of fundamental rights that depart from majoritarian social consensus. For instance, in decriminalising consensual same-sex relations in Navtej Singh Johar and in recognising the right to self-identified gender in NALSA. Manual scavenging, however, is a unique case in this category as the rights violation does not involve courts interpreting additional language into the open-textured provisions like Article 21, the violation is specifically stated in the text of the Constitution. Article 17 is not an equality guarantee in general from which the concept of untouchability can be read; the concept of untouchability is the exclusive subject matter of Article 17.[8] Transformative constitutionalism in this area does not mean that the courts have to create a new right, but that they have to provide it with "operative content and remedial teeth," as the framers would have framed it. Manual scavenging is therefore a good litmus test to see if there is a redistribution, once it goes beyond symbolic declaratory recognition and becomes enforceable against nebulous and dispersed actors of the state and the private sector.

III. THE CONSTITUTIONAL TEXT AND MANUAL SCAVENGING

A. Article 17 and the Abolition of Untouchability

Article 17 eliminates the concept of untouchability and prohibits any practice of it and states

[7] See generally Upendra Baxi, Preliminary Notes on Transformative Constitutionalism, in COURTING JUSTICE 1 (2014); Karl E. Klare, Legal Culture and Transformative Constitutionalism, 14 S. AFR. J. HUM. RTS. 146 (1998) (originating the term in the South African context, subsequently adapted to Indian constitutional discourse).

[8] See Constituent Assembly Debates, Vol. VII, at 665–668 (Nov. 29, 1948) (record of the debate on the draft article that became Article 17, reflecting the framers' understanding that the provision targeted the practice of untouchability directly and without qualification).

that the enforcement of any disability based on untouchability is a crime and shall be punishable in accordance with law.[9] Parliament has enacted penal provisions as per The Protection of Civil Rights Act, 1955 and subsequently The Scheduled Tribes and Scheduled Castes (Prevention of Atrocities) Act, 1989.[10] Of course, manual scavengers are well known to courts and commentators as one of the most persistent and visible forms of untouchability: the social ascription of the work to specific castes, and the prohibition on inter-caste mobility, is indeed one of the most powerful reminders of the logic of ritual pollution which Article 17 was designed to eradicate.

B. Article 23 and Forced Labour

No traffic in human beings or in beggar or other similar type of forced labour is permitted under Article 23 and is punishable in accordance with law.[11] The Supreme Court has interpreted "forced labour" to encompass not only forced labour based on physical compulsion, but also "forced labour" under economic compulsion where there is no reasonable alternative and where the remuneration for the work is less than the minimum wage.[12] In Dr. Balram Singh, the Court furthered this reasoning, concluding that hazardous cleaning without statutory protection equipment is forced labour, even if the worker is not registered as a "manual scavenger" under the 2013 Act.

C. Articles 14 and 21

Article 14 guarantees equality before law, to prohibit not merely formal classification but also state action, or inaction that perpetuates substantive inequality among similarly situated groups.[13] Since, Article 21 guarantees life with dignity, Francis Coralie Mullin has been understood to encompass the right to a decent standard of living, adequate nutrition, and freedom from degrading treatment, an understanding implication is needed for the workers who directly expose themselves to toxic gases, waterborne disease, and, in the most severe cases,

[9] INDIA CONST. art. 17.
[10] Protection of Civil Rights Act, No. 22 of 1955, INDIA CODE; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, INDIA CODE.
[11] INDIA CONST. art. 23.
[12] See People's Union for Democratic Rights v. Union of India, (1982) 3 S.C.C. 235 (India) (holding that labour supplied for remuneration below the minimum wage constitutes forced labour within the meaning of Article 23).
[13] See E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3 (India) (reading Article 14 as a guarantee against arbitrariness rather than merely a rule of reasonable classification).

death by asphyxiation inside sewers and septic tanks.[14]

IV. LEGISLATIVE TRAJECTORY: FROM THE 1993 ACT TO THE 2013 ACT

The first specific act that Parliament took was the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, which banned the employment of manual scavengers and construction of new dry latrines.[15] Unfortunately, the Act of 1993 failed to be adopted: under Article 252 of the Constitution, the Act had to be adopted by each state legislature by a resolution, and even in states that had adopted the Act, it was not effective for about three and a half years before being put into effect.[16] In a 2003 report, the Comptroller and Auditor General reported that the National Scheme for Liberation and Rehabilitation of Scavengers had not achieved its goals: that money distributed under the scheme had not been spent and there was no consistent link between the number of scavengers "liberated" and the number actually "rehabilitated.[17]

The 1993 Act was subsequently repealed and replaced by the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, after a long pending litigation and mobilisation of the civil society, particularly by the Safai Karamchari Andolan.[18] The definition of 'manual scavenger' in the 2013 Act is expanded to cover those who clean sewers and septic tanks using manual methods and no protective equipment; the 2013 Act also introduced a rehabilitation plan that includes one-time cash assistance, training, subsidised housing and scholarships for the children of identified manual scavengers, which did not exist in the earlier Act.[19] The change in the statute itself of transition from a mere prohibition to a prohibition coupled with an affirmative rehabilitative mandate itself is a sign of the working of transformative constitutionalism at the legislative level; Parliament implicitly acknowledged

[14] See Delhi Jal Board v. Nat'l Campaign for Dignity & Rights of Sewerage & Allied Workers, (2011) 8 S.C.C. 568 (India) (directing compensation for deaths of sewage workers and treating such deaths as a violation of the right to life under Article 21).
[15] Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, No. 46 of 1993, INDIA CODE.
[16] See Safai Karamchari Andolan v. Union of India, (2014) 11 S.C.C. 224, ¶ 9 (India) (discussing the delayed commencement of the 1993 Act and its limited initial territorial application to a handful of states and union territories).
[17] Comptroller & Auditor Gen. of India, Report No. 5 of 2003 (Performance Audit of the National Scheme for Liberation and Rehabilitation of Scavengers), discussed in Safai Karamchari Andolan v. Union of India, (2014) 11 S.C.C. 224, ¶¶ 8–10 (India).
[18] Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, No. 25 of 2013, INDIA CODE.
[19] Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, No. 25 of 2013, §§ 2(d), 5–7, 13, INDIA CODE

that formal abolition, by itself, does not remove the underlying compulsion of caste**.**

V. JUDICIAL INTERVENTION: SAFAI KARAMCHARI ANDOLAN AND DR. BALRAM SINGH

In December 2003, the Safai Karamchari Andolan, together with six other civil society organisations and seven individuals from the manual scavenging community, filed a writ petition under Article 32 of the Constitution contending that the continuing practice of manual scavenging and dry-latrine use was unconstitutional.[20] The Supreme Court held that the continuation of manual scavenging violated Articles 14, 17, 21, and 23, and directed the Union and State Governments to fully implement the 2013 Act. The Court ordered identification and rehabilitation of all manual scavengers within a fixed time frame, and directed that the families of persons who had died in sewer or septic-tank cleaning since 1993 be paid compensation of ten lakh rupees each.[21] The court further asked states to frame schemes for alternative livelihoods, self-employment training, and educational support for the children of manual scavengers.[22]

The remedial structure of Safai Karamchari Andolan illustrates a characteristic feature of judicially driven transformative constitutionalism: the Court did not confine itself to a declaration of unconstitutionality but constructed an ongoing supervisory jurisdiction, retaining the matter for compliance monitoring rather than treating the judgment as self-executing.[23]

B. Dr. Balram Singh v. Union of India (2023)

Again, nearly a decade later, Dr. Balram Singh filed a fresh PIL under Article 32 seeking implementation of both the 1993 and 2013 Acts, on the back of the continuing reports of deaths in sewerage and the data collected by the National Commission for Safai Karamcharis that showed that thousands of people were still involved in manual scavenging despite the ban.[24]

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[20] Safai Karamchari Andolan v. Union of India, (2014) 11 S.C.C. 224, ¶ 11 (India).
[21] Id. ¶¶ 15–20.
[22] Id. ¶¶ 21–25; see also India Supreme Court Orders Hike in Compensation and Total Eradication of Manual Scavenging, JURIST (Oct. 21, 2023) (summarising the continuing compensation framework).
[23] This supervisory posture continued into the subsequent litigation; see Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶ 6 (India) (noting that the 2023 proceedings arose out of continued non-compliance with the 2014 directions).
[24] See Supreme Court Passes Directions on Eradication of Manual Scavenging, NEWSCLICK (2022) (citing NCSK data that a survey across eighteen states identified over 42,000 persons still working as manual scavengers as of August 2019).

The bench of justices S. Ravindra Bhat and Aravind Kumar gave fourteen directions to the Union and State Governments, which included one categorical direction for the complete eradication of manual sewer entry from all departments, agencies, corporations and local bodies and increase in the compensation amount for sewer deaths to thirty lakh rupees, on 20 October 2023.[25] Remarkably, the Court also reasoned that if a worker is carrying out a hazardous cleaning task in absence of the minimum protective equipment prescribed by the 2013 Act, it constituted forced labour under Article 23 and therefore entitles the worker to rehabilitative benefits even if he or she is not a manual scavenger, as per the narrower meaning of the term in the Act.[26]

The Court's subsequent supervisory orders, such as one in December 2024 which condemned the Union for failing to comply with the order issued in 2023, and a January 2025 order mandating the end of manual scavenging in six major metros, indicate that the Court has made eradication a on-going constitutional duty, not an adjudicative process.[27]

VI. THE GAP BETWEEN DOCTRINE AND GROUND REALITY

Even with this doctrinal structure, it is admitted from the very documents that the government had used for the Dr. Balram Singh case that it has been able to identify only a part of those who are involved in manual scavenging and that the numbers reported are also likely to underestimate the practice significantly as much of it now happens in informal, outsourced and contractual arrangements, which are not formally surveyed through the mechanisms established with the original definition of manual scavenging under the 2013 Act.[28] This is a learning moment for the theory and practice of transformative constitutionalism via litigation: while the Court can define rights, shift the burden of eradication onto the executive, and draw up compensation schedules, it has less institutional capacity to change the municipal outsourcing practices, the incentive structures of the contractors, and the local caste-based norms of labour allocation that create the gap between the two at the point of delivery.

The other facet of the gap is in rehabilitation, not prohibition. Many times, the record before

[25] Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶ 47 (India); see also 'Completely Eradicate Manual Scavenging': Supreme Court Directs Union & States, LIVELAW (Oct. 21, 2023).
[26] Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶¶ 40–45 (India).
[27] See Dr. Balram Singh v. Union of India & Ors., CTR. FOR LAW & POL'Y RES. (litigation tracker, last visited Aug. 2026) (summarising the December 2024 and January 2025 orders).
[28] See Dr. Balram Singh v. Union of India (Oct. 20, 2023 judgment), ¶ 14 (India) (noting the Court's finding that states were able to identify only a minuscule proportion of persons actually engaged in manual scavenging).

the Court had revealed a disconnect between identification and the receipt of promised rehabilitative benefits of one-time cash payments, housing, and skill training, and, in substance, between identification and disbursement of rehabilitative benefits, as the Comptroller and Auditor General had found in the pre-2013 rehabilitation scheme.[29] This second occurrence indicates that the blocking power of the legislature is not the problem here, but rather administrative and political will, which, despite the strength of transformative constitutional doctrine in its textual and remedial expression, cannot be overcome without persistent institutional pressure from outside the courtroom.

VII. TOWARD A TRANSFORMATIVE CONSTITUTIONAL PRAXIS

Closing the gap outlined in Part VI will call for actions to be taken in tandem with, and not in lieu of, judicial action. First, mandatory mechanisation of sewer and septic-tank cleaning, as directed by the Court in Dr. Balram Singh, must have enforceable time limits that are linked to the municipal budgets, and not just accepted as a goal at the local government level where most of these tasks are contracted out.[30] Second, the National Commission for Safai Karamcharis which is already a non-statutory advisory body should be given statutory status and with binding inspection and enforcement powers similar to that of the National Human Rights Commission so that identification and monitoring would not be dependent on the self-reporting of the state.[31] Third, the pattern of rehabilitation funds that have not been spent or misallocated may be broken by implementing a direct benefit transfer system with independent, community-based verification, based on the organisational capacity of Safai Karamchari Andolan itself since 2003.

The assumption behind these proposals is that transformative constitutionalism, in a setting where violations are decentralized and hidden from the public, are best achieved as a bottom up process, one that can be invoked by lower level institutions and communities, but not enforced by the Supreme Court through its periodic supervisory hearings.

[29] Compare Comptroller & Auditor Gen. of India, Report No. 5 of 2003, with Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶¶ 30–35 (India) (documenting continuing shortfalls in disbursal of rehabilitation benefits under the 2013 Act).

[30] See Dr. Balram Singh v. Union of India, 2023 INSC 950, ¶ 47(i)–(iii) (India) (directing time-bound mechanisation and a phase-out of manual sewer entry).

[31] On the NCSK's current non-statutory advisory character, see Supreme Court Passes Directions on Eradication of Manual Scavenging, NEWSCLICK (2022).

VIII. CONCLUSION

Manual scavenging tests the outer edge of what adjudicative transformative constitutionalism can accomplish. The constitutional text is unambiguous, the statutory framework has been progressively strengthened, and the Supreme Court has, across a decade of litigation culminating in Safai Karamchari Andolan and Dr. Balram Singh, constructed an increasingly detailed remedial architecture. Yet the practice endures, not because the doctrine is unclear but because eradication depends on institutional actors - municipal corporations, sanitation contractors, and local bureaucracies - that operate largely outside the direct reach of Supreme Court supervision. The paper has argued that the constitutional promise of dignity for safai karamcharis will remain transformative in substance, and not merely in text, only if judicial doctrine is paired with statutory enforcement capacity and community-based monitoring capable of operating at the same decentralised scale as the violation itself.