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# Contesting Caste: Institutionalized Oppression and Circumventive Legal Resistance

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(Received 21 August 2021; revised 01 December 2023; accepted 24 April 2024)

## Abstract

Across the globe, people who mobilize to protect their rights in highly oppressive contexts may have to navigate government institutions that not only fail to implement protections but also engage in discriminatory practices. This article introduces the term “circumventive legal resistance” to describe practices of making legally grounded claims but facilitating relief through processes of expression and negotiation that are distinct from explicit mechanisms of legal enforcement. Based upon a study of twenty-seven rural, semi-rural, and urban areas across the north and north-west regions of India, this article documents how *Dalit* women—from the most marginalized groups at the base of the caste pyramid—mobilize to protect their rights in contexts where local institutions do not enforce laws prohibiting caste discrimination and instead perpetrate caste-based forced labor practices. In particular, I focus on a campaign to end manual scavenging—a form of caste-based forced labor that is one of the worst surviving symbols of untouchability. With local channels to legal relief largely foreclosed, *Dalit* women who leave manual scavenging engage in circumventive legal resistance: they draw on law to make claims but win relief through avenues distinct from those envisioned within the parameters of the law.

## Introduction

The potential of the law to upend structural discrimination and the role of social movements in legal mobilization and resistance have been critical sites of investigation in the study of law and society and across the social sciences. People who mobilize to protect their rights in highly oppressive contexts may have to navigate government institutions that not only fail to implement legal protections but also engage in discriminatory practices. Scholarship on the persistence of caste-based discrimination

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and *Dalit* resistance movements has, of necessity, grappled with the significant challenges in overcoming deeply entrenched patterns of subordination that stand as barriers to implementing laws prohibiting caste-based discrimination and violence (Bob 2007; Nagaraj and Greenough 2009; Waghmore 2013; Silliman Bhattacharjee 2014; Carswell and De Neve 2015; Collins 2017). This article studies contestations over manual scavenging in both everyday practices of local government institutions and in resistance by *Dalit* social movements. I focus on a social movement of *Dalit* women who mobilize legal protections on manual scavenging in contexts where government institutions refuse to enforce these laws. They respond by pursuing relief through enforcement mechanisms that operate outside formal law. I introduce the term “circumventive legal resistance” to describe these practices.

Manual scavenging is a form of caste-based forced labor that has been recognized by India’s National Advisory Council as the worst surviving symbol of untouchability. Communities that work as “manual scavengers” clean human waste—they collect excrement in cane or metal baskets and carry it away for disposal.<sup>1</sup> Women usually clean “dry toilets” that are not connected to septic tanks or sewage systems and therefore require manual cleaning. Men and women clean open defecation, gutters, and drains. Men also clean sewers and septic tanks. Manual scavenging reinforces the social stigma of “untouchability” and perpetuates discrimination that holds these groups at the bottom rung of caste-based social hierarchies in India (Silliman Bhattacharjee 2014).

While the exact number of people who currently practice manual scavenging is disputed, India’s Supreme Court estimated in 2014 that 9.6 million dry latrines were cleaned manually by individuals belonging to scheduled castes<sup>2</sup> or *Dalits*. This staggering figure is incomplete because it does not include manual cleaning of open defecation, uncovered drains, or public and private septic tanks. In 2022, the number of people engaged in cleaning human waste remained contested. States deny the persistence of this practice altogether, while activist and media reports continue to document deaths associated with hazardous manual cleaning of sewers and septic tanks (Gowda 2022; Roy 2022) (see Figure 1).

My study of manual scavenging contributes to literature on how legal and social movements institutionalize and mobilize laws and democratic processes (McCann 2004; Michelutti 2007; Levitsky 2014). The first section situates my research in relationship to scholarship on agency within plural social fields (Moore 1973), and the vernacularization (Michelutti 2007) and discursive integration (Levitsky 2014) of democratic processes and laws. I explain the unique contributions derived from studying how groups resisting entrenched practices of domination in highly restrictive contexts mobilize to enforce legal prohibitions on exploitation. The second section sets context for the study by explaining how manual scavenging is anchored

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<sup>1</sup> Under the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, No. 25 of 2013 (2013 Act), “manual scavenger” refers to “a person engaged or employed . . . by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit” (ch. 1(2)(1)(g)). There is significant overlap between the terms “manual scavenger” and “*safai karmachari*” (sanitation worker), which is also used in legislative contexts to refer to people employed as sweepers and sanitation workers.

<sup>2</sup> *Safai Karmachari Andolan & Ors. v. Union of India & Ors.*, Supreme Court of India, Writ Petition (Civil) no. 583 of 2003, March 27, 2014, para. 10.



Figure 1. Manual scavenging tools. Credit: Kasela, Uttar Pradesh. © Digvijay Singh, 2014.

in caste-based hierarchy and patriarchal gender relations that sustain the practice despite constitutional and legal prohibitions. The third section lays out my research methods, including research in twenty-seven rural, semi-rural, and urban areas across fifteen districts in the north and north-west regions of India. The fourth section presents my findings on the perpetuation of manual scavenging and conditions that reproduce caste-based divisions of labor within government institutions. I found that government institutions tasked with enforcing constitutional protections against caste-based labor not only fail to implement protections but also proactively engage in caste-based hiring and forced labor practices within administrative agencies of the state. This replication of discriminatory practices within local institutions forecloses channels to formal legal relief. The fifth section provides an account of resistance and mobilization by *Dalit* women who seek to leave manual scavenging. They evoke law to articulate the rights violations endemic to the practice, but their resistance to manual scavenging unfolds along alternate trajectories including the collective public refusal to engage in manual scavenging and the engagement of informal mediation with upper caste groups facilitated by local authorities. Each of these change processes draws on law to make claims but circumvents direct legal pathways. In making claims that signal the illegality of manual scavenging while circumventing formal enforcement mechanisms and instead negotiating alternate resolutions, these engagements facilitate relief beyond the parameters of formal law.

## Law, oppression, and resistance in plural social fields

### *Agency in plural social fields*

Understanding the potential of law to upend structural discrimination requires interrogation of competing systems of authority: on the one hand, social and

economic systems that anchor discrimination and, on the other, laws and their enforcement mechanisms that may either disrupt or reinforce discriminatory paradigms. Accordingly, this article draws on socio-legal scholarship that examines how law interacts with other systems of meaning and power. The concept of semi-autonomous social fields describes the presence of multiple ordering structures within a social field (Moore 1973) and provides a robust framework for understanding how legal norms intersect with social fields that are already structured by existing rules and customs (Moore 1973; Merry 1988). Internally generated practices within semi-autonomous or plural social fields may dictate compliance or noncompliance with state-made legal rules (Moore 1973; Ellickson 1991).

An understanding of the law as operating within overlapping social fields that extend beyond formal judicial and legislative institutions and negotiated by multiple social processes has been meaningfully applied to understanding political relations between state and non-state actors in contemporary India (Bornstein and Sharma 2016). Relatedly, Elizabeth Armstrong and Mary Bernstein (2008) describe society as composed of multiple and often contradictory institutions. This approach views institutions as overlapping and nesting. While laws may introduce systems of meaning, layered institutions anchor these systems and infuse them with material consequences (83). Reading Armstrong and Bernstein together with Sally Engle Merry (1988), this article marks the boundaries of social, economic, and legal institutions or structures through the processes by which they generate rules and coerce, induce, or undermine compliance (Moore 1973). Animating this theoretical framework, the second section of this article explains how manual scavenging is anchored in social and economic structures of caste-based hierarchy and patriarchal gender relations that sustain the practice, despite constitutional and legal prohibitions that aim to eliminate caste-based discrimination and violence.

In plural social fields, law and democratic processes may be among the many forces instrumental in establishing schemas—cognitive frameworks that organize and interpret information, distinguishing permissible from impermissible action. Law and society scholars have long recognized that laws and democratic processes derive authority in social interactions both because they create instruments for state enforcement and because they provide symbolic resources by reframing practices as rights violations (Albiston 2005). In this regard, legal knowledge figures as both an end and means of action: it provides both normative principles and strategic resources for the conduct of social struggle (McCann 2004). As explained by Stuart Scheingold ([1974] 2004, 218) in the American context, claiming a right invokes a symbol of legitimacy that links personal grievances to the more profound guarantees of constitutional rights even in contexts where litigation is more likely to enforce existing social orders.

My understanding of how various actors—from government officials to activists—animate legal prohibitions on discrimination in contexts governed by competing systems of authority draws from social theory concerned with detailing the anatomy of structure. Anthony Giddens (1984) and William Sewell (1992) have explained social systems as being comprised of differently authoritative schemas or ordering principles that are reproduced over time. Schemas may be generalizable, intersubjectively available, and applicable across contexts and interactions. The authoritative force of a particular schema is based on the accumulation of resources,

a term that refers to anything that serves as a source of power in social interactions (Giddens 1984; Sewell 1992, 16). Individuals use resources not only in the situations in which they first encounter them but also in distinct contexts—a process that has been referred to as “transposition” (Sewell 1992, 19, 21; Levitsky 2014).

Furthering this line of analysis, Mustafa Emirbayer and Ann Mische (1998) provide a framework for understanding agency as it relates to structure. They disaggregate agency into three component elements: iteration, projectivity, and practical evaluation. The iteration of past thoughts and patterns, and their routine incorporation in practical activity, stabilizes structures that come to define relationships of power. Projectivity, by contrast, requires the generation of possible future trajectories of thought and action. Finally, practical evaluation is the capacity to make judgments about possible courses of action in response to evolving situations (Emirbayer and Mische 1998, 971, 979–80). Iteration, projectivity, and practical evaluation are all ways in which individuals and collectives mobilize schemas and resources within and across structures. These elements of agency provide a framework for understanding both how systems of power are reproduced and how they are contested. The fourth section of this article provides an account of how caste and gender-based discrimination and forced labor practices are reproduced and stabilized through iteration, including within communities engaged in manual scavenging. It also describes how police and *panchayats* (local governance institutions) tasked with implementing prohibitions on manual scavenging instead transpose manual scavenging practices within the administrative apparatus of the state. The fifth section describes how social movement actors leverage laws prohibiting manual scavenging to disrupt pervasive norms of domination, discrimination, and violence by challenging the social and cultural schema that anchor manual scavenging.

### ***Law, Vernacularization, and discursive integration in contexts of domination***

Empirical research attuned to the interaction between various structures has attended to the processes by which laws, rights, and practices of democracy are institutionalized by social actors—a process that has been referred to as “vernacularization.” Merry (2006) describes processes of vernacularization as falling along a continuum depending upon how extensively imported institutions are integrated into local cultural forms and practices—whether they are replicated, hybridized, rejected, or subverted. The integration of new frameworks into local cultural forms and practices may germinate at an individual level, but it must transcend the individual and become a social process in order to enact broader cultural, political, social, or economic changes. Attending to the relationship between discursive integration, vernacularization, and change, forgoing scholarship presents processes of vernacularization and discursive integration as a catalyst for activating organized political demands (Levitsky 2014). My research, however, shows that such processes may be reversed in highly repressive contexts. In contexts of domination, collectivization through engagement with social movements may be instrumental and prior to the vernacularization of a rights discourse that embeds individual experiences of discrimination in collective experiences of oppression and subjects them to organized resistance.

Sandra Levitsky (2014) introduces the term “discursive integration” to describe processes of synthesizing new logics with familiar patterns of thought and action. Attending to the role of discursive integration in catalyzing political action, Levitsky provides insight into why Americans have little inclination for translating their private care problems into political demands for social policy reform. She lays out how discursive integration can activate political engagement, ranging from consciousness raising to becoming active in making organized political demands (15).<sup>3</sup> Levitsky’s framework includes a conceptual shift to understanding an individual experience in the context of a broader social reality as a necessary, if not sufficient, condition for public action (16).

In studies of discursive integration in the context of caste politics in India, however, caste-based collective identification precedes vernacularization and mobilization. In her political ethnography of the *Yadavs*, a powerful northern Indian caste, Lucia Michelutti (2007, 639) lays out what she refers to as the process of “vernacularization of democratic politics”—the ways in which values and practices of democracy become embedded in particular cultural and social practices. Michelutti traces the emergence of new dominant castes in Indian electoral politics. She focuses on how local idioms of caste, kinship, religion, and politics in northern India inform how the *Yadavs* navigate the political world. Also attending to the role of vernacularization in caste-based mobilization, Suryakant Waghmore (2013) has applied the concept of “vernacularization” to understand how *Dalit* activists come to effectively communicate their local needs to foreign donors.

While Grace Carswell and Geert De Neve (2015) do not use the term “vernacularization,” their ethnography of legal mobilization by *Dalit Arunthathiyars*—a group considered to be at the bottom of the caste hierarchy in Tamil Nadu, India—considers how litigation under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989 (1989 Atrocities Act) impacts *Dalit* mobilization—at once institutionalizing *Dalit* rights and catalyzing political backlash from dominant land-owning communities.<sup>4</sup> These vernacularization studies share an interest in how social actors infuse new perspectives and practices within their social and cultural contexts. In each of these studies, shared identification on the basis of caste—whether for dominant or oppressed caste groups—serves as a collective foundation for the discursive integration of laws, rights, and practices of democracy. Studies that establish the potential for shared identification to provide a foundation for discursive integration are of course not limited to the Indian context. Lynette Chua (2015), for example, describes how sexual orientation and gender identity minority activists in Myanmar vernacularize human rights discourses as a strategy for cultivating oppositional consciousness, creating shared grievances, and catalyzing collective action.

This research makes two distinct contributions to forgoing scholarship on vernacularization, discursive integration, and legal mobilization. First, in Michelutti,

<sup>3</sup> Sandra Levitsky (2014, 15) presents a three-stage process: coming to view long-standing private needs as a matter for public deliberation and decision making; imagining solutions to unmet needs or interests or grievance construction; and making claims to an official agency or responsible party for action.

<sup>4</sup> Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 330 of 1989 (1989 Atrocities Act).



Levitsky, and Chua's accounts, vernacularization and discursive integration are presented as activating strategic and organized political demands. My research, however, shows that such processes may be reversed in highly repressive contexts. In contexts of domination, collectivization through engagement with social movements may be instrumental and prior to discursive integration or the practice of coming to understand individual experiences of discrimination as embedded in collective experiences of oppression that can be resisted. In these contexts, collectivization may be a condition of vernacularization, mobilization, and resistance, further underscoring the critical importance of social movements in upending discrimination and violence.

Second, this article builds upon, and contributes to, research on vernacularization and discursive integration by providing insight into these processes for groups resisting entrenched practices of domination in highly restrictive contexts for political action. Michael Collins (2017) has studied legal mobilization strategies by the Dalit Panther Iyakkam (DPI) (Dalit Panther Movement), and Carswell and De Neve (2015) have considered later legal mobilization of the 1989 Atrocities Act by Dalit Arunthathiyars, both in Tamil Nadu, India. My study of mobilization to end manual scavenging joins this vein of literature, lending insight into how social movements deploy legal resources to wage campaigns in contexts where government institutions not only fail to implement protections but also engage in discriminatory hiring and caste-based forced labor practices.

My focus on *Dalit* women once engaged in manual scavenging is particularly instructive because at the nexus of caste and gender-based hierarchy their experiences present a "systemic edge," a site of analysis at the margins where techniques of governance are most visible and brutal (Sassen 2014). To explain how mobilization can occur in such a challenging context, I introduce the term "circumventive legal resistance": the practice of bypassing barriers to enforcing the law but using the symbolic resources of the law. In this case, *Dalit* women leverage the cultural significance of manual scavenging being illegal to disrupt deeply entrenched collective cultural schema of caste-based discrimination and exploitation (Bourdieu 1977). This article, then, contributes to the project of understanding how the law works in India through attention to what people believe law is and what they do with this knowledge as they make decisions in their everyday lives. By studying contestations over manual scavenging in the everyday practices of local government institutions and in the mobilization of *Dalit* social movements, I also contribute to an understanding of the Indian state as a trans-local institution that is made visible in local practices (Gupta 1995, 376) and accessed through a "plurality" of various vertical and horizontal nodes (Marwah 2021).

### **Caste- and gender-based hierarchy amidst constitutional rights to equality**

Manual scavenging figures, simultaneously, within at least three structures of socially patterned practice: caste-designated hierarchy; patriarchal gender relations; and the post-1949 constitutional legal structure. This section describes each of these institutions in turn, providing context for the empirical work presented in the sections that follow.

### ***Caste-based hierarchy***

For centuries, civil, social, and economic life in India has been regulated by the caste system. This system of social stratification designates ranked groups defined by descent and confined to particular occupations. Caste designation impacts the ability to control land and other productive resources, establishing broad congruence between class and caste (Chakravarti 2005; Deshpande 2011). At the base of India's caste hierarchy, *Dalits* have historically been landless or nominal landholders and restricted to enslaved agrarian labor and stigmatized work (Mosse 2018), including manual scavenging, funerary work, and leather work (Thorat 2013). The caste-based social hierarchy is anchored through a web of discriminatory spatial, economic, and untouchability practices. Practices of restricting *Dalit* communities to stigmatized work reproduce an iterative script of caste-based social exclusion: engagement in forms of labor viewed as unclean renders a person untouchable, and daily practices of untouchability delineate boundaries between hierarchically designated caste groups (Silliman Bhattacharjee 2014). *Dalit* communities commonly live in segregated areas on the periphery of villages and urban areas. They are also routinely excluded from common water sources, public spaces, and temples. Spatial segregation and untouchability practices are justified by the ritualized avoidance of unclean tasks and the corresponding assignment of these tasks to “polluted castes” (Silliman Bhattacharjee 2014; Mosse 2018).

*Dalits* engaged as manual scavengers are usually from the Hindu *Valmiki* sub-caste,<sup>5</sup> held at the very bottom rung of the caste-based social hierarchy. Considered fit for only the most “polluting” labor, this caste group is tasked with manually disposing of human excrement and performing other unsanitary tasks. Upper caste households who rely on manual scavenging for sanitation historically pay meagre in-kind subsistence support rather than cash wages. In-kind payments include leftovers, grain, old clothes, and conditional access to upper caste land to collect wood and graze livestock (Silliman Bhattacharjee 2014). Dominant castes may impose social and economic sanctions and even threats of violence for non-compliance with caste-designated structures. Women reported that, since dry toilets must be cleaned daily, they faced pressure from the community if they missed even one day, including powerful members of the community coming to their homes and demanding they return. Women who left manual scavenging reported such harassment lasting as long as two years. Women who leave manual scavenging also reported that people from dominant castes threatened to displace them from the village or exclude them from community resources. This denial of access has devastating consequences for landless *Dalit* communities who rely on access to private and community land to graze livestock and collect wood. Women also reported threats of violence for leaving this work (Silliman Bhattacharjee 2014). Retaliation against *Dalits* who leave manual scavenging is consistent with broader patterns of retaliation against *Dalits* who resist the old system of hierarchy, ranging from social boycotts to violence (Béteille 2000; Shah 2000; Jodhka 2004; Gorringer 2005, 2012; M. Mohanty 2007; Teltumbde 2010).

Scholarship on the persistence of caste has been central to studies of contemporary India across disciplines (Vaid 2014; Mosse 2018). Since the inheritance of occupations is a distinctive feature of caste (Dumont 1980), its endurance in

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<sup>5</sup> The Hindu *Valmiki* sub-caste is further subdivided into regional groups such as the *Chuhada*, *Mehatar*, *Malkana*, *Halalkhor*, *Rokhi*, and *Lalbegi* or the Muslim *Hela* sub-caste (Silliman Bhattacharjee 2014).



socioeconomic and labor market contexts has been a robust site of inquiry. Recent studies conclude that, while groups considered higher caste have had opportunities for occupational mobility with the evolution of the Indian economy, mobility opportunities for groups considered lower caste remain largely restricted (Thorat and Attewell 2007; Thorat and Newman 2010; Vaid and Heath 2010; Deshpande 2011; Vaid 2012; Das 2013; Jodhka 2016; Mosse 2018). Policy and legislative measures to promote equal rights and opportunities for *Dalits* in employment, including government reservations, have had only limited impact on access to the labor market. *Dalit* workers continue to face exclusion in hiring and remain confined to caste-designated occupations or employment in the unorganized sector where they earn low wages, experience poor working conditions, and have no employment or social security (Deshpande 2011; Kompier 2014; Jodhka 2016; Mosse 2018). These challenges in accessing the labor market create yet another barrier to leaving manual scavenging.

### ***Patriarchal gender relations***

Structures of caste- and gender-based subordination are intimately linked, with patriarchy intrinsic to the formation of caste categories (Chakravarti 1993, 2005; C. Mohanty 2003; Shah et al. 2006; Deshpande 2011; Still 2017; Gorringer 2017). Control over women and their sexuality is integral to maintaining patrilineal caste delineation that secures control over land and other productive resources for dominant castes (Welchman and Hossain 2005; Gorringer 2017). Within this schema, control over all facets of a woman's life vests in male members of the family, beginning within the natal household and continuing in the conjugal household (Chakravarti 1993). While scholarship at the intersection of gender and caste has observed that *Dalit* caste groups have historically been more egalitarian toward women than groups considered upper caste, researchers have also documented the undervaluing of *Dalit* women within the family and workplace (Deshpande 2011) and practices by *Dalit* men of displacing ignominious caste-designated obligations onto their wives, daughters, and mothers (Mosse 2012, 182; Silliman Bhattacharjee 2014).

Women practice manual scavenging at the intersection of caste-, gender- and class-based systems of domination. Among communities who practice manual scavenging, gendered divisions of labor shift the burden of the traditional forms of manual scavenging onto women. While manual scavenging has evolved to encompass a range of remunerated and unremunerated practices, the traditionally unremunerated practice of removing human excrement from public streets and dry latrines is reserved to women. According to the International Labour Organization's estimates, 95 percent of private and village toilets in India are cleaned by women. While men may work as day laborers, their income is unreliable. Accordingly, families rely on the food handouts that women receive daily for survival. At the intersection of gender and caste, *Dalit* women are also particularly restricted in job mobility, further locking them into caste-designated roles such as manual scavenging (Deshpande 2007; Mosse 2018, 427).

### ***Legal prohibitions on manual scavenging***

Article 17 of the Constitution of India, adopted in 1950, explicitly abolishes untouchability. Its practice is forbidden in any form and punishable by law. Specific

prohibitions on untouchability are set out in the Protection of Civil Rights Act, 1955 (1955 Civil Rights Act),<sup>6</sup> and the 1989 Atrocities Act.<sup>7</sup> In 1949, soon after independence, India's central government began appointing committees to end manual scavenging.<sup>8</sup> Laws prohibiting manual scavenging include the 1976 amendments to the 1955 Civil Rights Act; the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.<sup>9</sup> Successive legislative and policy attempts to end manual scavenging have taken two distinct approaches: a technocratic approach aimed at ending the practice by eliminating dry latrines through national sanitation schemes<sup>10</sup> and a civil rights approach that criminalizes hiring for manual scavenging and addresses historical injustice at the root of the practice.<sup>11</sup>

The field work for this article was conducted in 2013, immediately following the passage of the Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (2013 Act), which outlaws all forms of manual scavenging and prescribes penalties for perpetuating the practice.<sup>12</sup> Emblematic of the civil rights approach to ending manual scavenging, the 2013 Act recognizes a government obligation to correct historical injustices suffered by communities subjected to manual scavenging, including by addressing the socioeconomic context in which manual scavenging persists. Accordingly, the Act includes provisions for cash assistance, scholarships, housing, and access to alternate employment.<sup>13</sup> In rural areas, the 2013 Act assigns implementation to *panchayats*, the elected village-level administrative councils responsible for economic and social development initiatives.

Manual scavenging practices persist in contexts governed by competing systems of power. Entrenched caste and patriarchal hegemonies are in tension with constitutional commitments to equality and gender, caste, and religious non-discrimination.

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<sup>6</sup> Protection of Civil Rights Act, No. 22 of 1955, s. 7A, which was added in 1976, provides that whoever compels any person on the ground of untouchability to do any scavenging shall be deemed to have enforced a disability arising out of untouchability that is punishable with imprisonment.

<sup>7</sup> 1989 Atrocities Act, art. 3 (which lists specific untouchability practices outlawed as atrocities).

<sup>8</sup> These include the Scavengers' Living Conditions Enquiry Committee, 1949; the Ministry of Home Affairs, Central Advisory Board of Harijan Welfare Scavenging Conditions Inquiry Committee, 1957; the Central Department of Social Welfare Committee to Examine the Potential Abolition of the "Customary Rights" of Manual Scavengers; the Karnata I.P.D. Salappa Committee; and the National Commission on Labour, Committee to Study the Working Conditions of Sweepers and Scavengers, 1968.

<sup>9</sup> Protection of Civil Rights Act, 1955, No. 22 of 1955 (1955 Civil Rights Act); Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46 of 1993; and the 2013 Act outlaw all forms of manual scavenging, including manually cleaning excrement from latrines, sewers, septic tanks, open drains, and railway tracks. The Act also addresses historical subjugation of communities that practice manual scavenging.

<sup>10</sup> Integrated Development of Small and Medium Towns Scheme, 1969; Sulabh Shauchalaya (simple latrines) Scheme, 1974; Integrated Low-Cost Sanitation Scheme, 1981; Low-Cost Sanitation for Liberation of Manual Scavengers Scheme, 1989 and Total Sanitation Campaign, 1999, renamed Nirmal Bharat Abhiyan (Clean India Campaign) (see Silliman Bhattacharjee 2014).

<sup>11</sup> Specific prohibitions on untouchability are set out in the 1955 Civil Rights Act and the 1989 Atrocities Act, amended on December 31, 2015. The 1955 Civil Rights Act made it an offense to compel any person to practice scavenging. In 2015, the 1989 Atrocities Act expanded protections for *Dalit* communities who assert their rights in discriminatory settings.

<sup>12</sup> 2013 Act.

<sup>13</sup> 2013 Act, ch. IV, s. 13.

Interactive and overlaid, caste-based, patriarchal, and constitutional schemas are decisively at ideological odds. Within these plural social fields, anchored by varied institutions, the research that follows seeks to understand, first, whether and how laws prohibiting manual scavenging are operationalized by local institutions and, second, how they are mobilized by impacted communities. With this approach, this article joins a line of scholarship that situates social movements in dynamic interaction with structures of power, linking resistance to hegemonic structures and foregrounding contention (Ewick and Silbey 1998; Ferree 2003, 308).

## Research methods

I conducted field research for this article between November 2013 and June 2014, twenty years after the passage of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993,<sup>14</sup> and immediately following the passage of the 2013 Act. I designed this research with the objective of identifying barriers to implementing the 2013 Act. I received funding from the *University of Pennsylvania Law Review* and Human Rights Watch.<sup>15</sup> This approach to designing research aimed at advancing not only scholarly inquiry but also initiatives to develop and implement rights protections joins a line of scholarship committed to pragmatic solidarity (Farmer 2003), not only perceiving social inequalities but also challenging and transforming inequalities of power (see, for example, Holmes 2013; Chatterji 2015; Nathan and Silliman Bhattacharjee et al. 2022).

My research included investigations in twenty-seven rural, semi-rural, and urban areas across fifteen districts in the north and north-west regions of India. Field sites were distributed across the Delhi-National Capital Region, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan, and Uttar Pradesh. According to Government of India statistics, the states chosen have had the highest number of people engaged in manual scavenging.<sup>16</sup> This cross-section is significant because, while gender- and caste-based social norms exert profound influence over social relations in all of these areas, their associated practices are distinctly regional.

I spent a total of four months traveling by minivan across the sites of this study with activists, joining them in village-level organizing meetings, internal strategy sessions, larger state and regional convenings, and consultations with government and international stakeholders. During this period, I was immersed within the campaign at various levels. I spent my days in villages and municipal areas where manual scavenging persists and in the homes of women who were engaged in the struggle to leave this work. I observed the spatial construction of caste, including segregation, ghettoization, and barriers to accessing public resources. I was particularly attentive to the interaction between the administration of laws and caste-designated and patriarchal structures of control. Upon identifying sites of contestation and acquiescence, I developed detailed case studies of sites of struggle

<sup>14</sup> Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46 of 1993.

<sup>15</sup> As a condition of support for this fieldwork, findings were released by Human Rights Watch in August 2014 in a ninety-six-page publication entitled *Cleaning Human Waste: Manual Scavenging, Caste and Discrimination in India* (Silliman Bhattacharjee 2014).

<sup>16</sup> Government of India (2007–12, 3).

through observation, legal and administrative records, and accounts from a range of local actors, including rights activists, lawyers, and government officials.

I contextualized my observations across research sites through 135 face-to-face semi-structured interviews, including with women and men who currently or previously practiced manual scavenging. Respondents were identified purposively, with attention to including perspectives of women engaged in manual scavenging, who had left manual scavenging, and who had become active in social movement struggles to end manual scavenging. With translation support, I conducted interviews in Hindi and Marathi.<sup>17</sup> Interviews were informal, often conducted as the women I spoke to went about their daily activities—on walks through fields, while fetching water, or while preparing food. This strategy facilitated private conversations with women who spoke more freely outside of the earshot of male and more senior members of the household. These conversations were guided by open-ended questions concerning why respondents entered manual scavenging; their experiences of manual scavenging, including health risks and untouchability; alternate employment available in the area and/or barriers to securing alternate employment; experiences joining or deciding not to join campaigns to end manual scavenging; decisions to stay within or leave manual scavenging; and experiences in leaving the practice. These interactions lasted between thirty minutes and three hours. I asked respondents whether they wanted me to use their name in this research or to alternately choose a pseudonym. Notably, all of the women engaged in campaigns to end manual scavenging chose to use their names, while women still engaged in the practice provided pseudonyms.

To access accounts of how resistance to structural violence emerges as a dialectic between individuals and collectives, among the 135 face-to-face interviews I conducted, I sought to identify “experiential stories” from women who left the practice and engaged in the collective struggle to transcend caste-designated roles (Morrill et al. 2000). These stories of transformation illuminate the forces that constrain experience and highlight the ways in which people resist such orderings (Ewick and Silbey 1998; Morrill et al. 2000). Performative and projective aspects of these stories provided insight into how the narrators negotiate, define, and redefine roles, relationships, and identities (Morrill et al. 2000; Engel and Munger 2003).

I also reviewed documents, including laws, policies, Supreme Court cases, and international human rights forum deliberations addressing manual scavenging from 1955 to 2015. These sources provide insight into landmark events, movement activities, and government positions on manual scavenging. To situate field work in the political and historical context, I developed a detailed timeline of all legislative, policy, judicial, and research-based initiatives to end manual scavenging from 1949 to 2014. This included national government initiatives; Planning Commission guidelines; action by India’s National Commissions for *Safai Karmacharis* and Human Rights; attention to manual scavenging by international human rights forums; and public interest litigation at the Supreme Court of India.

Following my field work, I used data analysis software to hand code debrief memos from individual interviews and case studies. I tagged data sources with both context and content codes. Context codes identified the personal positionality described by

<sup>17</sup> Translation support was provided by Vibhawari Kamble and Digvijay Singh.

the narrator. For women engaged or once engaged in manual scavenging, content codes included whether they practiced manual scavenging through individual households or government hiring. Thematic content codes were used to cluster discussion on key issues, including barriers to leaving manual scavenging, individual and collective resistance, discrimination, access to government benefits and protections, informal intervention by state actors, use of legal language, and social movement strategies. I tracked how thematic content codes shift in relationship to the position described by the narrator. This approach foregrounded shifts that catalyzed decisions to leave manual scavenging. Alongside this second phase of coding, I wrote a series of analytic research memos to examine the coded data, refine my theoretical framework, and integrate codes as needed. Analytic memos focused on untouchability and reversals of untouchability scripts; reproduction of manual scavenging within the administrative apparatus of the state; individual and collective resistance to structural violence; projective public resistance strategies; and circumventive legal engagement.

### **Reproducing manual scavenging**

This section provides an account of how hegemonic structures are reproduced, both among *Dalit* women who practice manual scavenging and within the administrative apparatus of the state. First, it describes how women who practice manual scavenging have symbolically configured their *jagir* (in this case, the inherited role of cleaning in particular homes) as akin to a legally verifiable property right. Next, it details how police and *panchayats* (local governance institutions) tasked with implementing prohibitions on manual scavenging instead replicate caste- and gender-based hiring practices that sustain caste-based divisions of labor within local governance structures. These transpositions of manual scavenging within legal, administrative, and political imaginaries and institutions shape and direct iteration of caste-based schema (Emirbayer and Mische 1998, 984).

### ***Symbolic configuration of manual scavenging as a legal entitlement***

Under the *jajmani* system, a system of aristocratic patronage found in villages of the Indian subcontinent (Platteau 1992), lower castes perform various functions for upper castes and receive grain or other goods in return. According to this schema, *Dalit* dependents may have hereditary relationships with upper caste families, meaning that several generations of a *Dalit* family may work for corresponding generations of one or more upper caste families (Deshpande 2011). This system establishes a schema of stable, hierarchical relationships rooted in servitude and coercive labor (Platteau 1992; Deshpande 2011). For women who practice manual scavenging, the *jajmani* system establishes that, in exchange for living on land owned by upper caste families, they must clean toilets and perform other labor associated with “unclean” tasks. These relationships are typically passed from generation to generation, and women usually have no choice in the matter. In this way, women “inherit” the right to clean toilets in private households. When they get married, they join their mothers-in-law in daily rounds of collecting and disposing excrement to eke out a livelihood.

For women engaged in manual scavenging, the practice has historically been symbolically configured as a legal entitlement akin to a property right. Women from communities who practice manual scavenging refer to manually cleaning toilets as their *jagir* (estate)—terminology that evokes a grant of administrative authority and the right to collect revenue from the designated area. A *jagir* may vary in size, typically ranging from ten to thirty households, although one woman reported marrying into a family with a *jagir* that spanned one hundred families. A larger *jagir* increases the value of the inheritance. Describing the configuration of caste-based labor as a property holding, Kuldeep, a Rajasthan-based community organizer, explained: “In some communities, women inherit the keys to the jewelry locker. In the *Valmiki* community, they inherit the work of cleaning excrement from toilets.”

The configuration of a *jagir* as a family asset functions as a barrier to women leaving manual scavenging. Badambai, from Piplia Rao Ji, Madhya Pradesh, described taking four years to leave manual scavenging work, due in part to fear of losing her *jagir*: “The threat that I would be thrown out from the village and replaced made me come back to do the work. I felt ‘this is our *jagir*, no one else can take it.’ From 2003 to 2007 I was in and out of doing the shit-cleaning work.” As described by Badambai, her *jagir* granted her an entitlement to remain within the boundaries of the village. Her *jagir* was imbued with the status of owned property: in Badambai’s account, it was subject to alienation, theft, or loss and could be taken from her if she did not “do the work.”

Despite the degrading nature of the work, a *jagir* confirming the right to practice manual scavenging within the village in return for in-kind remuneration is considered an asset in a context where *Dalit* women face significant barriers to accessing the labor market. Bhuri from Bharatpur city in Rajasthan, for instance, described trying to learn an alternate trade but returning to manual scavenging when she was unable to get her sewing business off the ground:

In 2012 I left my own *jagir* to go for sewing classes. The class ended after two months and I waited for two months for the loan to buy my sewing machine, and then I could not sit at home any more. I needed to work. So now, today, I clean the latrines. I get *roti* [bread] every day and Rs. 20 to 30 [30 to 50 US cents] each month. We are all waiting to leave the work, but I have to have something else.

Holding a *jagir* is not only tied to livelihood but also to social standing. Women described taking significant efforts to acquire a *jagir* and the social position corresponding with this holding. Tasleem, from Tirana, Madhya Pradesh, purchased a *jagir* and formalized her purchase with a deed of sale printed on stamped paper. She explained:

In 1977, my husband and I decided to purchase a *jagir* so we would have a family asset which is necessary to get our son and daughter married. For 12,000 rupees [US \$177 in 1977], we purchased a *jagir* that entitled me to clean the dry toilets in 21 houses. For 15,000 rupees [US \$221 in 1977] we purchased another *jagir* which entitled me to clean dry latrines in 20 houses, and for him to do general sweeping in those houses. To purchase these *jagirs*, we borrowed



money from a local cow-dung seller. My husband and I repaid this debt through bonded labor where we were paid 200 rupees [US \$2.95 in 1977] each month.

In Tasleem's account, the *jagir* takes the form of property that can be purchased and sold. Their purchase confers the right to undertake gendered forms of labor: Tasleem is entitled to clean dry toilets, and her husband is entitled to do general sweeping. Her purchase of the entitlement to do manual scavenging and sweeping work is established in an agreement printed on non-judicial stamp paper—a paper with a revenue stamp that is used in non-judicial transactions between parties. The use of non-judicial stamp paper—a practice associated with sale deeds, affidavits, transfers of immovable property, agreements, and wills—symbolically configures her *jagir* as a transferable asset akin to property. Twenty-eight years after manual scavenging has been constitutionally prohibited, Tasleem purchased a *jagir* rooted in caste-based practices, symbolically securing the legal status of her purchase through the use of non-judicial stamp paper.

Put another way, in this transaction, the practice of manual scavenging becomes anchored in both the caste-based lineage of servitude represented by the *jagir* and the institution of property rights. Among women who practice manual scavenging, this hybrid institutional anchoring reinforces the unfaltering social and personal expectation that they undertake this dehumanizing form of caste-based labor. These practices live on as legitimate in the imaginaries of *Dalit* women because caste and patriarchal structures are so normalized that, left undisrupted, they can eclipse the potential for an alternative livelihood and way of life. Kiran from Bhonrasa village, Dewas district, Madhya Pradesh, a leader in the civil rights movement to end manual scavenging explained: “When we were manual scavengers, we were like the proverbial frogs in a well. We always faced discrimination, so we never really applied our brain to understanding why society is this way.”

### ***Replication of manual scavenging by local institutions***

The 2013 Act prohibiting manual scavenging assigns enforcement to government institutions at the local and state level. Rather than enforcing the prohibition, I found these institutions reproduce caste and gender-based relationships of power by exclusively hiring *Dalit* workers to clean dry latrines and do other sanitation tasks. Arti Valmik from Bhatiaagar village, Damu district, Madhya Pradesh, was hired to clean dry toilets in the very state offices tasked with enforcing laws to end manual scavenging: “Before I left this practice, I was working in the police department where I was hired to clean the dry toilets. I also used to clean dry toilets for the Chief Executive Officer of Bhatia block. I cleaned some houses in the village but for the most part I worked for government offices.”

### ***Illegal and discriminatory employment of manual scavengers by local governments***

Police, village councils, and municipal corporations reproduce manual scavenging through caste-based hiring, withheld wages, and threats of eviction and displacement in cases of non-compliance. Transposed within local government institutions, manual

scavenging remains functionally intact: employed as *safai karmacharis* (sanitation workers) but denied regular wages, women manually collect excrement from dry toilets and open defecation areas and return to the houses and places they cleaned to beg for food. Fears of eviction from government-provided housing prevents them from refusing this illegal work.

*Panchayat employment in Maharashtra.* In Dhule, Jalgaon, Nandurbar, and Solapur districts in Maharashtra, across all seven villages where I conducted fieldwork, *panchayats* exclusively hire men and women from communities that historically practice manual scavenging as *safai karmacharis* (sanitation workers) to do the illegal work of manually cleaning dry toilets and open defecation. Gita from Nhavi village in Jalgaon district, explained that *panchayats* do not employ people from her community for any other jobs besides cleaning toilets. She described not wanting to do this type of work but doing it anyway because she had no options for employment.

Anil and Rina, a young married couple, described moving within Dhule district, Maharashtra, where they are from to Kaparna village. Rina had completed high school, and Anil had studied until ninth grade, but they were still restricted to manual scavenging. Anil explained: “If you are a *Mehatar* by caste, you have to do this work.” He described a strictly regimented distribution of labor among caste groups in the village: “If there is excrement to clean, a garbage collector will not do it. They will call us to do it. I cannot even apply to do other work.” Mayabai who was employed by the *panchayat* to do manual scavenging work in Fagne village, in Dhule district, echoed these sentiments: “I cannot get any other work.”

Where local communities that historically practiced manual scavenging manage to break out of caste-designated employment, villages bring in migrant workers, exclusively from the *Valmiki*, *Hela*, *Lalbeghi*, and *Mehatar* communities, to take their place. In Kusumba village, also in Dhule district, I spoke to Rajubai and her family. They are from Akkulkuwa in Nandurbar district, a tribal area on the border of Gujarat and Maharashtra. They explained that in 2010, the Lokhande family left the village to seek alternate work. The Lokhande family had cleaned the dry toilets, open defecation, and drainage lines in the village for several generations. When they left, instead of implementing government schemes to replace dry toilets,<sup>18</sup> the village council solved their sanitation crisis by bringing in *Valmiki* families—a caste group made to practice manual scavenging—from other parts of Maharashtra. Five *panchayat* members drove to Akkulkuwa, hired Rajubai and her family, and brought them back to Dhule district to take the place of the Lokhande family.

*Municipal corporation employment in Rajasthan.* In Bharatpur city in Rajasthan, women and men from the *Valmiki* community were hired by the municipal corporation to manually clean excrement from drains, both directly by the government and through contractors. I spoke to Neha, who had worked as a *safai karmachari* (sanitation worker) for ten years. She explained her work: “I clean my area, these two lanes. I clean twice a

<sup>18</sup> Promising policy initiatives in India often falter due to poor implementation. Programs to end manual scavenging are no exception. In their report on the 2013 Act, the Government of India’s Standing Committee on Social Justice and Empowerment (2013) noted: “[S]uccessful implementation of the new Act would largely depend on how the Corporations, Municipalities, and Other Local bodies would be motivated and geared up for meeting the challenges to be thrown up by the new Act.”

day because it is so dirty. The houses here flush excrement from the toilets directly into the drains. I have to pick out excreta, along with any garbage from the drains. We are not given anything to protect us. No mask, no gloves, no shoes.” When I spoke to a senior official employed by the municipal corporation, she acknowledged having heard about laws prohibiting manual scavenging but not having read them personally. She also said she had no knowledge of whether excrement was cleaned manually in her jurisdiction since that work is “left to the contractor.” In fact, more than 60 percent of all hiring by the Bharatpur municipal corporation takes place through subcontractors, significantly limiting government oversight and investigation of caste-based discrimination in hiring.

At the time, out of 820 sanitation jobs in the city, five hundred cleaning “beats” were covered by subcontracted sanitation workers. Two brothers, Rajkumar and Ashok Jain, held the contracts for all of these workers. According to Rajkumar Jain, “between 75 and 100 beats require sanitation workers to manually clean open defecation and excrement from drains,” and only *Valmikis* are hired to do this type of sanitation work. “All our subcontracted workers are from the *Valmiki* community,” he explained. “No other community would do this work.” While the municipal corporation hires non-*Valmiki safai karmacharis* directly, according to Rajkumar, these workers do not actually do sanitation work. Instead, they are hired as *safai karmacharis* but work in offices or as messengers.

In both rural Maharashtra and semi-urban Rajasthan, entrenched caste-designated labor practices structure hiring within local administrations. The very institutions tasked with eliminating the illegal and dehumanizing practice of manually cleaning excrement instead reproduce this practice through hiring parameters. Both direct hiring by *panchayats* and municipal corporation hiring and subcontracting practices replicate the caste-based concentration of groups that have traditionally been made to practice manual scavenging in rural and contemporary urban forms of this work. As such, manual scavenging—rooted in the *jajmani* system—is grafted into the administrative institutions of the state.

**Withheld wages.** Within the *jajmani* system, remuneration for manual scavenging is discretionary. This patronage system maintains manual scavenging practices by making access to economic resources and land for housing and grazing livestock a condition of fulfilling caste-designated obligations. During my field research, I documented how local government institutions replicate caste-based practices of withholding wages and maintaining conditional access to land. Iteration of withheld wages and conditional land and housing access by government employers transposes the mechanisms of control that have traditionally anchored manual scavenging to the administrative apparatus of the state. Consistent with discretionary remuneration prescribed by the *jajmani* system, women and men who practice manual scavenging as *safai karmacharis* report that local officials deny and delay wages. Shantabai from Kingaon Village, Jalgaon district, Maharashtra, explained:

They don't pay us. It is always delayed. When I started 25 or 30 years ago the pay was 200 rupees per month. Now it is 1,500 rupees but whatever they say the pay is, they do not give it. Every week in the market, we go with our baskets and beg and people give us small portions of food. On other days, we go

and beg for food in the village. They give us cooked food, especially the wealthy houses because it is their duty as upper castes. They know we are not getting wages. Since I came here 30 years ago, I have had to beg for food.

The twin practices of village councils withholding regular wages, and Valmiki workers going door to door to collect leftover food to meet their basic subsistence needs, was common across the villages I visited in Dhule district. Although transposed within local government institutions, the practice of manual scavenging remains functionally intact: employed as *safai karmacharis*, but denied regular wages, women manually collected excrement from dry toilets and open defecation areas and returned to the houses and places they cleaned to beg for food. Instead of receiving designated wages, remuneration in the form of leftover food is discretionary and conditioned by caste-based “duty” among households considered upper caste. Systematic non-payment of wages by *panchayats* also prevents people from leaving the work. Rajubai and her family who migrated for employment in manual scavenging work from Akkulua to Kusumba in Dhule district described wanting to leave the work and go home but being unable to do so until she and her family were paid back wages: “The *panchayat* will not allow us to leave,” she explained. “They keep us here by not giving us our full payment.”

Valmiki families hired as *safai karmacharis* say they have no recourse when wages are late. In fact, among *panchayat* and municipal corporation workers, *safai karmacharis* are uniquely excluded from protection under India’s Payment of Wages Act, 1936 (1936 Act).<sup>19</sup> Wage protections under the 1936 Act apply to *panchayat* and municipal corporation workers employed in work relating to water supply and generation, transmission, and distribution of electricity. These protections, however, do not extend to sanitation workers, making them uniquely vulnerable to exploitation.

*Eviction threats from local government officials.* In a striking parallel to the practice of dominant castes threatening to displace families from the village if women resist manual scavenging, I found that local government officials use threats of eviction as leverage to keep families engaged in manual scavenging. Jameel Abbas from Taluka village, Dhule district, Maharashtra, explained: “If we try to leave this work, the *panchayat* members threaten us that if you are not working, we will bring other people. We will be asked to leave the village.” Despite not being paid, women and men working as manual scavengers described feeling compelled to work to ensure that they are not evicted from government houses—often homes where their families have lived for generations. Shakeel Abdas Methar, also from Taluka village explained: “I have been told that if I miss work, I will lose the house given by the *panchayat*.”

In 2013, such threats of displacement were activated in Kingaon village when seven families went on strike to demand wages that had been withheld for ten months. In response, the *panchayat* issued written eviction notices. Bika, who was involved in the strike explained: “The *panchayat* gave us written notice—“If you continue this strike, you will have to leave this house and we will bring in someone else.” Nine families in nearby Nhavi village, in Jalgaon district, Maharashtra, also went on strike in 2013, demanding regular wages and a wage increase for sweeping the village, cleaning

<sup>19</sup> Payment of Wages Act, 1936, No. 4 of 1936.

toilets, and manually cleaning open defecation. As in Kingaon village, these families lived in houses provided by the *panchayat*. As recounted by Bimal, in retaliation for the strike, first the water and then the electricity in their homes was cut off. Then they were threatened with eviction. According to Gita, the *panchayat* even threatened to have the police physically remove them from their homes.

Communities made to practice manual scavenging also reported facing retaliation from the *panchayat* for seeking alternate agricultural and labor work distinct from manual scavenging. Retaliation included threats of eviction by the *panchayat* from *panchayat*-provided housing. Retaliation for seeking alternate employment locks communities into manual scavenging even in contexts where other work is available. Bimal, from Nhavi village, described forgoing opportunities due to threats of eviction: “In our village, there is farming and labor work, but if I go to farm, I get threats from the *panchayat* that I must empty the house.” Bimal’s sister Gita described wanting to start a small business selling vegetables or raising goats but being concerned that she would not earn enough money to pay rent if she lost her home.

The impact of housing insecurity, combined with threats of eviction and displacement for leaving manual scavenging has been acknowledged and addressed in the 2013 Act and by the Supreme Court in *Safai Karmachari Andolan v. Union of India*.<sup>20</sup> Both the Supreme Court and the 2013 Act call for states to provide a residential plot and funds for construction to families that leave manual scavenging. Access to housing is to be implemented under existing central and state government schemes,<sup>21</sup> such as Indira Awaas Yojana (IAY), a social welfare program operated by the Rural Development Ministry that aims to provide housing for the rural poor through subsidies and cash assistance to construct houses. Hindu and Muslim families working as manual scavengers fall within the target group for this program.<sup>22</sup>

The process for selecting beneficiaries under the IAY scheme, however, is left to *panchayat* officials, providing an avenue for discrimination at the local level. For instance, in Nhavi village, no one from the *Mehatar* community has been selected for support under the IAY housing scheme. Bimal applied but was refused on the grounds that her family already had access to government-provided housing in exchange for doing manual scavenging work. In short, her engagement in manual scavenging and long-standing residence in *panchayat* housing disqualified her from the benefits of the IAY, which she requires in order to leave the practice. The caste-based *jajmani* labor system, tying access to housing to caste-based labor, is replicated by the *panchayat*—one of the institutions that holds a mandate to end this practice.

### Collective action, law, and resistance to manual scavenging

Within social fields where manual scavenging persists, social movement actors are essential catalysts for transformation. In 2002, the grassroots *Dalit* community organizers from across India launched a national campaign to support people who practice manual scavenging to leave the practice. By 2023—ten years after the

<sup>20</sup> *Safai Karmachari Andolan*, para. 14(i); 2013 Act, ch. IV, s. 13 (1)–(2), ch. V, s. 18.

<sup>21</sup> 2013 Act, ch. IV, s. 13 (1)–(2); ch. V, s. 18.

<sup>22</sup> Government of India, Ministry of Rural Development (2013).

passage of the 2013 Act—at least 58,000 women had “liberated” themselves from manual scavenging through this campaign.

### ***Law and invoking resistance***

Social workers and women who have already left manual scavenging cultivate awareness that manual scavenging is an illegal form of caste-designated forced labor akin to slavery. This framing is diagnostic and prognostic (Emirbayer and Mische 1998): it challenges women who practice manual scavenging to understand that the exploitation they face is illegal and what they can do to address it. A Madhya Pradesh-based community organizer explained: “We believe that if they realize this practice is slavery, they will break their shackles and demand to be free. We help women realize that they have the power to say no to this work. People who have liberated themselves in one village motivate people in the next village to end this practice. This is a movement for liberation.”

Despite the significant barriers to implementation described in the previous section, when taken up by social movements, laws prohibiting manual scavenging play an integral role in disrupting pervasive norms of domination, discrimination, and violence by challenging the social and cultural schema that anchor manual scavenging. Community organizers work to diffuse these legal norms as a framework for resistance, and women who have left manual scavenging describe legal knowledge as instrumental in this process of shifting perception, transforming ideology, and instilling a sense of entitlement. Arti, from Batiagarh in Damoah district, Madhya Pradesh, explained: “If they threaten us now, we know that the Dalit Act [the 1989 Atrocities Act] applies. We know there is a law that says we are not allowed to do this work. We told the dominant castes that now we know these laws. Now that we know the laws, they do not pressure us.”

For Arti, laws prohibiting manual scavenging and caste-based discrimination and atrocities shift the terms of interaction between herself, other women who have left manual scavenging, and people from dominant castes that once coerced them to engage in the practice. Arti emphasizes not only that she now knows the laws that apply when she is threatened but also that she and the other women from her village are informing castes considered dominant that they understand their rights. Here, Arti’s legal knowledge provides both normative principles and strategic resources for conducting social struggle. Claiming the legal right to leave manual scavenging work invokes a symbol of legitimacy that links her resistance to the more profound guarantees of constitutional rights.

Prior to taking remedial action to give up manual scavenging, however, a violation must be perceived or named (Felstiner, Abel, and Sarat 1981). Women who leave manual scavenging redefine the practice as an illegal form of caste-based exploitation rather than a legal entitlement by understanding the impacts of the practice on their health and experiences of social discrimination. Women who have left manual scavenging reported that when they first encountered the campaign to end manual scavenging they did not understand why it was in their interest to give up their inherited practice. Laldkuwar from Chattarpur district, Madhya Pradesh, explained:



When women who had left manual scavenging first came to our village, we did not understand their point. Manual scavenging was our *jagir* [inheritance]. At marriage time, we would see, in that house, how many baskets does the woman carry away? Is it more than five baskets? Then my girl will be able to earn food and live properly. After two or three conversations with sisters who stopped manual scavenging, I understood that the reason we lose our hair, get skin diseases and have problems breathing is because we carry excrement in these baskets on our heads. Now that we have left this work, we are not slaves to anyone.

Through engagement with the campaign to end manual scavenging, Laldkuwar disrupts the iterated script of manual scavenging as a valued inheritance by understanding the health consequences of this practice, including “constant nausea and headaches, respiratory and skin diseases, anemia, diarrhea, vomiting, jaundice, trachoma, and carbon monoxide poisoning” (Silliman Bhattacharjee 2014).

Taslim Bi linked manual scavenging to the untouchability and discrimination her children faced in school: “At first, I did not understand why people treated us as untouchable, then by speaking with women and men from [the movement to end manual scavenging], I understood that they make us do their filthy work and then discriminate against us on this basis. It is a circle.” From this process of problematization, Laldkuwar’s and Taslim Bi’s cognizance of manual scavenging as a violation has emerged. In Laldkuwar’s account, manual scavenging has come to be dislodged from the caste-based schema in which it is scripted as an inheritance and recharacterized as a form of slavery. Taslim Bi comes to understand how manual scavenging practices anchor generational forms of discrimination, marking herself and her children as targets of discrimination. While engaging in the interactive process of naming and blaming, Laldkuwar also describes her practical evaluation of whether to leave this practice (Emirbayer and Mische 1998, 971, 979–80), deliberating over whether to leave manual scavenging over the course of two or three conversations with women who had already left the practice.

### ***Circumventive legal resistance***

For women who resist manual scavenging, reproduction of caste-based practices within state institutions limits access to formal legal relief. Laws prohibiting manual scavenging and caste-based discrimination open up a space for contestation, but, without access to legal enforcement, contestation takes alternate forms. Conditioned by institutionalized forms of caste-based domination, the change processes described in this final section, draw on law to make claims but circumvent direct legal pathways—processes I refer to as circumventive legal resistance.

Although women who leave manual scavenging evoke and even engage formal legal pathways in naming rights violations, their resistance unfolds along alternate trajectories, including collective public refusal of manual scavenging and seeking informal resolution and mediation by local authorities to address threats of displacement and violence for leaving the practice. These strategies make legal claims while circumventing the direct mechanisms for enforcing these claims, facilitating relief beyond the exclusionary parameters of law enforcement in contexts of domination.

*Articulating systemic violence and projecting resistance*

The emblematic, primary symbol of resistance and protest strategy among women who leave manual scavenging is public collective refusal of manual scavenging by all women engaged in the practice in a particular village. As Kiran from Bhonrasa village in Dewas district, Madhya Pradesh, described: “In our village, there were 26 women from the *Hela* and *Valmiki* community that came together on the same day to leave this work. We went to the marketplace, brought our baskets and burned them down. We started a collective to support each other, *Garima Shakti Sangathan* [Dignity Strength Collective].” Disrupting ongoing social practices, women refuse manual scavenging by burning the baskets once used to collect human excrement. Burning baskets symbolic of manual scavenging unsettles ritual associations and metonymically refuses the relationships of authority that belie the practice. This symbolic recomposition takes elements of meaning tied to women who practice scavenging and the baskets they use—symbols of subordination and untouchability—and brings them together in a combination that foregrounds their agency in resisting coercive labor. This solidarity is integral to resistance. Public, collective refusal of manual scavenging not only signals resistance but also projects solidarity and organizational achievement. Like Kiran, many women reported that the initial act of collectively burning their baskets prompted them to form collectives to support one another in withstanding community pressure to return to manual scavenging (see Figure 2).

Laldukuwar described how after burning their baskets she and other women from her village spread awareness about laws that prohibit manual scavenging: “We told them emphatically that we will not do this work. We told them that those who hire us to do this work will be sent to jail for six months. We also put up papers on the walls of the village so other people came to know the law.” Laldukuwar described invoking legal authority to reinforce her right to disrupt caste-based labor practices. Although local law enforcement hitherto has failed to enforce prohibitions on manual scavenging in the village, *Dalit* women publicize the law as a framework for resistance. Women who resist manual scavenging, both individually and collectively, reformulate past patterns of caste- and gender-based domination by projecting alternative future trajectories grounded in a consciousness of legal rights. In burning their baskets, they challenge hegemonic caste- and gender-based norms by altering their relationship to the cane basket as a symbol of the structures that define the social fields they inhabit.

*Informal resolution through formal enforcement channels*

In situations of unequal power, rights discourse can also be used as leverage to broker informal resolution. While this study did not uncover even one case of formal police action against individuals or institutions that perpetuate manual scavenging, I did identify cases in which police and other officials evoke the law to informally intervene on behalf of women who left manual scavenging. For instance, in November 2012, twelve *Valmiki* women in Parigama village, Mainpuri district, Uttar Pradesh, came together to collectively refuse manual scavenging. When they refused to clean the dry toilets in the village, they were threatened by members of the dominant *Thakur* caste and then threatened again in a public meeting. Guddidevi, a leader from Parigama village explained how these threats escalated in intensity. First, the women who left manual scavenging were threatened in their homes that if they did not return to



Figure 2. Women refuse manual scavenging by burning the baskets once used to collect human excrement. Credit: Bhopal, Madhya Pradesh, 2013.

manual scavenging, they would be denied grazing rights and be beaten with sticks and stones. Then, six women were called into a meeting of upper caste men and told that if they did not resume the work they would be beaten. Guddidevi recalls being told: “We will not let you live in peace.” After two weeks, the threats escalated. More than twenty upper caste men confronted not only the women who left the manual scavenging but also the *Valmiki* men. They demanded that the men start sending their wives and mothers to clean the village toilets or they too would be beaten.

In response to these escalating threats, three women from the *Valmiki* community—Guddidevi, Sarojadevi, and Meenadevi—sought police intervention. First, they went to file a complaint at the local police station, five kilometers away. The police officer at the Alau Tahsil police station refused to file the complaint. Then, together with a community organizer, they traveled by bus to Mainpuri district headquarters to appeal for support to the superintendent of police. The superintendent of police not only registered their complaint on November 24, 2012, but also followed up with local police and administrative authorities. Two days after the superintendent of police intervened, community organizers persuaded government officials to call a meeting in Parigama between the *Valmiki* and the *Thakur* communities. In the meeting, the police gave verbal warnings against any further attempts to require women to return to manual scavenging. The visit had an instant impact in stopping threats of eviction and violence. Gangashri, who was at the meeting, recalled: “The police told them, ‘If you try and force them, we will put you in jail.’”

Compelling women to resume manual scavenging through threats of violence constitutes a violation of the 1955 Civil Rights Act and the 1989 Atrocities Act. Rather than file criminal charges and investigate allegations—a process that could result in imprisonment of the perpetrators—the police traveled to Parigama and evoked the law as a warning without actually enforcing the law to address the rights violations at hand. In this instance, absent the prospect of winning legal enforcement on prohibitions to end manual scavenging, community organizers leveraged police presence and the threat of potential future enforcement to stop threats of eviction and violence against women leaving the practice. This approach drew upon legal and enforcement authority to resist caste-based threats and end manual scavenging in Parigama while circumventing barriers to actually enforcing the law that are rooted in unequal relationships of power within the village (see Figure 3).

Similarly, in Bhorasa, Madhya Pradesh, when twenty-six *Valmiki* and *Hela* women burned their baskets and left manual scavenging, community organizers called upon the district collector and police officers to come to the village to inform the community and the *panchayat* that manual scavenging is against the law. In Ujjain District, Madhya Pradesh, where *Valmiki* families were allotted land by the government that was illegally and forcefully occupied by people considered to be of a higher caste, police refused to file charges but, at the behest of community organizers, intervened informally to help them take possession. Patterns of refusal by police to formally enforce laws prohibiting manual scavenging and caste discrimination by taking action against upper caste families and government officials that perpetuate the practice; and their simultaneous willingness to informally intervene on behalf of women who resist manual scavenging, shapes strategic action by women who resist manual scavenging.



**Figure 3.** “We told the police, ‘We are being forced to do this illegal work and want to file a report.’ The police officer would not file the complaint. We . . . reached the Superintendent of Police. He did not file a complaint, but he came to our village and told the Thakurs [upper caste group] that the threats must stop.” Credit: Guddidevi, Mainpuri district, Uttar Pradesh. © Digvijay Singh, 2014.

For instance, in response to the systematic exclusion of the *Valmiki* community from using public cremation grounds in Piplia Rao Ji on the border of Madhya Pradesh and Rajasthan, Lalibai, supported by a lawyer and social worker, approached the superintendent of police with a written report explaining that exclusion from public cremation grounds violates the 1989 Atrocities Act. They called for the superintendent of police to file a first information report (FIR), initiate a formal criminal investigation, and hold a village meeting to inform the community that *Valmiki* families have a legal right to use the cremation grounds. Lalibai also informed the police that, if they did not take any action, she would report to the media and State Commissions on Human Rights and Scheduled Castes and Scheduled Tribes. In her initial engagement with the police, Lalibai called for both formal and informal intervention. She also warned local authorities that she was prepared to evoke state and national-level pressure.

While the superintendent of police refused to file a FIR and initiate a criminal investigation, he did assign a head constable to hold a village meeting, including the *sarpanch* (village head) and other influential members of caste communities considered dominant. During the meeting, the constable went over the 1989 Atrocities Act and called for an agreement allowing the *Valmiki* community to use public facilities. Kranti, a lawyer who helped in guiding this case, explained the outcome of this strategy:

Lalibai agreed not to file a FIR on the grounds that she would no longer be barred from using public facilities, including public cremation grounds and the ration shop. In this case, a compromise was considered more desirable than legal action since legal action threatened to further polarize the community rather than promote dialogue. The next time that Lalibai tried to use the cremation grounds, the *sarpanch* accompanied her to make sure there was no problem.

Lalibai invoked her right to non-discrimination but ultimately pursued informal resolution to address not only an individual dispute but also a pattern of discrimination. This mode of legal mobilization draws upon legal norms but is open to engaging alternate processes. As a political strategy, circumventive legal resistance by *Dalit* women who leave manual scavenging responds to the reality that formal channels to relief may be largely foreclosed, draws upon the law to invert social scripts of subjugation, and formulates demands outside the bounds of formally prescribed enforcement.

## Conclusion

The concept of circumventive legal resistance that I have advanced provides a framework for understanding how progressive laws can be mobilized in extremely challenging contexts for social transformation. As laid out in this article, where channels to law enforcement are foreclosed, circumventive legal resistance uses the symbolic resources of the law to contest power relations that directly benefit from the non-implementation of legal protections. Such engagements and contestations



evoke the law to articulate systemic violence but ultimately seek resolution through informal alternate channels.

While this article covers collective public refusal of illegal labor and untouchability practices and informal mediation by public authorities as particular types of circumventive legal resistance, the concept has applicability in other contexts where caste-based discrimination and forced labor practices persist. Moreover, although caste is distinct from race in that it represents a system of social stratification that predates colonialism by centuries (Deshpande 2011), at their core, both are systems of ascriptive hierarchy and symbolic violence (Jodhka 2016). Recognizing this resonance between caste and other systems of oppression expands the potential application of circumventive legal resistance to understanding strategies for resistance in other contexts where social movements resist domination anchored at the nexus of gender, race, and other vertical and ethnic formations.

My study of contestations over manual scavenging in the everyday practices of local government institutions and in the mobilization of *Dalit* social movements foregrounds the importance of considering how laws aimed at addressing structural discrimination interact with state institutions and the imaginaries of groups facing entrenched systems of exploitation and domination. This study empirically demonstrates the relevance of a pluralistic approach to social fields when studying how social movements mobilize law to upend discrimination in contexts structured by entrenched systems of domination. A focus on uncovering the replication of discriminatory practices within the imaginaries of oppressed groups and state institutions provides critical context for understanding the terrain of legal mobilization.

Finally, this article contributes to a line of research focused on how the interpellation of democratic and legal frameworks—synthesizing new logics with familiar patterns of thought and action—can catalyze social movement mobilization. As laid out in this study, for women who practice manual scavenging, restriction to caste-based forced labor is deeply internalized and anchored by their position within the family and community. In this context—described by Kiran as being like a frog in a well, unable to see beyond the discrimination she faced—engagement with the movement to end manual scavenging, including other women who have left manual scavenging, is instrumental to understanding how individual experiences of discrimination and exploitation are part of a collective experience of oppression at the intersection of gender and caste. Here, processes of collectivization and recognizing collective experiences of oppression are a precursor to cognitively integrating progressive laws and democratic frameworks that render manual scavenging and caste-based discrimination illegal. This insight into the critical role of collectivization in activating the symbolic resources of the law in highly oppressive contexts is particularly urgent as rising authoritarianism restricts social movement activity and freedom of association across the globe.

**Funding Support.** This project was supported by the *University of Pennsylvania Law Review* and Human Rights Watch.

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