
FROM SACRED ORDER TO STATUTORY RESIDUE: MANUFACTURED HIERARCHY, COLONIAL CODIFICATION, AND THE PERSISTENCE OF CASTE AND GENDER DISCRIMINATION IN INDIAN LEGISLATION

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I. Introduction

In October 2024, the Supreme Court of India held in *Sukanya Shantha v. Union of India* that prison manuals across multiple states formally assigned labour on caste lines, directing members of Scheduled Caste communities to perform sweeping and sanitation duties within correctional facilities.¹ This was not a colonial-era relic. It was an active administrative practice of the Indian state, operating decades after Article 17 of the Constitution declared untouchability abolished and its practice in any form a punishable offence and notably, Article 17 does not confine itself to caste-based untouchability alone. The provision uses the expression ‘in any form and language’²

The persistence of this practice within a state institution poses a question this paper seeks to answer: how does a manufactured hierarchy survive constitutional abolition? The answer lies not only in failures of enforcement but in something more foundational. The hierarchy that Indian constitutional law set out to dismantle was constructed over centuries through identifiable acts of text manipulation, administrative imposition, and bureaucratic classification. That construction left its residue not only in social attitudes but in the legislative classifications, conditional protections, and definitional frameworks that independent India inherited and, in several instances, preserved. This paper traces that construction and identifies where its residue remains.

II. The Historical Construction of Hierarchy

A. Varna as Profession, Not Birth

The most foundational misrepresentation in the intellectual history of caste is the claim that the varna system was always hereditary. The Bhagavad Gita states in Chapter Four, Verse

¹ *Sukanya Shantha v. Union of India*, W.P. (Civil) No. 1404 of 2023 (S.C.I. Oct. 3, 2024).

² INDIA CONST. art. 17.

Thirteen: *chaturvarnyam maya srishtam guna karma vibhagashah*, meaning the fourfold order was created according to qualities and work, not birth.³ The operative terms, *guna* denoting inherent qualities and *karma* denoting action, carry no reference to lineage or hereditary transmission. Varna on these terms is a fluid descriptor of present conduct, not a permanent inherited identity.

The character of Karna in the Mahabharata makes this contradiction impossible to ignore. Denied the right to compete at the tournament in Hastinapur on grounds of birth, despite his demonstrated qualities as a warrior, Karna's story is preserved within the same tradition that produced the verse affirming that varna is based on qualities and action. The coexistence of these two irreconcilable positions within the same textual tradition reflects not ancient wisdom but accumulated authorship serving different masters across different centuries.

B. Manusmriti as Interpolated Administrative Document

The Manusmriti is simultaneously the most cited authority for the scriptural basis of caste hierarchy and one of the most textually contested documents in Indian literary history.⁴ Its internal inconsistencies are substantial. Verses on the same subject contradict one another. The text oscillates between positions on women's autonomy, on permissible occupations across varnas, and on the ritual status of different communities in ways irreconcilable with a single authorial voice working from a coherent philosophical framework. These contradictions are most naturally explained by successive layers of text added by different priestly groups at different historical moments, attributed to the mythological figure of Manu to confer cosmic authority upon what were essentially political and administrative decisions.

The mythological context of Manu further undermines the text's claim to primordial authority. Across the Puranas and the Matsya Avatar narrative, Manu appears as the progenitor of humanity after the great flood, tasked with the repopulation of the earth. The social conditions presupposed by the Manusmriti, a complex stratified society with occupational guilds, property transactions, and inheritance disputes, bear no relationship to the context in which Manu is mythologically situated. A document presupposing urban civilizational complexity cannot authentically originate with a figure whose entire narrative purpose is

³ Bhagavad Gita 4.13 (S. Radhakrishnan trans., George Allen & Unwin 1948).

⁴ Wendy Doniger & Brian K. Smith trans., *The Laws of Manu* (Penguin Classics 1991). For interpolation argument see Romila Thapar, *Early India: From the Origins to AD 1300* (Allen Lane 2002) and R.S. Sharma, *Sudras in Ancient India* (3d ed., Motilal Banarsidass 1990).

survival after civilizational collapse. The text's attribution to Manu is a legitimating device, not an authorial fact.

The same mechanism of retroactive spiritual justification operates in the treatment of gender. The Devi Purana presents Adi Para Shakti, the primordial divine feminine, as the source from which the Trimurti itself emerges. In a cosmological framework where the feminine principle is the ground of all existence, the construction of menstruation as ritual pollution is not merely unjust but theologically self-defeating. The internal logic collapses completely when stated as a syllogism: if menstruation constitutes ritual impurity, then every being in existence including every divine incarnation the tradition venerates is born of impurity, making the premise false by its own terms. The menstruation rules in the Manusmriti cannot represent genuine theological conviction because they are irreconcilable with the foundational commitments of the tradition they claim to represent.

C. The Mahar Watan: A Traceable Timeline of Dispossession

Abstract arguments about textual manipulation acquire concrete force when examined alongside specific community histories that document the transition from functional social integration to stigmatised outcaste status within recorded historical time. The Mahar community of Maharashtra provides this evidence with unusual clarity.⁵

Mahars were historically village watandars holding hereditary village rights and duties. Their specific function included maintaining the official record of village boundaries, a responsibility of real legal weight: in land disputes the Mahar watan holder's testimony was given evidentiary precedence. They participated in the balutedar system, receiving a defined share of village produce in exchange for their services. These functions are incompatible with the social position of an untouchable community. A community considered ritually polluting would not be entrusted with the legal authentication of land boundaries or given a formal economic share in village produce.

The degradation of Mahar status accelerated sharply under the Peshwa administration of the eighteenth century. Under Peshwa rule, Mahars and Mangs were required to tie a broom

⁵ Rosalind O'Hanlon, *Caste, Conflict and Ideology: Mahatma Jotirao Phule and Low Caste Protest in Nineteenth-Century Western India* (Cambridge Univ. Press 1985). For Peshwa-era humiliation practices, see also Eleanor Zelliot, *From Untouchable to Dalit: Essays on the Ambedkar Movement* (Manohar 1992).

behind them to erase their footprints from the path, and to hang an earthen pot around their neck to collect their spit, so that neither their physical trace nor their bodily fluids would pollute the ground. These are documented eighteenth-century administrative impositions by a specific political regime, not ancient practices rooted in Vedic cosmology. The Battle of Bhima Koregaon in 1818, in which Mahar soldiers of the British East India Company defeated the last Peshwa's forces, is commemorated by Dalit communities as recognition that the Peshwa regime represented a historically specific and politically identifiable intensification of the oppression their ancestors endured.⁶

The cremation argument reinforces this point with particular force. If the communities assigned to cremation work were ritually polluting, and if correct funerary rites are essential for the liberation of the soul of the deceased, then assigning spiritually essential work to spiritually contaminating performers is a direct theological contradiction. A tradition that genuinely believed both propositions would not have made this assignment. The assignment was made because the actual basis of the practice was not spiritual pollution but the need to assign dangerous and unpleasant labour to a population denied the social power to refuse it. The spiritual justification was applied after the political decision, not before.

D. British Colonial Bureaucratisation and the Freezing of Identity

The British colonial administration's contribution to the entrenchment of caste hierarchy operated primarily through administrative classification. Census operations beginning in 1871 required every person in India to be assigned to a fixed enumerable community category. The administrative necessities of taxation, military recruitment, and legal jurisdiction demanded legible and permanent social units. Many communities that had existed with fluid, regionally variable, and overlapping identities found themselves frozen into permanent categories at whatever degraded position the colonial surveyor happened to find them.

The Criminal Tribes Act of 1871 represents the most extreme instance of this colonial transformation of fluid identity into hereditary stigma.⁷ The Act empowered the colonial government to notify entire communities as hereditarily criminal, treating membership in certain castes or tribes as sufficient evidence of criminal propensity regardless of individual

⁶ Gail Omvedt, *Dalits and the Democratic Revolution* (Sage Publications 1994).

⁷ Criminal Tribes Act, 1871 (India) (repealed 1952 by the Criminal Tribes Laws (Repeal) Act, 1952).

conduct. Nomadic trading communities such as the Banjaras, whose traditional livelihoods had been substantially destroyed by railway construction rendering their trade routes obsolete, were particularly susceptible. The Act was repealed in 1952, and the affected communities redesignated as Denotified Tribes, but the social stigma and the destruction of traditional livelihoods persisted long after denotification.⁸

The zamindari system, through which the British delegated revenue collection to intermediaries drawn predominantly from existing landholding communities, further entrenched economic inequality along caste lines. Communities that had been dispossessed, such as the Mahars of their watan rights, found their dispossession formalised within the colonial legal framework. The British did not invent the hierarchy they encountered, but they gave it the permanence and legal authority of a modern administrative state. The practices that British observers recorded in the late eighteenth and early nineteenth centuries, and which formed the basis for their administrative classifications of Indian society, were themselves the products of a recent and politically motivated intensification of the system by the Peshwas. The British bureaucratised a system that had just been substantially reconstructed.

Ambedkar's argument, advanced across several works,⁹ that many untouchable communities were originally Buddhist communities that refused reintegration into the Vedic fold after Buddhism's decline, and were punished with progressive social exclusion, adds a further dimension. If untouchability originated as a penalty for religious and political non-compliance rather than as a cosmologically grounded categorisation of ritual pollution, then the spiritual pollution narrative was not the cause of exclusion but its retrospective justification, applied after the exclusion had already been politically determined.

III. The Persistence of Manufactured Hierarchy in Indian Legislation

A. The Foundational Constitutional Promise and Its Limits

Articles 15 and 16 of the Constitution prohibit discrimination on grounds of religion, race, caste, sex, and place of birth, and guarantee equality of opportunity in public

⁸ National Commission for Denotified, Nomadic and Semi-Nomadic Tribes, Report (Government of India 2008).

⁹ B.R. Ambedkar, *The Untouchables: Who Were They and Why Did They Become Untouchables?* (Amrit Book Co. 1948) ch. 3-5.

employment.¹⁰ Article 17's prohibition is not confined to caste-based untouchability. The phrase 'in any form' extends the provision's reach to untouchability practised on any ground, making it one of the Constitution's most expansive anti-discrimination guarantees.¹¹ These provisions represent a genuine and radical constitutional rupture with the preceding social order. Their limitation is that they addressed the symptoms of a manufactured hierarchy without fully dismantling the classificatory frameworks through which that hierarchy had operated. The result is a constitutional commitment to equality sitting atop an administrative and legislative inheritance that in several areas reproduces the very distinctions the Constitution condemns.

B. Sukanya Shantha: The State Replicating Untouchability

The Supreme Court's decision in *Sukanya Shantha v. Union of India*¹² is the most recent and direct judicial confirmation of this diagnosis. The petitioner challenged provisions of prison manuals across multiple states that assigned labour duties within prisons on the basis of caste, specifically directing Scheduled Caste prisoners to perform sweeping and sanitation tasks. The Court found these provisions violated Article 17 as well as Articles 14, 15, and 21, and directed the revision of all prison manuals containing caste-based labour assignments.

The significance of this decision extends beyond its remedial effect. Prison manuals are administrative documents of the Indian state, produced and maintained by state governments. The finding that these documents formally replicated caste-based labour assignment demonstrates that the hierarchy was not merely a social persistence that the state had failed to eradicate. It was being actively reproduced within state institutions. The state was not simply failing to enforce Article 17. It was institutionally violating it. This is precisely what the historical argument of this paper would predict: when a system of hierarchy has been embedded in administrative practice across centuries, eliminating it requires the active examination of every administrative document and procedure that the system has shaped. That examination has not been comprehensively undertaken.

C. The Scheduled Caste Order 1950 and Religious Conditionality

The Constitution (Scheduled Castes) Order, 1950 provides that no person professing a

¹⁰ INDIA CONST. art. 15; INDIA CONST. art. 16.

¹¹ M.P. Jain, *Indian Constitutional Law* (8th ed., LexisNexis 2018)

¹² The Constitution (Scheduled Castes) Order, 1950, C.O. 19 (India).

religion other than Hinduism, Sikhism, or Buddhism shall be deemed a member of a Scheduled Caste.¹³ The practical consequence is that a person born into a Scheduled Caste community who converts to Christianity or Islam loses their Scheduled Caste status and with it access to reservations and statutory protections. A person from the same community who retains their Hindu, Sikh, or Buddhist identity retains the status.

This provision is constitutionally anomalous. Article 15 prohibits discrimination on grounds of religion.¹⁴ The Scheduled Castes Order creates a scheme) in which access to constitutional protection is conditioned on religious identity. The justification that caste discrimination is specific to Hindu social structures is empirically inadequate. Social discrimination on the basis of caste origin does not disappear upon religious conversion. A person from a Mahar family who converts to Christianity continues to face discrimination on the basis of their community affiliations and occupation history. The removal of constitutional protection at the moment of conversion withdraws the remedy precisely when it may be most needed, since conversion itself frequently represents an attempt to escape the discrimination the protection exists to address. The provision also reproduces, within constitutional law, the structural logic of punishing departure from defined religious boundaries, the same logic that this paper has argued underlay the original construction of untouchability itself.

D. Manual Scavenging: Legislation Without Rehabilitation

The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013¹⁵ represents the second legislative attempt, after the 1993 Act, to prohibit the practice of manual scavenging, the manual cleaning of dry latrines and sewer lines, a practice assigned almost exclusively to Dalit communities through the operation of the caste system. The Supreme Court in *Safai Karamchhari Andolan v. Union of India*¹⁶ had already established the constitutional obligation to eradicate the practice and rehabilitate those engaged in it.

Despite both legislative and judicial mandate, the practice persists. Annual deaths in sewer cleaning continue to be recorded. National Crime Records Bureau data documents cases

¹³ The Constitution (Scheduled Castes) Order, 1950, C.O. 19 (India).

¹⁴ *Indra Sawhney v. Union of India*, AIR 1993 SC 477

¹⁵ Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, No. 25, Acts of Parliament, 2013 (India); see also Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, No. 46, Acts of Parliament, 1993 (India).

¹⁶ *Safai Karamchhari Andolan v. Union of India*, (2014) 11 SCC 224.

under the Act while the practice it prohibits continues.¹⁷ The persistence reflects two failures operating simultaneously. The first is a failure of enforcement: mechanisms for identifying and prosecuting violations are inadequate, and local administrative complicity is common. The second and more fundamental failure is in rehabilitation. The 2013 Act's rehabilitation provisions have been implemented only partially and in many states barely at all. Communities whose only available livelihood is the one assigned to them by caste cannot be effectively prohibited from practising that livelihood without a genuine alternative being made available. The legislative framework prohibits the practice without adequately addressing the economic conditions that make it unavoidable.

E. Forest Rights and Tribal Displacement

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006¹⁸ was enacted to address what its preamble describes as the historical injustice done to forest dwelling Scheduled Tribes and other traditional forest dwellers. The Act recognises individual and community forest rights of communities that have been in occupation of forest land for generations, and was explicitly designed to reverse the colonial dispossession that began with the Indian Forest Act of 1878.

Implementation has been substantially impeded by institutional resistance from forest departments retaining interests in administrative control over forest areas, and by the incomplete mapping and recognition of community forest rights across states. Large-scale rejection of claims without adequate hearing, and the continued pursuit of development projects on forest land without recognition of forest rights, undermine the Act's remedial purpose. Many of the communities most affected by ongoing displacement are the descendants of the same nomadic and forest-dwelling communities that the Criminal Tribes Act first stigmatised and colonial forest policy first dispossessed. The Forest Rights Act was designed to reverse that colonial dispossession. Its incomplete implementation perpetuates it.

F. Devadasi Abolition: Toothless Legislation

Multiple states have enacted legislation prohibiting the dedication of women and girls

¹⁷ National Crime Records Bureau, Crime in India Report (Ministry of Home Affairs, Government of India 2022).

¹⁸ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India).

to temples under the devadasi system.¹⁹ The system, under which girls from designated caste communities were dedicated to temple service and subsequently subjected to sexual exploitation under religious sanction, represents one of the most direct intersections of caste, gender, and religious authority in the history of the subcontinent's social practices. The communities from which devadasis are drawn are overwhelmingly Dalit communities, making the system simultaneously an instrument of caste oppression and gender violence.

The prohibition legislation has been largely ineffective. Dedication continues in parts of Karnataka, Andhra Pradesh, Telangana, and Maharashtra, often informally and without the public ceremonies that previously made it visible. Women and girls most at risk are those whose families have no alternative livelihood and no social capital to resist community pressure. Legal prohibition without economic empowerment and social support cannot address a practice whose root causes are poverty, caste vulnerability, and the absence of alternative opportunity.

G. Gender Discrimination: Temple Entry, Widowhood, and Inheritance

The Supreme Court's decision in the Sabarimala case²⁰ addressed the exclusion of women of menstruating age from the Sabarimala temple and held, in the majority, that this exclusion violated Articles 14, 15, 17, and 25. The matter has been referred to a larger bench for reconsideration of questions relating to the relationship between constitutional morality and essential religious practice, leaving the legal position unsettled. The case illustrates the persistent difficulty of addressing discriminatory practices clothed in religious authority, where courts must assess theological interpretation they are institutionally ill-equipped to make and constitutionally constrained in how far they can reach.

Widowhood restrictions, including prohibitions on remarriage and the imposition of social exclusion from auspicious ceremonies, have no clear Vedic basis and appear to have hardened during the medieval period as mechanisms for controlling inheritance and property succession. The Hindu Succession Amendment Act of 2005 and the Supreme Court's decision in *Vineeta Sharma v. Rakesh Sharma*²¹ establishing daughters' equal coparcenary rights

¹⁹ Karnataka Devadasi (Prohibition of Dedication) Act, 1982; Andhra Pradesh Devadasi (Prohibition of Dedication) Act, 1988.

²⁰ *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

²¹ *Vineeta Sharma v. Rakesh Sharma*, (2020) 9 SCC 1; Hindu Succession (Amendment) Act, 2005, No. 39, Acts of Parliament, 2005 (India).

represent significant legislative and judicial progress on inheritance. However, social resistance to the exercise of these rights continues in many communities, and the gap between formal legal entitlement and practical access to property remains substantial.

H. The SC/ST Atrocities Act: Implementation Failures

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, as amended in 2015,²² criminalises a wide range of acts of discrimination and violence against Scheduled Caste and Scheduled Tribe members. The Act establishes special courts for the trial of offences and provides for the appointment of special public prosecutors. In practice, conviction rates under the Act remain low. Delays in investigation, police reluctance to register cases, and intimidation of witnesses contribute to an implementation gap that renders the Act's theoretical protections substantially less effective than its text suggests.

IV. Conclusion

The four mechanisms examined in this paper, textual manipulation, Peshwa codification, British bureaucratisation, and legislative inheritance, are not separate phenomena. They are stages in a single continuous process through which a system of social control was constructed, intensified, formalised, and ultimately transmitted into the administrative and legislative frameworks of independent India. The constitutional rupture of 1950 was genuine and significant, but it was not complete. It condemned the hierarchy without fully dismantling the classificatory architecture through which the hierarchy operated.

The *Sukanya Shantha* decision demonstrates that the architecture is still standing within institutions of the state itself. The Scheduled Castes Order 1950 reproduces within constitutional law the logic of conditioning protection on religious conformity. The Manual Scavenging Act prohibits a practice without adequately dismantling the economic conditions that make it unavoidable. The Forest Rights Act reverses colonial dispossession only partially, and against institutional resistance. Devadasi legislation prohibits without empowering. The Sabarimala litigation exposes the limits of judicial reach into discrimination clothed as devotion.

²² Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India); Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, No. 1, Acts of Parliament, 2016 (India).

The reforms required are therefore not merely administrative but conceptual. The SC Order 1950 requires amendment to remove its religious conditionality. Rehabilitation under the Manual Scavenging Act requires funding and enforcement commensurate with its stated ambition. Forest rights recognition requires institutional reform of the forest bureaucracy. Devadasi abolition requires economic intervention alongside legal prohibition. And across all these domains, the legislative inheritance of the purity framework requires the kind of systematic audit that *Sukanya Shantha* has now mandated for prison manuals but that has not yet been applied to the full range of Indian administrative and legislative classification.

The hierarchy that Article 17 abolished was not eternal. It was made. What is made by political and administrative decision can be unmade by the same means, provided the political will to examine the full inheritance honestly is present.