


Short Communication

The right to sanitation in India: Realisation of what?

Kopal Khare  

Department of Humanities and Social Sciences, Birla Institute of Technology & Science Pilani, Hyderabad Campus, Hyderabad, India
E-mail: p20160019@hyderabad.bits-pilani.ac.in

 KK, 0000-0002-4316-2486

ABSTRACT

In the context of recent degeneration in manual scavengers in Uttar Pradesh, India, where women are forced to undergo uterus removal surgery to perform efficiently at work, this article investigates what precisely realisation of the right to sanitation in India entails. It reviews the existing literature and finds that there is a narrow conception of sanitation as an infrastructure provision that influences the conceptualisation of sanitation as a right in India. The limited understanding of sanitation impacts the livability outcomes of the individuals, specifically the Dalit manual scavengers who are subjected to insufferable circumstances. The paper argues that the evaluation of the realisation of sanitation as a right is comprehensively achieved by deploying Amartya Sen's conception of justice, given its compatibility with the human rights framework. It concerns with the reduction of human suffering. It assesses individual well-being by focusing on expanding people's freedoms and opportunities to live a life of dignity.

Key words: caste system, manual scavenging, right to sanitation, sanitation justice, Swachh Bharat Mission, well-being approach

HIGHLIGHTS

- Sanitation planning in India suffers from limited understanding.
- Right to sanitation is equated with resource provision alone.
- Ignores the emerging inequalities caused by gender and caste.
- It becomes difficult to hold the state responsible for non-compliance with sanitation requirements.
- Rights language should review the status of Dalit manual scavengers once sanitation resources have been ensured.

INTRODUCTION

Sanitation is one of the basic determinants of quality of life and human development index (Narayanan *et al.* 2012). With 40% of Indian households and 60% of rural households practicing open defecation, the sector demands a holistically urgent policy response. The Government of India launched Swachh Bharat Mission (SBM) in 2014 to eradicate open defecation by ensuring full toilet coverage, solid waste management, and enabling behaviour change among individuals. The sanitation discourse assumed centre stage with the Prime Minister's involvement in the programme by initiating a massive media campaign, deployment of Information, Education, and Communication (IEC) strategies; and involvement of multiple stakeholders such as celebrity brand ambassadors; community volunteers, youth, students, homemakers, senior citizens, the elected representatives that led to the creation of '*Jan Andolan*' (trans. People's movement) (Ministry of Housing and Urban Affairs 2017, 2021). The ambitious five-year target was set when the country had 565 million people practicing open defecation, contributing to the 54% of the people practicing open defecation worldwide, cited as a human development disaster (Coffey & Spears 2017; Mara 2017). The Government of India's declaration of 'open defecation-free' status in all states and Union Territories (UTs) of India on 2 October 2019 led to the near-universal coverage in five years of implementation of the SBM. Around 105 million toilets were constructed in the country, and more than 600 million people transformed their open defecation behaviour (Sarkar & Bharat 2021). As per the NFHS-5 (2019–21) report, 83% of households have access to toilets. Additionally, the percentage of households practicing open defecation decreased from 39% in 2015–16 to 19% in 2019–21 (IIPS & ICF 2021).

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Thus, it is evident that the recent developments in the country led to the creation of massive infrastructure support in rural and urban areas. The programme is a top-down campaign, which was supposed to provide an initial nudge to the people to have hygienic preferences. However, serious activities like manual scavenging and manhole cleaning were ignored. The hype around the campaign was symbolic that it remained limited to high-profile activity where people belonging to powerful positions paid attention to broom branding. The intervention neglected the linkage between caste and manual scavenging. The uncleanliness in India is often associated with poverty as there is a prevalent idea that lack of cleanliness is due to inadequate infrastructure. However, cleanliness has more to do with cultural reasons than lack of economic means. The caste culture in India externalises the activity of cleaning up to the low-caste scavenger. United Nations recognised water and sanitation as a single distinct right in 2010; however, the realisation of the right in India is a complex phenomenon (Kumar 2014; Teltumbde 2014; Gatade 2015; Albuquerque 2019). Evaluating the effectiveness of sanitation interventions solely based on infrastructural coverage gives rise to an inadequate understanding of the sector. Hence, the objective of this paper is to examine what precisely the realisation of the right to sanitation consists of in the context of India.

METHOD

In this literature-based paper, I demonstrate that manual scavenging in India continues to exist despite the legislation and rehabilitation interventions deployed for over a decade. It reveals a significant injustice as the development and maintenance of sanitation infrastructure in the country thrives on the cheap labour that belongs to the Dalit community. For this review, I considered scientific articles, review articles, and grey literature such as media accounts, government reports, and guidelines to demonstrate how the limited perception of sanitation impacts individual liveability outcomes, specific to the manual scavenging work. No restrictions on the publication date were imposed for the search, and only articles published in English were considered. Search strings were applied to the following databases: Google Scholar, SCOPUS, IWA Publishing, and JSTOR. The sources of sanitation-related grey literature are various Ministries of India issuing guidelines on drinking water and sanitation, law and justice, housing, and urban affairs, Turkish Radio and Television (TRT) World, an online media platform, and National Family Health Survey Reports. The following search terms were used to identify the relevant studies: caste and manual scavenging; sanitation and human rights; caste system in India; sanitation as a good. I used Sen's conception of justice as a theoretical framework that situates sanitation in the context of realisation focused justice (Sen 2009). The findings from the studies are synthesised using a narrative approach. The paper is divided into three sections: the first part discusses the oppressive relationship between caste and cleanliness and how it is neglected in sanitation interventions, specifically the SBM programme. The second part of the paper explores the resource centric view of sanitation, that restricts the perception of sanitation solely as the infrastructure provision. Lastly, I argue that Sen's conception of justice is the need of the hour that relies on the kind of lives people tend to live post-resource allocation.

Caste and cleanliness

Before I explore the oppressive relationship between caste and cleanliness, I would first like to discuss the Indian caste system. The caste system is a hierarchical social order that divides society into four endogamous groups: Brahmins (the literate people, particularly priests); Kshatriyas (the warriors); Vaishyas (crafts and tradesmen); and Sudras (who are the servants of the categories mentioned above). Each category consists of persons belonging to a particular occupation that is continued in a hereditary manner. The Untouchables or the menial castes are not part of this categorisation and should not be in contact with the rest of society. People from these 'menial' castes were denied land ownership, so they remained a constant labour supply for the 'upper caste' people. They are forced to do odd jobs, which are not only considered insignificant but a sense of wretchedness and filth based on the notion of purity-pollution that is attached to them. Even though the Constitution of India abolished the practice of Untouchability in 1950, the experience of post-independent India shows that caste oppression still manifests in covert forms and will continue to exist as long as the oppressive hierarchical order remains. In the sociology literature, the term 'Dalit' has been used for ex-untouchables of Indian society who have faced the acute form of social exclusion that combines spatial exclusion in terms of the physical location of residence, a temporal exclusion that stigmatises Dalits co-existence with dominant castes, exclusion from political representation, employment, and material resources. Hence, in this paper, the term Dalit has been used that represents the people from the marginalised caste who are forced to inherit the occupation of manual scavenging (Guru 2000; Kumar 2005; Jaffrelot 2010; Patnaik 2017).

The definition of 'manual scavenging' in the context of dry latrines refers to the practice of manually removing human excreta from the latrine pan or the surface with bare hands, brooms, or metal scrapers into baskets or buckets and carrying

it to a dumping site. It also includes cleaning septic tanks, gutters, and sewers. Even though manual scavenging is banned in India under The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013, the practice is still widespread. The emergence of manual scavenging in India can be attributed to the developing sanitation infrastructure. Before that, open defecation was the primary mode of relieving oneself. The practice originated during Muslim rule, where women were required to use bucket privies to maintain the *Purdah* (veil) culture. It became widespread due to the expansion of municipalities under British Rule and an increase in dry latrines. This led to the emergence of 'scavenging castes' that forced Dalits to pursue the practice due to the caste factors denying other livelihood options. Hence, it reveals a paradox: instead of addressing the issue itself, the development of toilet infrastructure actually leads to the perpetuation of manual scavenging. Manual scavengers are inflicted with major health problems and tend to die early: the average life expectancy among them is 45 years. They are exposed to diseases such as nausea, skin infections, anaemia, diarrhoea, vomiting, jaundice, and trachoma that inflicts women directly handling faeces or men cleaning sewers (Ministry of Law and Justice 2013; Gatade 2015; Ghosh 2019; Koonan 2021).

Swacch Bharat Mission – Urban 2.0 guidelines specify provisions that safeguard the well-being of sanitation workers. It includes eliminating hazardous entry for sewer and septic tanks by mechanising sewer and septic tank cleaning operations; provision of protective gear/personal protective equipment kits to sanitation workers; and social welfare benefits for sanitation workers such as life and health insurance. However, the guideline is silent on the oppressive linkage between caste and scavenging work (Ministry of Housing and Urban Affairs 2017, 2021). There is no dearth of legal provisions to deal with the issue of manual scavenging, but that is insufficient to end it. In practice, the issue is still treated with utter disregard. For instance, the Government's emphasis on sanitation workers viewing their cleaning job as a spiritual calling identifies the scavenging work as a spiritual activity. This expectation mutes the inherent link between marginalised castes and cleaning up. It also stays ignorant of sanitation workers' struggle to abolish dry latrines (Teltumbde 2014; Panchang 2020).

Ghosh (2019) contends that the programme may be re-christened as Pure India Mission instead of Clean India Mission because the programme tries to make the experience of cleanliness 'purer' by relying on this form of labour. Additionally, the programme focuses on creating infrastructures without paying adequate attention to how human waste deposits will be cleared. These toilets have lower chances of being linked to sewage and drainage systems. It is interesting to note that even though there are provisions in the SBM mission document to make investments in procuring mechanised sludge machines for the physical removal of excreta (which had been a part of earlier interventions, too), the adoption of technology can still be substituted for cheap labour supply enabled by the cultural reasons. In the urban areas where the technology has indeed been adopted, a reconstitution of manual scavenging happens in the context of urban ecological shifts in handling sewage (Sreenath 2019).

A recent incident of removal of the uterus among Dalit women manual scavengers in Jalaun district, Uttar Pradesh, has us thinking about what we should examine when evaluating progress in sanitation goals? As per the news reported on 13 October 2022 in Turkish Radio and Television (TRT) World, a public news broadcasting platform, it is revealed that thousands of Dalit women manual scavengers across India are forced to undergo hysterectomy – surgical removal of the uterus – owing to the infections they contract during manual cleaning of service latrines. Commenting on the forced need and the struggle that follows post the removal of the uterus, Archana states:

'I had undergone surgery thinking it would boost my productivity at work. However, post the surgery, I have more problems to deal with' (Hussain & Rizwan 2022).

Additionally, three sanitation workers died while cleaning the sewage tank in Chandrapur, Mumbai (Alis 2022). Such incidents point towards the agonising misery that manual scavengers and manhole cleaners go through despite the latest provisions in the SBM Urban 2.0 mission document (Ministry of Housing and Urban Affairs 2021).

As per the Supreme Court of India judgement in the case of Safai Karamchhari Andolan and Others vs. the Union of India and Others delivered in March 2014, there are 96 lakh dry latrines in India that employ people for cleaning them who are primarily Dalits, and 80% of them are women (Koonan 2021). In a press release posted on December 2021 by the Ministry of Social Justice and Empowerment, India (Ministry of Social Justice and Empowerment 2021) it was revealed that there are 58,098 manual scavengers identified in the country during a survey. Out of that, 97% were Dalits. However, the selection of the areas where the Ministry conducted the survey remained arbitrary, resulting in the underreporting of manual scavengers identified. For instance, the selection of regions remained limited to the regions where the government 'believed that manual scavenging exists'. The survey was conducted only in 170 districts in 18 states, leaving a high proportion of states and districts to be surveyed (The Hindu 2019).

Thus, it is evident that sanitation interventions have remained limited to infrastructure development, mainly toilet construction being the primary indicator for the right to sanitation (Cullet *et al.* 2019). The reason behind this is perhaps the limited understanding of water and sanitation services being solely contextualised in the dominant 'economic good' perspective in economics, which primarily relates to the infrastructural provision by the public sector. Therefore, in the next section, I argue that sanitation planning in India remains narrowly focused on resource provision and discuss how it impacts the implementation processes and individual advantages in the context of social inequalities such as gender and caste.

The status of water and sanitation

Water and sanitation cannot be strictly compartmentalised in the definite boundaries of public and private goods, given the dependence on users' collective consumption and the state's capital investment. The nature of the services falls between the continuum of public and private. The characteristics of the good go beyond the inherent property of a good and have societal considerations, which often ascertain precisely how it can be treated: as private good or commonly managed. This is significant, especially in essential goods that are integral to a decent life. For example, the water in the tap is private, but for water to exist in the tap, it should be made available from a common source and piping systems.

Similarly, constructing a toilet is a private utility, but the solid and liquid waste management has to be state regulated. The sustained water and sanitation access sources are based on common pool resources (the commonly managed open drainage and the common groundwater source), requiring collective action for efficient management. The irresponsible and unregulated usage of these resources accrues collective action dilemmas. It is also considered a merit good as each household benefits from additional households' access to the service. For example, access to a contamination-free environment is a benefit shared by the neighbours (Opschoor 2006; Mader 2011).

Along similar lines, Rees (1998) states that water and sanitation services fall between public and merit goods for two reasons: the public health benefits it offers from disposal and transportation of sewage. Secondly, these goods must be provided for humanitarian reasons, as access to adequate sanitation and water is to be provided irrespective of whether individuals are willing. On the other hand, Schouten & Schwartz (2006) identify the inherent private property of the good at individual levels along with common benefits. Water has higher subtractability, and toilets cannot be made available to all and therefore are excludable. Also, there is a 'merit' in making it accessible to several households for possible positive externality, mainly the health outcomes. Because both depend on a highly dense distributional network, the additional increase in a household will lead to a decrease in the average cost of provision (Musgrave *et al.* 1989).

Among the other conceptualisations of sanitation in the international legal and policy framework, such as Millennium Development Goals (2000), sanitation is defined in terms of access to the type of technology and elevated service levels that are more sanitary. Even though the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights in 1948 and 1966, respectively, did not acknowledge the right to sanitation as a distinct objective, they linked sanitation with the realisation of other human rights such as rights to an adequate standard of living, adequate housing, health, education, water, work, life, physical security, the prohibition of inhuman or degrading treatment, gender equality, and the prohibition against discrimination. However, it did lack focus on the issue of dignity being an essential component of sanitation if taken as a human right. The everyday experience of vulnerability, uncertainty, embarrassment, exposure to numerous health risks, and shame, when an individual is forced to practice open defecation or use a bucket or a plastic bag, goes unnoticed. Until 2008, when the year was declared the International year of Sanitation by the United Nations, sanitation received much-needed attention at the international level. It was soon followed by the conceptualisation of water and sanitation from a human rights perspective and also recognised as a single distinct right in 2010. The recognition entailed that now the realisation of the right to water and sanitation is legally binding on all the nations who are party to CESC and Human Rights treaties and that the right, equal to all other rights, is justiciable and enforceable, and that it should hold public entities responsible in the event of non-realisation of sanitation as a right (Albuquerque 2019).

However, the conceptualisation of the right at the international level does not include the social dimension of inequalities in caste and gender, which is characteristic of the right to sanitation in India. A series of laws in India recognise the right to sanitation as 'access' to sanitation-related infrastructure as the right to sanitation (Cullet *et al.* 2019). For instance, Shree (2019) discusses the nature and focus of sanitation in state planning in post-colonial India across three phases of Five-Year Plans (FYPs), that is First to Third (1951–66); Fourth to Seventh (1969–1990), and Eighth to Twelfth (1991–2017). In the first phase, the Government adopted a heavy industry-based growth model to tackle the problems India faced post-independence, which led to the introduction of the National Water Supply and Sanitation Program in 1954. It called for an

investment in water supply, sewerage, and latrine construction. On the one hand, the water supply issue was treated as a standalone issue; sanitation provision remained a part of housing needs. In the third FYP, the focus shifted to health, brought sanitation to the spotlight, and required investments in the provision of drainage, sewerage, safe sewage disposal, and water supply. Towards the second phase of FYP (1960–90), following the attacks on the country in 1962 and 1965 and severe drought, in the Fourth FYP, the focus was shifted to poverty and unemployment. During the Sixth FYP, sanitation regained attention while acknowledging that there has been an urban bias in allocating sanitation resources. It, therefore, classified sanitation as a social service that eventually impacted alternate funding sources. Followed by the declaration of the International Drinking Water Supply and Sanitation Decade (1981–91), the Seventh FYP aimed to provide adequate drinking water to the entire population and sanitation to 80% of the urban and 25% to the rural population. The third phase, from the eighth to twelfth plan (1991–2017), witnessed the change in nature of sanitation services from state-led supply-driven to demand-driven, which was significantly impacted by the emergence of liberalisation, privatisation, and globalisation processes. Unlike a free commodity previously, the tenth FYP plan treated water as an economic good that required the collection of costs from users. During the 1990s, the 73rd and 74th constitutional amendments encouraged people-centric and demand-responsive service delivery. It also made the provision of sanitation services conditional on the demand, behaviour, and attitude of people that initiated funding in awareness-building activities, as seen in the programmes such as the Total Sanitation Campaign and Nirmal Bharat Abhiyaan. The eleventh FYP introduced incentive-based service delivery by awarding Nirmal Gram Puruskar to the open defecation-free Gram Panchayats. Thus, here we see the changing nature of water and sanitation from rightful entitlement to the community's obligation in rural areas. The community now feels the pressure to defend their right to have access to sanitation by proving their 'merit' through performing and competing to bring a cleaner and sanitary environment. The twelfth plan (2012–17) witnessed the launch of SBM (Gramin) in 2014 that aimed at ensuring the contamination-free environment by addressing problems with contaminated water bodies, treatment of sewage with a combination of providing incentives to households to build toilets to prevent open defecation (Coffey & Spears 2017; Ministry of Drinking Water and Sanitation 2018).

The resource-centric focus in sanitation planning across several FYPs ignored the questions that arise from a rights perspective and are linked to dignity. At the national level, sanitation is not recognised as a right in statutory provisions. There is a limited realisation of the right under the current sanitation programme, that is, ending open defecation through administrative directions. Although there is recognition of sanitation as a derivative right by the judiciary as enshrined in *Municipal Council, Ratlam v Shri Vardhichand & Others* case (1980), which held the municipalities responsible for the lack of public investment in public toilets and sewerage facilities, the judiciary mainly discussed it not as a fundamental right to sanitation but the duties of the state. Hence, there is no specific mention of the right to sanitation in the Constitution of India (Cullet 2019).

With the advent of a demand-led definition of sanitation that limits the state's role as a facilitator, it perceives individuals as beneficiaries rather than right holders. Their rights are not seen as entitlements, which makes it difficult to hold the state responsible for non-compliance in sanitation requirements. Sanitation interventions, especially in rural areas, from the onset of the Central Rural Sanitation Program in 1984 to Swachh Bharat Mission-Gramin in 2014, have adopted problematic features from the perspective of rights-based understanding of sanitation. For instance, the use of the word 'incentive' in place of subsidy, emphasis on awareness-building activities to construct toilets, and the decentralised participatory approach – Community Led Total Sanitation, was adopted by implementers. It presumed 'individual ignorance' as the sole challenge in implementing sanitation interventions rather than the actual absence of enabling sanitation environment as an obligation of the state (Koonan 2019).

Therefore, the divorce between policy and legal framework while implementing sanitation programmes makes the realisation of the right to sanitation fragmented and incomplete. It is characterised by restructuring the sanitation programmes as 'new' in successive government regimes rather than addressing the remaining gaps that determine the realisation of sanitation as an individual entitlement. As a result, manual scavenging, the rights of sanitation workers, caste, gender, environmental concerns, facilitation of solid-liquid waste management, and provision of sewage network remain distinct and self-contained issues, rather than rightful entitlements of the individuals.

Consequently, the dignity aspect, which is given utmost importance in the debates surrounding realisation of the right to sanitation, is ignored in the context of caste-related manual scavenging that is quite prevalent in the country (Wilson 2019). Additionally, the apolitical conception of sanitation also impacts the kind of sanitation surveys that have occurred in the past few years. For instance, Swachh Survekshan, the annual cleanliness survey conducted in the urban areas by the Ministry of Housing & Urban Affairs (MoHUA), records the progress across three indicators – the type of service levels, the disaster and

epidemic response, and certification of cities on being garbage free (Ministry of Housing and Urban Affairs 2022). However, no organised survey has been conducted on the identification of manual scavengers, other than a press release in December 2021 by the Government on the 'possible' number of manual scavengers and their caste-related data. As mentioned above, the selection of regions was arbitrary and limited to 170 out of 766 districts across the country. As per the response by the Ministry of Social Justice and Empowerment, India, dated 1 January 2014, to the application seeking information on manual scavenger's rehabilitation under Right to Information Act 2005, the Ministry admitted that no survey had been undertaken to identify the number of dry latrines that need to be converted into sanitary latrines (Ministry of Social Justice and Empowerment 2014).

Sanitation justice

The rights language of sanitation undeniably requires situating sanitation in the context of justice. To address the justice concerns of resource distribution, Jeremy Bentham's maximisation of utility as the amount of pleasure derived from resources, and John Rawls's conception of the distribution of goods under a veil of ignorance, assume a dominant place. It focuses on the equitable distribution of resources that involves equitable availability and access to resources. However, if we need to look at sanitation as a realisation of right, we must go beyond resource allocation. Amartya Sen's realisation focused perspective of justice provides a much-needed correction in this focus and is perfectly compatible with the rights framework. Sen contends that the conventional theories of justice, especially proposed by John Rawls, are deeply problematic and argues that these are transcendental. Rawls aimed at the emergence of a well-ordered society with strict compliance on the part of individuals where everyone will act in a just manner while upholding just institutions. It, therefore, is believed to produce a perfectly just society. Sen argues that a transcendental understanding of justice imagines the ideal circumstances of 'perfect justice' before it actually happens. It is achieved by aiming at a perfectly just society consisting of ideal institutions, legislations, and the distribution of resources. However, it neglects a great deal of unjust circumstances in the actual society influenced by human interactions and the world that already exists and would eventually emerge. Therefore, he argues for a comparative perspective where realisation-based comparisons are made on what is 'less' or 'more' unjust. It focuses on identifying and removing the *manifest* injustices in society that could feasibly emerge once the institutions are set up. Sen illustrates the point by invoking the principles of *Matsyanyay* (trans. the law of fish) from Indian political theory, where the subject of justice is not merely aimed at achieving a perfectly just society but identifying and preventing the clearly remediable injustices around us that we would want to eliminate. He gives an example of people's agitation for the abolition of slavery in the eighteenth and nineteenth centuries. The people demanding the abolition of slavery were not labouring under the illusion that the abolition would make the world perfectly just. They believed that a society with slavery was totally unjust. Therefore, it was the diagnosis of slavery being an intolerable injustice that made its abolition an urgent priority and not the requirement of looking for consensus on what a perfectly just society should look like (Nussbaum 2003; Sen 2009; Mills 2011; Khare & Suresh 2021). Therefore, the advancement of justice should aim to expand individual opportunities and freedom to live a life of dignity. It should assess individual advantage in terms of how their lives are impacted and the suffering is reduced once the development efforts are in place. In the context of sanitation interventions, manual scavenging attributed to Dalits points towards the *volitional* neglect and *denial* of the Government and society at large in removing remediable circumstances. Manual scavenging among Dalits manifests as an intolerable justice, the abolition of which will cause the society to achieve a less unjust status.

CONCLUSION

In this paper, I argue that realising sanitation as a right, being understood as resource provision alone, is problematic. The sanitation interventions tend to neglect social disparities such as caste, class, and gender that emerge during and after the programme's implementation. SBM program trivialises the insufferable circumstances of Dalit manual scavengers by designating their status as potential labourers or service providers rather than active recipients. It reveals a significant injustice as the development and maintenance of sanitation infrastructure under the programme thrives on the cheap labour supply that belongs to the Dalit community. Hence, while evaluating progress in sanitation in the context of human rights, we need to ask where our focus lies while evaluating the right to sanitation in India: on resource allocation or reduction of human suffering. Amartya Sen's conception of justice provided much-needed correction of focus when dealing with such intolerable injustice, which continues to occur in society. The paper appeals for acknowledgment of the unjust linkage between caste and cleanliness that has been neglected in the previous and current policy interventions. The relative burden of removing human waste

from the public and private places in India continues to fall on the Dalit community. Consequentially, as Patnaik (2017) argues, reforming caste system in the economy will not end the oppression in society. What is required is an obliteration of caste identity itself, the very ‘annihilation of caste’ to address this inhuman practice.

DATA AVAILABILITY STATEMENT

All relevant data are included in the paper or its Supplementary Information.

CONFLICT OF INTEREST

The authors declare there is no conflict.

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