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**DECONSTRUCTING CASTE-BASED PRIVATE DISCRIMINATION: COMPARATIVE  
EXAMINATION OF INDIA AND CANADA**

By

**Shubham Kumar**

A Thesis  
Submitted to the Faculty of Graduate Studies  
through the Faculty of Law  
in Partial Fulfillment of the Requirements for  
the Degree of Master of Laws  
at the University of Windsor

Windsor, Ontario, Canada

2023

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**DECONSTRUCTING CASTE-BASED PRIVATE DISCRIMINATION: COMPARATIVE  
EXAMINATION OF INDIA AND CANADA**

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September 22, 2023

## **DECLARATION OF ORIGINALITY**

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## **ABSTRACT**

"Caste" is a rigid system of social hierarchy marked by deep-rooted divisions. These divisions are upheld through patriarchal and heteronormative practices, often enforced through the looming threats of social ostracism, economic boycotts, and physical violence, which also infringe upon the rights guaranteed by the Constitution of India.

While numerous legal judgments and legislations have concentrated on mitigating caste-based discrimination by state authorities and individuals in public spaces, significantly less attention has been directed towards caste discrimination in private spheres, referred to as private discrimination. Despite explicit constitutional provisions that prohibit private discrimination and enable individuals to take legal action against others for such transgressions, the courts have demonstrated hesitance in enforcing fundamental rights against private individuals engaging in caste discrimination. Consequently, instances of private discrimination endured by Dalits and Other Backward Classes have remained mainly outside the scope of legal protection.

This thesis employs a critical caste theory framework arguing for the regulation of caste discrimination pertaining to various aspects, such as employment, marriage, housing, dining, and general social interactions. To provide a comprehensive analysis of these issues in the Indian context, this thesis explores the anti-discrimination legal framework in Canada related to private discrimination.

**Keywords:** Caste-based private discrimination; critical caste theory; caste discrimination in Canada, private discrimination.

## DEDICATION

*To Maa and Amma (grandmom), who never went to school but ensured we got the best education. I wish you were around to see me achieve this.*

*To Dad, who inspires me to remain positive and expect the best from the world.*

*To Babasaheb Ambedkar and Mahatma Gandhi for inspiring generations to fight against injustices.*

## ACKNOWLEDGEMENTS

I extend my heartfelt appreciation to my parents, mother, and father, whose enduring love, unwavering encouragement, and significant sacrifices have been the cornerstone of my educational journey. I am also grateful to my sisters and other family members whose support has been a consistent source of motivation.

My profound thanks go to my thesis advisor Prof. Vasanthi Venkatesh, whose insightful guidance, mentorship, and unwavering faith in my abilities have deeply influenced the development of this work. Her dedication to my academic growth has been an indispensable component of this undertaking. I would also like to thank my committee members, Prof. Laverne Jacobs and Prof. Jane Ku, for their support throughout my time at the Faculty of Law and this thesis. I'm very thankful to Annette Demers for the kindness, generosity and warmth that she's shown and whose invaluable research guidance greatly facilitated my research. Her commitment to facilitating access to knowledge has been instrumental in shaping the content of this thesis. I acknowledge with gratitude the support provided by Prof. Sujith Xavier, Associate Dean and the university administration. Their investment in my education has played a significant role in the successful completion of this thesis.

I extend my heartfelt gratefulness to Kirti Dadheech for her continuous faith in me, and her genuine optimism for my success has been a source of motivation and inspiration. I would also like to thank Deesha Dalmia, Anurag Bhaskar, Disha Wadekar, Shubham Patel, Surbhi Karwa and Rochana Kammowanee for their unwavering support, encouragement and steadfast belief in my abilities throughout the course of my academic journey. I am deeply appreciative of their friendship and support.

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## **LIST OF ABBREVIATIONS**

1. CCT: Critical Caste Theory
2. COI: Constitution of India
3. CRT: Critical Race Theory
4. IPC: Indian Penal Code
5. NCRB: National Crime Records Bureau
6. NCBC: National Commission for Backward Classes
7. NCSC: National Commission for Schedule Caste
8. OHRC: Ontario Human Rights Code
9. OHRC: Ontario Human Rights Commission
10. OBC: Other Backward Classes
11. PCR: Protection of Civil Rights Act
12. SC: Scheduled Castes
13. SC/ST PoA Act: Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act
14. SCST: Scheduled Castes and Scheduled Tribes
15. ST: Scheduled Tribes
16. SCI: Supreme Court of India

## CHAPTER 1

### INTRODUCTION

*The stove is made out of mud  
The mud is sourced from the lake  
The lake belongs to the landlord*

*A hunger for bread  
Bread made of pearl millet  
Pearl millet grown in the fields  
The field belongs to the landlord*

*The bull belongs to the landlord  
The plough belongs to the landlord  
The hands on the shaft of the plough are ours  
The harvest belongs to the landlord*

*The well belongs to the landlord  
The water belongs to the landlord  
The crops and the fields belong to the landlord  
The lanes that run through these neighbourhoods belong to the landlord*

*Then what is ours?  
The village?  
The city?  
The nation?*

-Poem by Om Prakash Valmiki<sup>1</sup>

This poem encapsulates the narrative and testament of the sentiments harboured by countless ‘Dalits’ and individuals from lower castes, who find themselves marginalised, relegated, and ostracised within their own nation and upon their native land.

‘Caste’ in India is a rigid system of social stratification based on a descent-based hierarchy. It is a systemic imposition of social marginalisation on persons because of their birth in a particular

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<sup>1</sup> This is a translated version of Om Prakash Valmiki's poem, "*Thakur ka kuaan*", originally written in Hindi. See Archit Guha, "The well belongs to the landlord", online: <<https://jaggerylit.com/the-well-belongs-to-the-landlord-kuan-thakur-ka/>>.

caste.<sup>2</sup> Such divisions are reinforced through patriarchal and heteronormative practices<sup>3</sup> and the threat of social ostracism<sup>4</sup>, economic boycotts<sup>5</sup>, and physical violence,<sup>6</sup> including violation of the rights guaranteed by the Constitution of India. The term 'Dalit', used earlier, finds its origins in Marathi/Sanskrit, where it conveys the connotation of being split, broken, or crushed.<sup>7</sup> This terminology was notably employed by the 19th-century social reformer Jyotiba Phule to delineate a group referred to as 'out-castes,' who endured oppression at the hands of dominant caste groups. Subsequently, this nomenclature was embraced and popularized by Dr. B. R. Ambedkar.<sup>8</sup> In the eyes of the non-Dalit populace, a deeply ingrained perception cemented the notion of Dalits as broken and perpetually impure, thus coining the pejorative term “untouchable,” a designation that warranted stringent avoidance to prevent any taint of contamination resulting from physical or social contact.<sup>9</sup>

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<sup>2</sup> Anand Teltumbde, *Dalits: Past, Present and Future*, 2d ed (Routledge India, 2020).

<sup>3</sup> Nishant Upadhyay & Sandeep Bakshi, “Translating queer: Reading caste, decolonizing praxis” in *Routledge Handb Transl Fem Gend* (Routledge, 2020); Shailaja Paik, *The Vulgarly of Caste: Dalits, Sexuality, and Humanity in Modern India* (Stanford: Stanford University Press, 2022).

<sup>4</sup> “Villupuram caste discrimination: Here’s why Dalit students missed their revision test - The New Indian Express”, online: <<https://www.newindianexpress.com/states/tamil-nadu/2023/apr/11/villupuram-caste-discrimination-heres-why-dalit-students-missed-their-revision-test-2564637.html>>.

<sup>5</sup> Inder Bisht, “In India’s villages, upper castes still use social and economic boycotts to shackle Dalits”, (5 March 2020), online: *NewsLaundry* <<https://www.newsLaundry.com/2020/03/05/in-indias-villages-upper-castes-still-use-social-and-economic-boycotts-to-shackle-dalits>>.

<sup>6</sup> Akanksha Singh, “India: Why justice eludes many Dalit survivors of sexual violence”, online: <<https://www.aljazeera.com/news/2022/6/8/india-why-justice-eludes-many-dalit-survivors-of-sexual-violence>>.

<sup>7</sup> It is important to note that the term ‘Dalit’ is not used officially, and the prevailing constitutional, legal, and administrative nomenclature is “Scheduled Caste”, designating the castes enumerated in a specific schedule appended to the Constitution.<sup>7</sup> The confirmation of SC classification hinges upon issuing a caste certificate, an authoritative documentation bestowed by competent authorities attesting to one’s affiliation with an SC. This certification allows the bearer access to various constitutional measures, including affirmative action policies and other legal protections.

<sup>8</sup> Vasanthi Venkatesh, “International Casteist Governance and the Dalit Radical Tradition: Reimagining a Counter-hegemonic Transnational Legal Order” 2022:3 *TWAIL Rev* 171–203, online: <<https://twailr.com/twail-review/issue-03-2022/vasanthi-venkatesh-international-casteist-governance-and-the-dalit-radical-tradition-reimagining-a-counter-hegemonic-transnational-legal-order/>>.

<sup>9</sup> Bhimrao Ramji Ambedkar, *The essential writings of B. R. Ambedkar*, 8. impr ed, Valerian Rodrigues, ed (New Delhi: Oxford University Press, 2010).

Allow me to commence with a personal reflection. I hail from a rural village near Gorakhpur, a town in the Indian State of Uttar Pradesh. This village predominantly comprises individuals of lower caste origin typically engaged in agricultural labour or menial occupations. Access to education is regarded as a privilege, paved with numerous social and economic barriers.

During my formative years as a student, the school in our village scarcely offered the luxuries of seats or benches. Our makeshift seating comprised humble jute sacks that we transported from our homes. The school building housed a spacious hall, the headmaster's chamber, and an administrative office. The single hall accommodated all classes, each convened simultaneously. In this dimly lit expanse, two instructors simultaneously presided over four classes in the far corners. Despite spatial constraints, a noticeable seating hierarchy prevailed. Notably, the foremost rows were systematically reserved for *Brahmins*, *Thakurs*, *Banias*, and other individuals from the upper caste.<sup>10</sup> Contrastingly, the rearmost rows were designated for *Lohars*, *Dhobis*, *Ahirs*, *Chamars*, and other lower-caste students.<sup>11</sup> I, too, found myself relegated to the back rows, acutely aware of my caste status even before familiarising myself with the names of my kin. While my school did not overtly engage in 'untouchability,' subtle indications of division pervaded, such as apprehension toward seat-sharing, the sharing of meal boxes, or the sharing of books. As an obedient child of seven, I consented to this segregated arrangement, oblivious to its societal implications, as it mirrored the established norm.

In 2004, I relocated from my native Gorakhpur village to Kolkata, a move necessitated by my father's professional responsibilities. Subsequently, I gained admission to an English-medium

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<sup>10</sup> "What is India's caste system?", *BBC News* (25 February 2016), online: <<https://www.bbc.com/news/world-asia-india-35650616>>.

<sup>11</sup> *Ibid.*

school operated under the auspices of the Khalsa Trust, an institution associated with the Sikh minority. Within this new milieu, distinct classrooms were allocated for every class, each adorned with wooden benches. Absent were any indications of caste or religious-based segregation. This transformation represented an entirely different environment, one that felt altogether novel. It presented a realm where English was spoken, standardised uniforms adorned every student, clean shoes and lunchboxes were ubiquitous, and every pupil was afforded an equitable opportunity to participate actively in classroom proceedings.

On the occasion of my inaugural school day and my very first class, my teacher requested that I stand and introduce myself. "My name is Shubham Kumar. My father's name is Surendra Prasad Yadav. I enjoy playing cricket and listening to songs," I said. Subsequently, my teacher posed a query that surprised me: "Why is your name, not Shubham Prasad Yadav, akin to your father's surname, 'Prasad Yadav'?" This query, previously unencountered, left me wanting an answer.<sup>12</sup> Later, I approached my father, inquiring why my surname was not 'Prasad Yadav,' akin to his. While I sensed that he anticipated such a query, its timing caught him off guard. He recounted that in 1987, he secured a position as a Class-IV employee (skilled labour class) within the Indian Railways and was subsequently stationed in Kolkata this period coincided with a resurgence of social and political movements spearheaded by leaders such as Lalu Prasad Yadav, Mulayam Singh Yadav, Mayawati, Kanshiram, and Karpoori Thakur, collectively fighting for the implementation of affirmative action policies for the Other Backwards Classes (OBCs) as recommended by Mandal Commission.<sup>13</sup> In 1990, the Government of India mandated the

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<sup>12</sup> The surnames and last names in India are determinants of religion, caste, occupation, and region to which the individual belongs. Caste is the most common determinant of surnames among Hindus. Hence, an inquiry of surname is often an inquiry of an individual's caste.

<sup>13</sup> India, Government of India, *Backward Classes Commission*, (Report of the Commission) by BP Mandal, vol 3 (New Delhi: Government of India, 1980).

implementation of the Mandal Commission's recommendations, a development that precipitated widespread protests. The Yadavs<sup>14</sup> and other individuals from the OBC community became targets of ridicule and scorn at workplaces, academic institutions, and social gatherings. Owing to my father's surname, which he shared with leaders from these marginalised castes leading the movement for affirmative action for marginalised castes, he found himself subjected to discrimination, harassment, and constant caste-based taunts from colleagues of higher castes within his workplace in Kolkata. A surname that previously instilled him with a sense of pride had now transmuted into a burden, serving as a source of humiliation and differentiation. Consequently, in 1996, I was given the surname of 'Kumar,' which means 'a boy,' eschewing the paternal surname to shield me from the discrimination and antipathy engendered by his last name. This marked one of my initial awakenings to the spectre of caste identity and the associated stigma it bore.

Fast-forwarding to 2014, I successfully navigated the highly competitive law entrance examination, the Common Law Admission Test (CLAT), securing admission to the National Law University, Lucknow (NLU). After admission, each NLU disseminates a comprehensive list of admitted students, encompassing their enrollment numbers, examination scores, ranks, and corresponding caste affiliations. After enrollment, a select group of senior students would summon

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*"Mandal Commission or Socially and Educationally Backward Classes Commission (SEBC), was established in India in 1979 with a mandate to "identify the socially or educationally backward classes" of India. It was to consider the question of reservations for people to address caste discrimination, and used eleven social, economic, and educational indicators to determine backwardness. In 1980, based on its rationale that OBCs ("Other backward classes") identified on the basis of caste, social, economic indicators made up 52% of India's population, the commission's report recommended that members of Other Backward Classes (OBC) be granted reservations to 27% of jobs under the Central government and public sector undertakings, thus making the total number of reservations for SC, ST and OBC to 49%".*

<sup>14</sup> Yadavs belong to the *Ahir* caste (traditionally from the cattle-rearing community). As per the Caste hierarchy, Yadavs are 'Shudra,' i.e. from the lowest caste meant to serve the upper castes. Owing to their social and educational backwardness, the government declared them as OBCs per the Mandal Commission recommendations.



students from lower castes for informal gatherings. During these sessions, we were requested to divulge details such as our names, CLAT ranks, city of origin, and hobbies. The underlying motive for inquiring about CLAT ranks was often to ascertain whether a student's admission had been facilitated through 'caste-based reservation' or purportedly by 'merit.'<sup>15</sup> Regrettably, students admitted through reservation mechanisms encountered an unrelenting barrage of bullying and were subjected to the onus of justifying their positions. Questions tinged with scepticism, such as "Why are you availing yourself of caste-based reservation?" or "Why do you believe that caste-based reservations should persist when the prevalence of caste-based discrimination is ostensibly diminished?" or "What rationale supports the continuation of reservations? Are we, in any way, discriminating against you?" or even "Given that your father holds a governmental position, what compels you to seek reservation for university admission?" pervaded these interactions. This phenomenon persisted despite lower-caste students successfully securing admission through a competitive selection process. Consequently, a constant need to substantiate one's merit continually dogged these students.

Such encounters with seclusion, caste-based discrimination, and perpetual scrutiny of one's merit compelled me to recount a personal narrative that underscores the 'modern manifestations' of discrimination faced by lower castes in India in their daily lives. These occurrences epitomise a prevalent pattern of passive or covert forms of discrimination, symbolic of the experiences endured by individuals from lower castes.

The tumultuous journey I have traversed as an individual from a lower caste is a poignant reminder of the immeasurable tribulations endured by countless souls who remain voiceless, devoid of any

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<sup>15</sup> Anurag Bhaskar, "The modern form of institutionalised casteism", (15 January 2021), online: *Hindustan Times* <<https://www.hindustantimes.com/opinion/the-modern-form-of-institutionalised-casteism-101610716480748.html>>.

platform to convey their anguish. My intention is not to assume a universal voice for all individuals from lower castes; my encounter with the scourge of caste-based discrimination merely reveals a fraction of the harrowing reality. Even in India, individuals of lower caste lineage continue to grapple with unfathomable prejudice, spanning from instances as heart-wrenching as fatal beatings spurred by baseless allegations of fowl theft to the profound injustice where the esteemed stature of the President of India (who hails from the Tribal community) cannot surmount the barriers that restrict their entry into sacred temples.<sup>16</sup>

While untouchability or systemic segregation is less prevalent in public spheres, enduring divisions persist across occupational, residential, and social dimensions.<sup>17</sup> Despite the prohibition of manual scavenging, an abhorrent practice involving manually cleaning sewage and dry latrines, India still employs 1.2 million manual scavengers, almost exclusively comprising Dalits.<sup>18</sup> Notably, even as industries and recruiters profess to be caste-blind, inquiries about “family background,” often serving as a modern euphemism for caste, continue to pervade interviews and employment processes.<sup>19</sup>

These distressing scenarios underline the multidimensional implications of caste-based inequality, encompassing economic dispossession, social exclusion, and the perpetual cycle of discrimination. The socioeconomic disparities persistently reflect the ingrained structures and prejudices that

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<sup>16</sup> “Symbolism Crumbles? President Murmu Allegedly Denied Entry At Jagannath Temple Sanctum Sanctorum; Mandir Denies Charges”, online: <https://www.outlookindia.com/national/symbolism-crumbles-down-president-murmu-allegedly-denied-entry-at-jagannath-temple-mandir-denies-charges-news-298195>.

<sup>17</sup> Gayatri Singh, Trina Vithayathil & Kanhu Charan Pradhan, “Recasting inequality: residential segregation by caste over time in urban India” (2019) 31:2 *Environ Urban* 615–634, online: <http://journals.sagepub.com/doi/10.1177/0956247818812330>.

<sup>18</sup> Shubham Kumar & Priyanka Preet, “Manual Scavenging: Women Face Double Discrimination as Caste and Gender Inequalities Converge” (2020) 55:26–27 *Econ Polit Wkly*, online: <https://www.epw.in/engage/article/manual-scavenging-women-face-double-discrimination-caste-gender>.

<sup>19</sup> Annapurna Waughray, *Capturing Caste in Law: The Legal Regulation of Caste Discrimination*, 1st ed (London: Routledge, 2022) at 75.

continue to shape the outlines of contemporary Indian society, reinforcing the urgency and importance of Dr Ambedkar's passionate call for the "annihilation of caste".<sup>20</sup>

The foundation of this thesis rests upon my encounters with my own caste identity, encompassing a range of experiences, including the enduring exposure to micro-aggressions, subtle manifestations of caste-based discrimination, and the pervasive incidents of daily violence targeting millions of individuals belonging to the Dalit and 'Bahujan'<sup>21</sup> communities. Additionally, the omnipresence of caste considerations across diverse domains within Indian society contributes substantively to this study's premise.

Despite the substantial historical backdrop of anti-caste discourse in India's legal and political annals, the central contention of this thesis deal with that the existing legal and policy framework in the country inadequately addresses the evolving intricacies of discriminatory practices. Moreover, the laws exhibit limitations in extending protective measures, specifically in instances of caste-based private discrimination.

The Constitution-makers incorporated explicit provisions in the Constitution to proscribe caste-based discrimination by the State and by individuals. For instance, Article 15 prohibits the State from discriminating based on caste, religion, race, sex or any of them.<sup>22</sup> Further, Article 15(2)

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<sup>20</sup> Ambedkar, *supra* note 10.

<sup>21</sup> "Bahujan" is employed to denote a collective representation of marginalized and oppressed communities within the context of Indian society. These communities have often endured historical discrimination, social ostracization, and a diminished socio-economic standing, largely stemming from factors such as caste, class, and ethnicity. The Bahujan category encompasses a diverse array of social groups, with a pronounced emphasis on specific categories, notably the Dalits, Scheduled Tribes (commonly known as Adivasis), and OBCs as delineated within the Indian caste system.

<sup>22</sup> *Constitution of India Act, 1950*, Art 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

forbids citizens from discriminating with respect to access to public places such as shops, hotels, use of wells, roads, etc. Article 17 abolishes the practice of untouchability, makes it a punishable offence and is applicable against both private and State actors.<sup>23</sup>

Besides these constitutional provisions, several laws have been enacted by the Indian legislatures to prevent the discrimination and commission of offences of atrocities against individuals belonging to certain specific caste groups and tribes. For instance, the Untouchability (Offences) Act, the Protection of Civil Rights Act, and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act prohibit and criminalise the commission of atrocities (caste-based offences) against SCs and STs. However, poor conviction rates and frequent misuse of these Acts highlight the need for their further revision.<sup>24</sup>

This thesis examines the reasons behind the failure of India's legislative framework and the challenges it faces when attempting to address deeply entrenched institutional and structural forms of caste discrimination. The statutes mentioned above primarily direct focus towards an individual's severe exemplifications of caste-based discrimination and violence. While the imperative of penalising such transgressions remains vital, the domain of criminal law treats each occurrence of discrimination or violence as a discrete, detached event committed by one or more individual perpetrators, often failing to acknowledge its intricate sociocultural and historical backdrop. The discussed approach, which confines its recognition of discrimination to its overt or

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<sup>23</sup> *Constitution of India Act, 1950*, Art 17- "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

<sup>24</sup> "Bihar: Nearly 45,000 cases under SC/ST Act pending disposal, conviction rate only 8% | India News - The Indian Express", online: <<https://indianexpress.com/article/india/bihar-sc-st-act-pending-disposal-conviction-rate-7702220/>>.

violent expressions, leads to a concerning separation between extreme forms of violence and prevailing societal norms.

While several judicial pronouncements, legislations and affirmative action policies have focussed on curtailing caste discrimination by authorities and individuals in public, much lesser attention has been focussed on caste discrimination by individuals in private spaces (called *private* discrimination). Among the most prevalent instances of private discrimination encountered by Dalits and OBCs are apparent in housing and employment. To illustrate, it is not uncommon for individuals of higher castes to withhold rental accommodations from Dalits and OBCs based solely on their caste.<sup>25</sup> Likewise, upper-caste individuals might exclusively engage individuals from their caste as domestic employees. A housing discrimination study, in particular, illuminated that approximately 18 per cent of Dalits confront categorical denials by upper-caste homeowners due to their caste affiliations. Similarly, an examination focused on educational institutions unveiled that students from upper castes frequently abstain from meeting or socialising with Dalits and OBCs beyond classrooms. Invitations to their residences during festivals or extracurricular pursuits are rare.<sup>26</sup> These vivid instances of caste-based discrimination within private domains exhibit marked disparities, yet they are often dismissed under the aegis of “personal preferences” and lack a legal safeguard.

In India, there exists a deficiency in a comprehensive framework of civil equality legislation that can effectively address everyday instances of discrimination, such as those encountered in recruitment processes, which are not covered by existing criminal statutes. This study illuminates

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<sup>25</sup> Sukhadeo Thorat et al, “Urban Rental Housing Market: Caste and Religion Matters in Access” (2015) 50:26/27 Econ Polit Wkly 47–53, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24482557>>.

<sup>26</sup> Rakesh Kumar Maurya, “In their Own Voices: Experiences of Dalit Students in Higher Education Institutions” (2018) 20:3 Int J Multicult Educ 17–38, online: <<https://ijme-journal.org/index.php/ijme/article/view/1627>>.

these complexities by adopting a comparative analytical lens, scrutinising the anti-discrimination legal framework operative within Canada. The selection of the Canadian legal system for examination emanates from multifaceted considerations. Firstly, Canada enjoys international recognition as a model of progressive legal evolution, particularly in the realm of human rights protection, prompting the adoption of the Canadian legal framework as a benchmark for comparison. Notably, Canada's federal anti-discrimination statutes presently stand as an epitome of complex legal refinement among the Organisation for Economic Co-operation and Development member states, signifying a noteworthy stride in the path of contemporary anti-discrimination jurisprudence.<sup>27</sup> Further, the Human Rights Codes implemented across various Canadian provinces furnish safeguards shielding individuals from private discrimination on multiple protected grounds. Consequently, conducting an examination of Canada's legal precedents pertaining to instances of private discrimination and assessing the approaches taken by the Courts and other adjudicative bodies becomes a necessity for facilitating a comparative inquiry into private discrimination. Secondly, the rationale underpinning this choice also originates from the noticeable presence of individuals of South Asian origin, predominantly from India, within Canada. This presence underscores the relevance of investigating caste-based discrimination within the Canadian context. Lastly, the surging incidents of caste-based violence and discrimination manifesting across Canada have been pivotal in steering this study's focus. Given that Canadian legislation does not explicitly proscribe caste-based discrimination, this thesis offers actionable recommendations to address the intricacies of the caste conundrum within the Canadian context.

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<sup>27</sup> “Committee on the Elimination of Racial Discrimination considers the report of Canada”, online: *OHCHR* <<https://www.ohchr.org/en/press-releases/2017/08/committee-elimination-racial-discrimination-considers-report-canada>>.

## 1. RESEARCH QUESTIONS

This thesis tries to answer the following research questions:

- i. Does India's current anti-discrimination legal framework effectively addressing caste-based private discrimination concerning housing, employment, marriage, and social interactions?
- ii. Is there a need for 'civil anti-discrimination legislation' in India to tackle caste-based and other types of private discrimination effectively?
- iii. What is Canada's legal framework concerning 'private discrimination' in employment, education, housing, and social interactions, and can adopting insights from Canada enhance the effectiveness of addressing 'caste-based private discrimination' in India?

## 2. THEORETICAL FRAMEWORK- CRITICAL CASTE THEORY

Critical Race Theory (CRT) offers a pragmatic framework for analysing how racism and white supremacy contribute to prevailing socioeconomic disparities, notably influenced by historical colonial experiences.<sup>28</sup> Within this theoretical construct, it is essential to extend similar attention to "upper-caste supremacy" as given to "white supremacy" discussions in the historical context of Indian colonialism.<sup>29</sup> This resonance is especially pronounced when examining Dalit identity. However, a more comprehensive exploration is required, encompassing various dimensions of identity that intricately shape societal structures and individual situations, particularly in the

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<sup>28</sup> Richard Delgado & Jean Stefancic, eds, *Critical race theory: the cutting edge*, third edition ed (Philadelphia, Pennsylvania: Temple University Press, 2013).

<sup>29</sup> Melissa Rae Goodnight, "Critical race theory in India: theory translation and the analysis of social identities and discrimination in Indian schooling" (2017) 47:5 *Comp J Comp Int Educ* 665–683, online: <<https://doi.org/10.1080/03057925.2016.1266926>>.

discourse concerning caste's impact on Dalit or Bahujan identity. In this context, CRT holds significant potential for advancement. As a result, this thesis's focus is on revealing the operational dynamics of 'upper-caste dominance'<sup>30</sup> and its role in perpetuating enduring oppression faced by India's Dalit community through the lens of Critical Caste Theory (CCT)<sup>31</sup> inspired by the 'social reproduction theory'<sup>32</sup> and CRT to foster an understanding of the interplay among caste, class, and power within India's context. However, it is essential to note that CCT remains in a state of development, needing a fully structured and coherent status within social sciences.

"Critical Caste Theory" was initially coined by Natarajan and Greenough in their publication "*Against Stigma: Studies in Caste, Race, and Justice in Durban*."<sup>33</sup> Natrajan and Greenough assert in their introductory discourse that scholars and policymakers should approach the study of caste from a tripartite perspective. Firstly, they advocate for an examination within the paradigm of "social construction". Secondly, they suggest a comparative analysis that situates caste alongside other key principles of social differentiation and hierarchy, including class, gender, race, and ethnicity. Finally, they advocate for an inquiry rooted in "critical caste theory," aimed at comprehending caste dynamics within the broader framework of effecting transformative changes in the intricate interplay among caste, casteism, inequality, and power dynamics.<sup>34</sup>

Many scholars have also debated whether addressing caste should precede discussions of class disparities.<sup>35</sup> Others argue that resolving class inequalities will eventually lead to the dissolution

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<sup>30</sup> Shalu Nigam, "The Privileges of Being a Hindu, Upper Caste and Elite Class, Male in India" (2016) SSRN Electron J, online: <<http://www.ssrn.com/abstract=2730525>>.

<sup>31</sup> Balmurli Natrajan, Paul R Greenough & University of Iowa, eds, *Against stigma: studies in caste, race, and justice since Durban*, New perspectives in South Asian history 26 (New Delhi: Orient BlackSwan, 2009).

<sup>32</sup> Christopher B Doob, *Social inequality and social stratification in US society*, 1st ed ed (Boston: Pearson, 2013) at 37.

<sup>33</sup> Natrajan, Greenough, & University of Iowa, *supra* note 32.

<sup>34</sup> *Ibid* at 10.

<sup>35</sup> Anand Teltumbde, "Dichotomisation of Caste and Class" (2016) 51:47 *Econ Polit Wkly* 34–38, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/44165876>>.



of caste and other forms of injustice, including patriarchy.<sup>36</sup> While recognising the interconnectedness of oppressive systems with class dynamics and power structures, addressing all forms of oppression concurrently is crucial.<sup>37</sup> In India, movements against caste-based discrimination must encompass challenges not only to class inequalities but also to patriarchy and various other forms of oppression. Similarly, anti-capitalist and feminist efforts should simultaneously address caste, class, patriarchy, and other forms of oppressive influence. Singularity focusing on one type of oppression risks inadvertently perpetuating new oppressive systems or reinforcing existing ones. Chapter 3 of this thesis extensively delves into the intricacies of CCT, meticulously examining its evolutionary and intersectional concepts.

### **3. LITERATURE REVIEW**

Scholars specialising on caste and discrimination have embarked on comprehensive explorations encompassing the multifaceted layers of caste-based discrimination. This encompassing investigation navigates through economic, social, political, and cultural facets, each contributing to perpetuating societal inequality. Dr B.R. Ambedkar, complemented by his adeptness as a skilled legal negotiator, draftsman and a pioneering legal scholar, was the first to reconceptualise the issue of caste and untouchability-based exclusion, transforming it from a matter confined to socio-religious dimensions to one encompassing civil, political, social, and economic rights. His work encompasses an exhaustive examination of the historical evolution of the caste system, unveiling its oppressive essence and the profound impact it casts upon marginalised communities.<sup>38</sup> His seminal work, "Annihilation of Caste", resounds with an unyielding clarion call for completely

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<sup>36</sup> Andre Béteille, *Caste, class, and power: changing patterns of stratification in a Tanjore village* (S.l.: University of California Press, 2022).

<sup>37</sup> Ambedkar, *supra* note 10.

<sup>38</sup> BR Ambedkar, "Dr. Babasaheb Ambedkar: Writings and Speeches, vols 1–17. Mumbai: Education Department of the Government of Maharashtra" (2014).

dismantling the entrenched caste hierarchy.<sup>39</sup> His resolute commitment seeks to eradicate deeply entrenched hierarchies and alleviate the widespread oppression interwoven into the system's very fabric.

In the wake of Dr Ambedkar's legacy, many scholars from South Asia and other parts of the world have delved into meticulous analyses of caste and discrimination. Spanning disciplines such as anthropology,<sup>40</sup> sociology,<sup>41</sup> history,<sup>42</sup> political science,<sup>43</sup> and economics.<sup>44</sup> These scholars have undertaken multifarious examinations of the caste system's complex dimensions. These analyses penetrate the intersections of caste with gender, class, and race, revealing the multifaceted nature of its influence. As scholars have meticulously documented the multifaceted nature of caste within modern India across diverse academic disciplines, it becomes evident that despite the legal domain receiving some degree of attention, it has remained inadequately explored by legal scholars and practitioners.

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<sup>39</sup> Ambedkar, *supra* note 10.

<sup>40</sup> Louis Dumont, *Homo hierarchicus: the caste system and its implications*, complete rev. english ed ed (Chicago: University of Chicago Press, 1980); M N Srinivas, "Caste in Modern India" (1957) 16:4 J Asian Stud 529, online: <<http://www.jstor.org/stable/2941637?origin=crossref>>; Sonalde Desai & Amaresh Dubery, "Caste in 21st Century India: Competing Narratives" (2011) 46:11 Econ Polit Wkly 40–49, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/41151970>>.

<sup>41</sup> Kalpana Kannabirān & K G Kannabiran, *Tools of justice: non-discrimination and the Indian constitution: in honour of K.G. Kannabiran* (New Delhi: Routledge, 2012); Dipankar Gupta, *From Varna to Jati: the Indian caste system from the Asiatic to the feudal modes of production*, Working papers / Centre for developing area studies, McGill university 22 (Montreal: McGill university Centre for developing area studies, 1978); Bêteille, *supra* note 37.

<sup>42</sup> Romila Thapar, *The Penguin history of early India: from the origins to AD 1300*, 1. publ ed, Penguin academics Non-Fiction, history (New Delhi: Penguin Books India, 2003); Paik, *supra* note 4; Chinnaiyah Jangam, *Dalits and the making of modern India*, first edition ed (New Delhi: Oxford University Press, 2017); Anupama Rao, *The caste question: Dalits and the politics of modern India* (Berkeley, Calif.: University of California Press, 2009).

<sup>43</sup> K Ilaiah, *Untouchable god* (Kolkata: Samya, 2013); Gopal Guru, "Dalits from margin to margin" (2000) 27:2 India Int Cent Q 111–116, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/23005493>>; Gail Omvedt, *Dalits and the democratic revolution: Dr. Ambedkar and the Dalit movement in colonial India* (New Delhi; Newbury Park: Sage Publications, 1994).

<sup>44</sup> Ashwini Deshpande, *The grammar of caste: economic discrimination in contemporary India* (New Delhi: Oxford University Press, 2011); Sukhadeo Thorat, S Madheswaran & B P Vani, *Scheduled castes in the Indian labour market: employment discrimination and its impact on poverty*, first edition ed (Oxford: Oxford University Press, 2023); Teltumbde, *supra* note 3; Satish Deshpande, "Caste and Castelessness" *Econ Polit Wkly* (13 April 2013), online: <<https://link-gale-com.ledproxy2.uwindsor.ca/apps/doc/A325286404/AONE?u=wind05901&sid=bookmark-AONE&xid=09cce927>>.

Aside from the notable contributions of Dr. Ambedkar, Marc Galanter emerged as one of the pioneering constitutional law scholars to delve into the realm of caste within the legal framework. Galanter's paper titled "Law and Caste in Modern India."<sup>45</sup> presents a thought-provoking exploration of the complex relationship between the legal system and the caste framework in contemporary Indian society.<sup>46</sup> Galanter's insightful analysis delves into the historical underpinnings of caste and its persistent influence on various facets of Indian life. Galanter's discussion of affirmative action policies and reservations is a notable highlight of the paper. He explains the complexities of these legal mechanisms, recognising both their potential to alleviate historical injustices and the inadvertent perpetuation of caste disparities. Galanter's paper was a research guide for my initial research regarding the role of legal professionals and institutions in challenging or reinforcing caste dynamics.

Upendra Baxi, a prominent legal scholar, has extensively explored various dimensions within the complex domain of caste-related issues. His engagement spans from dissecting the legal framework to scrutinising the socio-political ramifications of caste hierarchies.<sup>47</sup> Baxi's examination of caste-based discrimination centres on a critical analysis of the Indian Constitution, particularly its proclamation of equality and justice. Through his analysis, he underscores the inherent contradictions between these constitutional ideals and the persistent existence of caste-based hierarchies and discriminatory practices. His work underscores the pressing need to bridge

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<sup>45</sup> Marc Galanter, "Law and Caste in Modern India" (1963) 3:11 *Asian Surv* 544–559, online: <<https://online.ucpress.edu/as/article/3/11/544/21613/Law-and-Caste-in-Modern-India>>.

<sup>46</sup> *Ibid.*

<sup>47</sup> Upendra Baxi, "Caste Census and Constitutional Justice" (2010) 45:37 *Econ Polit Wkly* 25–29, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/25742065>>.

the chasm between these constitutional promises and their practical implementation, especially within marginalised communities.<sup>48</sup>

One of Baxi's notable contributions is his critique of the legal system's response to caste-based discrimination. He interrogates the limitations of legal remedies when confronted with deeply ingrained social injustices. Baxi's writings advocate for a comprehensive understanding of the role of law in either perpetuating or challenging caste hierarchies. He emphasises the necessity for legal reforms extending beyond formal legal equality, aiming to address the socioeconomic realities that continue to fuel caste-based discrimination.<sup>49</sup>

However, Baxi's optimism about the transformative potential of legal interventions in eradicating caste discrimination invites debate. Through its in-depth analysis of varied legislative enactments, this thesis contends that while legal reforms are indeed imperative, the resolution of caste-based discrimination demands a multifaceted approach. Such an approach should encompass legal measures, grassroots mobilisation, cultural transformations, and economic empowerment. This stance draws inspiration from the insights of Critical Race Theory scholars such as Delgado,<sup>50</sup> Bell,<sup>51</sup> and Crenshaw<sup>52</sup>, who have pointed out how institutional influence perpetuates systemic bias and racism against African Americans. In the quest for addressing caste discrimination, it becomes crucial to grasp its complexities through diverse lenses. While the insights from Critical Race scholarship are valuable, the intricacies of caste often transcend the boundaries of existing Critical

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<sup>48</sup> *Ibid.*

<sup>49</sup> Upendra Baxi, "Caste, Class and Reservations (In Memoriam: I. P. Desai)" (1985) 20:10 *Econ Polit Wkly* 426–428, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/4374159>>.

<sup>50</sup> Delgado & Stefancic, *supra* note 29.

<sup>51</sup> *Ibid.*

<sup>52</sup> Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) 140 *Univ Chic Leg Forum* 139–167.

Race frameworks.<sup>53</sup> In response to these unique complexities, CCT offers a valuable perspective. Natarajan and Greenough introduced this theoretical framework in their seminal work "*Against Stigma: Studies in Caste, Race, and Justice in Durban*."<sup>54</sup> Their book comprehensively analyses the contemporary relevance of the caste system within the globalised context, shedding light on caste dynamics both at the national (Indian) and international levels.

Nonetheless, it is notable that while Natarajan and Greenough's work is an essential foundation for CCT, it needs to have the structured framework characteristic of CRT. This absence poses challenges when applying it as a theoretical foundation within legal research. In response, this thesis builds upon the insights of Goodnight,<sup>55</sup> Natarajan and Greenough<sup>56</sup> to develop a structural framework for CCT, enhancing its applicability in legal inquiry.

In the context of this thesis, the scholarly work of Annapurna Waughray, titled "Capturing caste in Law: The Legal Regulation of Caste Discrimination,"<sup>57</sup> played a foundational role in shaping the preliminary phase of my research regarding the exploration of caste and its interplay in India's legal system. Waughray's work delves into the legal framework surrounding caste discrimination, meticulously exploring the nuances of legislative provisions and legal interpretations across diverse jurisdictions, particularly emphasising the UK. This exploration shines a light on the complexities inherent in caste discrimination. However, an intriguing paradox emerges within Waughray's contribution – its strength also poses a limitation. At times, her analysis delves excessively into legal technicalities, occasionally creating a potential disconnect from the lived experiences of those enduring caste-based discrimination. The profound immersion into legal

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<sup>53</sup> Goodnight, *supra* note 30.

<sup>54</sup> Natarajan, Greenough, & University of Iowa, *supra* note 32.

<sup>55</sup> Goodnight, *supra* note 30.

<sup>56</sup> Natarajan, Greenough, & University of Iowa, *supra* note 32.

<sup>57</sup> Waughray, *supra* note 20.

intricacies occasionally obscures the human facet of the issue, a crucial component for comprehending the tangible ramifications of discriminatory practices. Balancing the intricacies of law with human narratives could have heightened the book's accessibility and resonance.

The ambition of this thesis lies in situating caste within the legal discourse in India, critically evaluating its transformative role within constitutional jurisprudence, particularly in relation to anti-discrimination measures. This examination remains intimately linked with contemporary intersectional marginalisation faced by Dalits and Bahujans. However, a notable lacuna within Waughray's work lies in its need for more attention to intersectionality. A more robust exploration of these intersecting forms of discrimination could have enriched the analysis, yielding insights that better capture the realities of individuals grappling with multifaceted layers of disadvantage. This void is addressed in Chapter 3 of this thesis, where a comprehensive exploration of the intersectional framework of caste discrimination is undertaken, employing critical caste theory as an analytical lens.

To further dissect the web of intersectionality where caste discrimination converges with other forms of oppression, especially within the legal context, I critically engage with Kimberly Crenshaw's influential work "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,"<sup>58</sup> as well as Shreya Atrey's "Intersectional Discrimination."<sup>59</sup> Crenshaw's intersectional framework emphasises the necessity of recognising and addressing the compounded forms of oppression faced by marginalised individuals due to the interplay of multiple identities. However, it's essential to note that caste in India transcends being a mere identity; it constitutes a deeply entrenched social structure that has perpetuated systemic inequality.

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<sup>58</sup> Crenshaw, *supra* note 53.

<sup>59</sup> Shreya Atrey, *Intersectional Discrimination*, 1st ed (Oxford University Press, 2019).

The interaction between caste, class, and gender within India is multifaceted, extending beyond the confines of conventional identity-focused analyses. The intersectionality lens, while crucial, might inadvertently oversimplify the social hierarchies that underlie caste-based discrimination.<sup>60</sup>

This is where Shreya Atrey's "Intersectional Discrimination" offers valuable insights. Atrey's work expands the discourse on discrimination beyond the limitations of single-axis frameworks, striving to comprehend how different facets of identity intersect and give rise to distinct forms of disadvantage and marginalisation. Atrey argues that for claims of intersectional discrimination to be viable, it necessitates a comprehensive reconfiguration of several fundamental components within the framework of discrimination law. These components encompass a revision of legislative and constitutional provisions related to nondiscrimination, the delineation of protected categories and criteria for identifying similar categories, the comprehension of direct and indirect forms of discrimination, the substantive interpretation of discrimination, the selection of comparators for assessment, the criteria for the standard of review, the considerations of justifications, the distribution of the burden of proof, and the determination of appropriate remedies.<sup>61</sup> Atrey's work also presents a counterargument to Nivedita Menon's argument regarding the non-application of intersectionality in the Indian context.<sup>62</sup> Menon argues that the conceptual framework of intersectionality does not provide effective insight into comprehending the inherently fluid and diverse category of "women" within the context of India. This inherent fluidity is exemplified through the enduring calls for "reservations" for women in the Indian Parliament. Menon further argues that beyond the patriarchal resistance to such demands, additional opposition emerges from

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<sup>60</sup> Santvana Kumar & Ekata Bakshi, "The Dominant Post-constitutional Indian Feminist Discourse: A Critique of its Intersectional Reading of Caste and Gender" (2022) 3:1 CASTE Glob J Soc Exclusion 49–68, online: <<http://3.143.205.5/ojs/index.php/caste/article/view/364>>.

<sup>61</sup> Atrey, *supra* note 60 at 2.

<sup>62</sup> Nivedita Menon, "Is Feminism about 'Women'? A Critical View on Intersectionality from India" (2015) 50:17 Econ Polit Wkly 37–44, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24481823>>.

the consideration of the caste constituents of women who may potentially benefit from the envisioned reservations. To this Atrey argues that intersectionality rejects the understanding of discrimination as a function of a single categorical axis and emphasizes the need to recognize discrimination resulting from the intersections of multiple axes of caste, race, religion, sex, gender, disability, age, sexual orientation etc.

The works discussed above engage with various dimensions of caste and its intersections with colonialism, constitutionalism, intersectional identities, and the broader legal framework. Nevertheless, none of these works approach caste from the angle of private discrimination – that is, how caste-based discrimination unfolds within private spheres and how it impacts personal and social relationships among individuals of diverse castes. In the context of addressing discrimination, this thesis draws upon Tarunabh Khaitan's work titled "A Theory of Discrimination Law,"<sup>63</sup> as well as Gautam Bhatia's<sup>64</sup> examination of horizontal discrimination within the Indian Constitution.

Of particular significance in the examination of caste-based discrimination is Tarunabh Khaitan's exploration of the "relational conception of equality." In this paradigm, Khaitan challenges conventional notions of equality, placing a strong emphasis on social relationships, group identities, and the role of the state in achieving genuine equality. At the heart of Khaitan's framework lies the acknowledgment that inequalities extend beyond mere individual disparities, delving deeply into the intricacies of social structures and interpersonal connections.<sup>65</sup> Instead of

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<sup>63</sup> Tarunabh Khaitan, *A Theory of Discrimination Law* (Oxford University Press, 2015) DOI: 10.1093/acprof:oso/9780199656967.001.0001.

<sup>64</sup> Gautam Bhatia, "Horizontal Discrimination and Article 15(2) of the Indian Constitution: A Transformative Approach" (2016) 11:1 *Asian J Comp Law* 87–109, online: <[https://www.cambridge.org/core/product/identifier/S2194607816000053/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S2194607816000053/type/journal_article)>.

<sup>65</sup> Khaitan, *supra* note 64 at 97.



fixating solely on the formal or procedural aspects of equality, Khaitan underscores the imperative of substantive equality. This substantive equality seeks to address the fundamental sources of disparities, ensuring that individuals have equitable access to opportunities and outcomes.<sup>66</sup> One salient aspect of Khaitan's relational conception of equality is its recognition of the pivotal role played by group identities. These identities encompass categories such as caste, race, gender, religion, and others. Khaitan's framework asserts that these identities transcend individual attributes; they are, in fact, societal constructs that significantly influence an individual's experiences and opportunities. This notion becomes pertinent when analysing caste, given its entrenched hierarchical structure based on complex relational power dynamics. This relational perspective significantly enhanced my comprehension of how caste-based discrimination operates within societal and institutional contexts. The influence of caste extends across various institutions, including educational, economic, and social systems. Viewing caste discrimination through this lens underscores the imperative of addressing systemic biases.

Within his theoretical framework, Khaitan posits that those individuals assuming specific institutional roles in the public sphere, such as state employers, providers of goods or services, or accommodation to the public, bear an obligation not to engage in discriminatory practices.<sup>67</sup> Although Khaitan's discussion is not directly tied to the Indian Constitution or the issue of caste-based private discrimination encountered by marginalised castes in realms like employment and housing, it is essential to assess the applicability of his anti-discrimination law theory to private individuals as well. In Chapter 4 of this thesis, I delve into the application of the Indian

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<sup>66</sup> Colm O’Cinneide, “Justifying Discrimination Law” (2016) 36:4 Oxf J Leg Stud 909–928, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/26363448>>.

<sup>67</sup> Thulasi K Raj, “Private discrimination, public service and the constitution” (2022) 6:1 Indian Law Rev 17–36, online: <<https://www.tandfonline.com/doi/full/10.1080/24730580.2021.1950338>>.

Constitution in cases of housing and employment discrimination perpetrated by private individuals with caste as the central reference point. A critical perspective is presented on the "public actor" principle advanced by Khaitan<sup>68</sup>, as well as Gautam Bhatia's "economic goods" principle,<sup>69</sup> which contends that private discrimination involving monetary transactions assumes a public nature and thus falls within the purview of Article 15(2) of the Indian Constitution.<sup>70</sup> This thesis argues that the 'public actor' principle and 'economic goods' principle while holding relevance within the existing anti-discrimination framework of the Indian Constitution, are not sufficient enough to prohibit caste based private discrimination. Since, instances of caste based private discrimination may neither involve a 'public actor' nor involve any 'economic transaction'.

Caste operates in nuanced ways due to complex interplay of historical, religious, social, cultural and structural factors. It is manifested in various ways through stigma (lower castes being as considered as impure or untouchables) or occupational specialization (lower castes being forced to work as manual scavengers, cleaners, etc.), power dynamics or social segregation. Hence, caste demands a comprehensive approach when addressing caste-based private discrimination. Such an approach must not be confined merely to actions within the public domain; rather, it should encompass an approach that adequately addresses discrimination perpetuated by private actors within private spheres as well. This contention is rooted in the fact that most instances involving micro-aggressions, subtle discrimination, and seclusion based on caste unfold within private spaces. As long as the scope of discrimination law fails to address these private sphere dynamics, its effectiveness in curbing caste-based discrimination remains limited.

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<sup>68</sup> *Ibid.*

<sup>69</sup> Bhatia, "Horizontal Discrimination and Article 15(2) of the Indian Constitution", *supra* note 65.

<sup>70</sup> Raj, *supra* note 68.

Numerous empirical studies conducted by scholars outside the legal domain have consistently illuminated the pervasive nature of discrimination against Dalits and Bahujans in various spheres such as housing,<sup>71</sup> health,<sup>72</sup> education,<sup>73</sup> employment,<sup>74</sup> and even within private contexts.<sup>75</sup> An investigation by Sukhdeo Thorat regarding discrimination in urban rental housing within Delhi and nearby cities revealed that 18 per cent of Dalit and 31 per cent of Muslim homeseekers encountered outright refusal when seeking accommodation in the country's National Capital Region.<sup>76</sup> Additionally, Maurya's study centred on the experiences of Dalit students within Higher Educational Institutions, unveiled that while upper-caste students are willing to socialise with Dalit students on campus, they seldom extend invitations for academic or non-academic purposes, such as festivals or ceremonies.<sup>77</sup> This restraint emanates not from an unwillingness to invite Dalit friends to their homes but rather stems from apprehensions about backlash from their families and communities. The study also highlighted caste-based prejudices and discrimination when Dalit students interacted with college administration, primarily attributed to the lack of Dalit representation in administrative roles.

Scholars such as Khaitan, Bhatia, and Thulasi have tackled aspects of housing and employment discrimination.<sup>78</sup> However, their examinations primarily orbit around theoretical dimensions of private discrimination, failing to encompass the narratives of marginalisation in the

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<sup>71</sup> Thorat et al, *supra* note 26.

<sup>72</sup> Raksha Thapa et al, "Caste Exclusion and Health Discrimination in South Asia: A Systematic Review" (2021) 33:8 *Asia Pac J Public Health* 828–838.

<sup>73</sup> Maurya, "In their Own Voices", *supra* note 27.

<sup>74</sup> D Ajit, Han Donker & Ravi Saxena, "Corporate Boards in India: Blocked by Caste?" (2012) 47:32 *Econ Polit Wkly* 39–43, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/23251799>>.

<sup>75</sup> Deshpande, *supra* note 45.

<sup>76</sup> Thorat et al, *supra* note 26.

<sup>77</sup> Maurya, "In their Own Voices", *supra* note 27.

<sup>78</sup> Khaitan, *supra* note 64; Bhatia, "Horizontal Discrimination and Article 15(2) of the Indian Constitution", *supra* note 65; Raj, *supra* note 68.

aforementioned empirical research studies. Their arguments advocating for the regulation of private discrimination tend to be generalised and fail to address the multidimensional marginalisation endured by Dalits, as underscored by the empirical research.<sup>79</sup>

While the scope of Indian legal scholarship on ‘caste-based private discrimination’ remains limited, predominantly centring on housing discrimination, I turned to Canadian and Global North scholars to get insights into anti-discrimination frameworks and their engagement with multifaceted layers of discrimination. I explored prevailing research on private discrimination and its regulatory mechanisms. Grodsky and Pager, for instance, delves into the sociological aspects of private discrimination, specifically in relation to racial discrimination within employment, housing, credit, and consumer markets.<sup>80</sup> Similarly, David Bilchitz's paper titled “*Why courts should not sanction unfair discrimination in the private sphere: a reply*” addresses the question of whether religious associations should be granted exemptions from legal anti-discrimination provisions concerning their employment practices.<sup>81</sup> Bilchitz's central argument revolves around the assertion that courts should exert influence in overseeing and penalising unjust discrimination within private realms. Discriminatory practices, even within private interactions, can perpetuate systemic inequalities and infringe upon individual human rights. Bilchitz contends that safeguarding human dignity and equality, foundational principles of human rights law should extend beyond state actions to include private relationships.<sup>82</sup> Mirroring Bilchitz’s stance within religious domains, this thesis posits that human dignity, equality, and societal welfare should

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<sup>79</sup> Zahra Siddique, “Evidence on Caste Based Discrimination” (2011) 18 Labour Econ S146–S159, online: <<https://linkinghub.elsevier.com/retrieve/pii/S0927537111000807>>.

<sup>80</sup> Eric Grodsky & Devah Pager, “The Structure of Disadvantage: Individual and Occupational Determinants of the Black-White Wage Gap” (2001) 66:4 Am Sociol Rev 542, online: <<http://www.jstor.org/stable/3088922?origin=crossref>>.

<sup>81</sup> David Bilchitz, “Why Courts Should not Sanction Unfair Discrimination in the Private Sphere: A Reply” (2012) 28:2 South Afr J Hum Rights 296–315, online: <<https://heinonline.org/HOL/P?h=hein.journals/soafjhr28&i=308>>.

<sup>82</sup> *Ibid.*

govern legal deliberations, even within the private sphere. Courts should play an active role in regulating and penalising caste-based discrimination in private settings, aligned with the broader goals of upholding human rights and societal justice.

Within Chapter 4 of this thesis, an engagement with the counter-arguments against regulating private discrimination comes to the fore. In his work, Richard Epstein posits that private discrimination constitutes a simple refusal to engage rather than an employment of force. Consequently, government coercion or regulation should not be warranted. This thesis comprehensively analyses such contentions raised by Epstein and other scholars and offers counter-arguments that address their underpinnings.<sup>83</sup> Moreover, it is noteworthy to underscore that most scholarship concerning private discrimination predominantly centres on instances of racial discrimination, thus leaving a conspicuous void wherein the dedicated examination of caste-based discrimination within personal spheres still needs to be explored. In this vein, this thesis strives to bridge this research gap by advocating not only for regulating private discrimination but also by advancing a compelling case for such regulation within the context of caste-based discrimination.

Turning to the Canadian context, in pursuit of comprehending the diverse facets of discrimination, both by State and non-state actors, I turn to the scholarly contributions of Anthony Sangiuliano,<sup>84</sup>

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<sup>83</sup> Richard H McAdams, "Epstein on Private Discrimination: Searching for Common Ground" (2021) 50:S2 J Leg Stud S293–S312, online: <<https://www.journals.uchicago.edu/doi/10.1086/705548>>; Richard A Epstein, "Should Anti-discrimination Laws Limit Freedom Of Association? The Dangerous Allure Of Human Rights Legislation" (2008) 25:2 Soc Philos Policy 123–156, online: <[https://www.cambridge.org/core/product/identifier/S0265052508080217/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0265052508080217/type/journal_article)>; Richard A Epstein, "The Wrong Rights, or" (2018) 85:2 Univ Chic Law Rev 403–424, online: <<https://www-jstor-org.ledproxy2.uwindsor.ca/stable/26455912>>.

<sup>84</sup> Anthony Sangiuliano, "Can There Be a Unified Doctrine of Anti-Discrimination in Canada?" (2022) 18 J Law Equal 1, online: <<https://heinonline.org/HOL/P?h=hein.journals/jleq18&i=1>>.

A. Anne McLellan,<sup>85</sup> and Sonia Lawrence.<sup>86</sup> Their analyses delve into the contours, applicability, and limitations of the Canadian Charter of Rights and Freedoms, shedding light on its implications for various manifestations of discrimination within the Canadian landscape. Further enriching this exploration is Frances Henry's seminal work, "*Racism in the Canadian University: Demanding Social Justice, Inclusion, and Equity*."<sup>87</sup> Within this study, Henry adeptly navigates the tapestry of racism deeply woven into Canadian universities. By artfully weaving together systemic, structural, and individual dimensions of racism, she amplifies the voices and experiences of those affected. Through this nuanced approach, she unfurls the interplay between racial discrimination, power dynamics, and institutional configurations. However, even amidst the commendation, it is prudent to note that a marginal comment arises that the book's potency could be enhanced through the inclusion of detailed case studies or empirical evidence. Such omissions might inadvertently contribute to a sense of generalisation, possibly diluting the diverse experiences within distinct institutions.

In a similar scholarly vein, Prof. Laverne Jacobs' empirical research titled "*Access to Post-secondary Education in Canada for Students with Disabilities*."<sup>88</sup> provides a comprehensive exploration of the obstacles confronted by disabled students in their pursuit of higher education in Canada. Jacobs meticulously navigates the landscape of human rights legislation, accommodation protocols, and the duty to accommodate, furnishing readers with a robust understanding of the

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<sup>85</sup> A Anne McLellan & Bruce P Elman, "To Whom Does the Charter Apply - Some Recent Cases on Section 32 Case Comments and Notes" (1985) 24:2 Alta Law Rev 361, online: <<https://heinonline.org/HOL/P?h=hein.journals/alblr24&i=371>>.

<sup>86</sup> Sonia Lawrence, "Equality and Anti-discrimination: The Relationship between Government Goals and Finding Discrimination in Section 15" in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *Oxf Handb Can Const*, 1st ed (Oxford University Press, 2017) 815.

<sup>87</sup> Frances Henry & Carol Tator, eds, *Racism in the Canadian University: Demanding Social Justice, Inclusion, and Equity* (Toronto: University of Toronto Press, 2018).

<sup>88</sup> Laverne Jacobs, "Access to post-secondary Education in Canada for students with disabilities" (2023) 23:1-2 Int J Discrim Law 7-28, online: <<http://journals.sagepub.com/doi/10.1177/13582291231174156>>.

legal framework. However, a notable aspect pertains to the predominance of legal considerations over broader sociocultural and systemic factors that contribute to the challenges experienced by disabled students. Further expansion into the interplay between disability and other intersecting identities, encompassing race, gender, and socioeconomic status, could have augmented the analysis, acknowledging how these dynamics compound barriers and influence the experiences of disabled students. Prof. Jacobs' work serves as an invaluable resource, offering insights into the constraints of Canada's anti-discrimination framework and the systemic biases that hinder disabled students' access to post-secondary education.

Drawing upon these scholarly explorations, this thesis seeks to probe whether an intrinsically morally relevant distinction exists between private and non-private discrimination and, if ascertainable, whether the regulation of private discrimination would contravene the constitutional prerogative of choice, freedom of assembly, and association.

#### **4. SCOPE OF MY STUDY**

I recognise that India struggles with many discriminatory practices across diverse grounds, including caste, gender, race, creed, religion, disability, sexual orientation, and other societal malaises that impede the nation's socioeconomic and political advancement. However, within the confines of this thesis, my inquiry centres on caste-based discrimination endured by individuals at the hands of non-state entities, specifically concerning matters of housing, employment, and social interaction. The focal point of this study resides in discrimination enacted or experienced by private individuals exclusively. References to private entities such as non-state corporations, associations, and societies are invoked as necessary to contextualise discrimination in contexts beyond direct state governance.

Moreover, the comparative scrutiny centres on the anti-discrimination legal frameworks of India and Canada. The rationale for delimiting my investigation to the singular realm of caste-related private discrimination is rooted in the complex nature of caste's pervasive influence across Indian society. Its manifestations exhibit marked variability across geographical regions, social strata, gender dynamics, and more. Thus, a study of caste-based private discrimination inherently encapsulates a nexus of intersecting identities, which forms an integral part of this research. Furthermore, it is important to acknowledge that this thesis approaches the topic of racial discrimination with a certain degree of limitation. In this work, my exploration of race is confined to the scope of contextualizing Critical Caste Theory within the broader framework of Critical Race Theory.

It is pertinent to emphasise that this research probes the regulation and treatment of private discrimination within India and Canada, specifically regarding caste. Nevertheless, the findings and recommendations may serve as a pivotal reference point for future inquiries aimed at regulating other forms of private discrimination distinct from caste.

## **5. METHODOLOGY OF THE STUDY**

In this thesis, I have employed two distinct methodologies. In Chapter 2, I have utilised the doctrinal legal research method. This chapter explores the concept of 'caste' within the Indian context, delving into its historical, cultural, social, and political implications across personal and public realms. The chapter underscores the influence of caste in an individual's social and political life, emphasising its pervasive presence in various facets of daily existence. The chapter analyses the regulation of caste-based discrimination before independence. It further examines the constitutional formulation process in India, focusing on endeavours to address caste-based



discrimination. Additionally, the chapter explores legislative enactments after the establishment of the Indian Constitution and evaluates the limitations in the nation's legal mechanisms to combat caste-based discrimination effectively. This assessment shows the inadequacies in the legislative and policy framework, regarding caste-based private discrimination.

In Chapter 3, I analyse the evolution of Critical Race Theory through a review of secondary literature, employing it as a conceptual framework to formulate the Critical Caste Theory. This novel framework serves as the basis for analysing caste-based oppression within India. This chapter delves into the correlation between Critical Race Theory (CRT) and casteism. This section also confronts some challenges of employing CRT concepts in the Indian societal landscape, culminating in the development of Critical Caste Theory (CCT). This analytical framework is tailored to examine caste-based discrimination in India comprehensively. The subsequent part of this chapter establishes a fundamental platform for an in-depth investigation into CCT, firmly grounded in the principles of CRT. It extensively probes the core tenets of CCT, advocating its application in dissecting caste-based discrimination and multifaceted marginalisation in the Indian context.

In Chapter 4, the doctrinal legal research method is employed to investigate the deliberations within the Constituent Assembly during the formulation of the Indian Constitution. This chapter comprises two parts. First delves into the legal and constitutional challenge posed by caste-based discrimination within private domains. While the Constituent Assembly worked to eliminate caste-based discrimination, the lack of robust mechanisms in private spheres threatens foundational state principles. This discussion explores constitutional morality, considering its implications in a society striving to overcome caste disparities. The second part examines caste-based discrimination in private domains through illustrative case studies and judicial pronouncements by

the Supreme Court of India. These cases underscore the gap between acknowledging discrimination within India's legal framework and providing effective remedies for victims. The chosen cases reveal limitations in addressing caste-based discrimination within private contexts, highlighting a dissonance between recognition and action and argues for enactment of Civil Anti-Discrimination laws in India to deal with such cases of caste-based private discrimination. The conclusion of this chapter also endeavours to counter prevalent arguments often presented against the regulation of private discrimination.

In Chapter 5, I use the doctrinal legal research method. This chapter is structured to analyse Canada's existing anti-discrimination framework comprehensively. It examines the scope and impact of the Charter of Rights and Freedoms, delves into Human Rights Legislation, and evaluates the constraints of private discrimination law within the Canadian context. Additionally, the chapter explores the presence of caste discrimination in Canada and its regulatory framework by examining a case adjudicated by the Human Rights Tribunal. This case study sheds light on the limitations of the Canada's legal structure's effectiveness in addressing issues related to caste-based discrimination.

In Chapter 6, the present research concludes with its findings, culminating in a call for comprehensive reforms in India's multifaceted approach to addressing the issue of caste-based discrimination. Within this context, the research extends its purview to assimilate pertinent insights assembled from international models that have successfully navigated the labyrinth of discrimination eradication. Additionally, this chapter advocates for the establishment of a more expansive legal framework, one cognizant of the continued presence of discriminatory practices within the ostensibly sacrosanct precincts of private domains. The overarching objective of such an initiative is to engender an atmosphere conducive to the cultivation of enhanced egalitarianism

and the realization of social justice, simultaneously benefiting both the Indian and Canadian socio-legal landscapes.

## CHAPTER 2

### TRACING THE TRAJECTORY: CASTE-BASED DISCRIMINATION FROM HISTORY TO CONTEMPORARY LEGAL CONUNDRUMS

*“Once you clear the minds of the people of this misconception and enable them to realise that what they are told is religion is not religion, but that it is really law, you will be in a position to urge its amendment or abolition.”*

— *B.R. Ambedkar, Annihilation of Caste*

#### 1. INTRODUCTION

This chapter is structured into three distinct sections. *Part I*, is dedicated to expounding upon the concept of ‘caste’ in the Indian context. Within this part, the focus is directed toward an introduction to the issue of ‘caste discrimination’ in India, encompassing its historical, cultural, and social implications. This part initiates with an exploration of the origins of caste hierarchy in India, delving into its evolutionary trajectory, its subsequent solidification, and its deployment as an instrument of oppression to subjugate and marginalise lower castes

*Part II*, engages in an in-depth analysis of the regulation of caste-based discrimination during the pre-independence era and then examines the constitutional formulation process in India, particularly emphasising the meticulous efforts aimed at penalising caste-based discrimination.

The final section, *Part III* explores the legislative enactments after the establishment of the Indian Constitution takes place, accompanied by an evaluation of the inadequacies exhibited by the country’s legal and regulatory mechanisms in effectively combatting caste-based discrimination.

It accentuates the deficiencies within the existing legislative and policy framework, particularly in addressing caste-based discrimination of a private nature.

## **2. FROM ROOTS TO RANKS: UNEARTHING THE ORIGINS OF CASTE HIERARCHY**

### **2.1. FROM PIETY TO PRECEDENCE: CASTEIST LEGAL EVOLUTION IN THE VEDIC AGE**

In the Indian context, the term ‘Caste’ refers to a stringent system of social stratification organised along lines of descent-based hierarchy. This system entails the systemic imposition of social limitations on individuals based on their birth within specific castes.<sup>89</sup> It stands as one of the earliest manifestations of discrimination across the globe. ‘Caste’ is etymologically derived from the Portuguese word ‘*casta*,’ signifying categories such as race, species, or pure lineage.<sup>90</sup>

The ideological justification for the caste structure originates within Hindu cosmogonical narratives, commonly referred to as ‘varnas’.<sup>91</sup> The caste system is structured around four principal castes, termed as *varnas*: the Brahmans (priests), Kshatriyas (warriors and rulers), Vaisyas (traders, artisans, and producers), and Shudras (servants and labourers). The genesis of this fourfold division originates in the tenth book of the Rig Veda.<sup>92</sup> This text narrates the cosmogonic narrative of *Purusha*, the primordial or cosmic being, whose sacrificial embodiment culminated in the creation of the universe and human society, subsequently classified into four distinct classes, or varnas:

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<sup>89</sup> Teltumbde, *supra* note 3.

<sup>90</sup> Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*, 1st ed (Cambridge University Press, 1999).

<sup>91</sup> Waughray, *supra* note 20.

<sup>92</sup> *Ibid* at 32; Wendy Doniger, *The hindus: an alternative history* (New York: Penguin Books, 2014).

“When they divided the Man into how many parts did they apportion him? What do they call his mouth, his two arms and thighs and feet? His mouth became the Brahman; his arms were made into the Warrior, his thighs the People, and the Servants were born from his feet.”<sup>93</sup>

Historically, the ‘Dalits’ remained beyond the confines of the *Varna* system. Their occupations encompassed tasks that the prevailing Indian society categorically designated as ritually defiling, such as scavenging, sweeping, and leatherworking.<sup>94</sup>

Rig Veda and Manusmriti embodied the construct of purity and impurity, with specific implications for Dalits and Shudras. Manusmriti, contains teachings or science of righteousness by Manu.<sup>95</sup> It is hailed as the ancient socio-legal code which institutionalized caste hierarchies and systemic oppression of Dalits. Manu categorically affirms the existence of merely four “caste” or varnas, intentionally excluding the *Chandalas* (Dalits) from this classification.<sup>96</sup> The antagonism exhibited towards the Shudras and Dalits in Rig Veda and Manusmriti has led to the systemic acts of brutality, enslavement and discrimination against them.

The importance of these ancient texts is underscored by the fact that resistance against Manu and Manusmriti has been a central element of social reform and anti-discrimination movements in India. Dr. B. R. Ambedkar, famously denounced Manusmriti as the infamous code upholding "social justice." In a symbolic gesture against the hierarchical and oppressive caste-based social order, he staged an event on December 25, 1927, known as the Mahad Satyagrah, during which

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<sup>93</sup> Doniger, *supra* note 93.

<sup>94</sup> Guru, *supra* note 44.

<sup>95</sup> “Manu-smriti | Dharma, Vedic Texts & Ancient India | Britannica”, (18 July 2023), online: <<https://www.britannica.com/topic/Manu-smriti>>.

<sup>96</sup> In a passage, Manu writes: “[The *Chandalas*] must live outside the village; their property consists of dogs and donkeys; their garments are the clothes of the dead; they eat in broken vessels; their ornaments are of iron, and they constantly roam about. A man who follows the Law should never seek any dealings with them. All their transactions shall be among themselves, and they must marry their own kind. They depend on others for their food, which should be in a broken vessel. They must not go about in villages and towns at night; they may go around during the day to perform [tasks but must wear] distinguishing marks.”

copies of Manusmriti were publicly burned.<sup>97</sup> This act served as a powerful statement against the perpetuation of caste-based discrimination and inequality. Nevertheless, notwithstanding the evident and explicit antipathy manifested within the Manusmriti towards both Shudras and Dalits, Manu endures as a revered figure throughout India. His presence is conspicuous in the form of statues and portraits adorning courtrooms across the nation, symbolizing his historical significance as the inaugural legal scholar of the country.<sup>98</sup>

## **2.2. FROM IMPOSED HIERARCHIES TO DECONSTRUCTED CASTE REALITIES: INVESTIGATING COLONIAL-ERA IRREGULATION**

The caste system and ‘structural inequalities’ got fortified by the colonial influence over a period of two centuries. Initially, the British Indian judicial system embarked upon the task of elucidating the tenets of Hindu law by enlisting the guidance of Brahmin “Law Officers,” commonly referred to as ‘pandits’.<sup>99</sup> These pandits, erudite Brahmin scholars well-versed in the nuances of the shastras, advocated the proposition that, for adherents of the Hindu faith, the sastras constituted the corpus of jurisprudence reflective of classical Indian practice. This doctrinal framework was considered to hold sway as the *de facto* legal framework.<sup>100</sup>

The relationship between British jurisprudence and Hindu law was systemitized by the emergence of diverse English translations and comprehensive digests centred around “Hindu”

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<sup>97</sup> Bhimrao Ramji Ambedkar & Bhimrao Ramji Ambedkar, *Against the madness of Manu: B. R. Ambedkar’s writings on Brahmanical patriarchy*, Sharmila Rege, ed (New Delhi: Navayana Publ, 2013); Omvedt, *supra* note 44; Mukul Sharma, *Caste and nature: Dalits and Indian environmental politics*, first edition ed (New Delhi, India: Oxford university press, 2017).

<sup>98</sup> Anurag Bhaskar, “Caste And The Statue Of ‘Manu’ In Rajasthan High Court”, (6 May 2020), online: <<https://www.livelaw.in/columns/caste-and-the-statue-of-manu-in-rajasthan-high-court-156315>>.

<sup>99</sup> Werner Menski, *Comparative law in a global context: the legal systems of Asia and Africa* (New York: Cambridge University Press, 2006); Thapar, *supra* note 43.

<sup>100</sup> Waughray, *supra* note 20 at 58.

jurisprudence.<sup>101</sup> These textual resources were contrived with the express intent of serving as interpretative aides for British magistrates. While the expertise of pandits was harnessed for this purpose, the trajectory of legal evolution also witnessed the gradual ascendance of a broader judicial approach encompassing unwritten customs and established norms. The continued involvement of pandits persisted until their eventual abolition in 1864.<sup>102</sup>

During this period, India's "personal law" system was based on distinct regulations applied to individuals belonging to diverse varnas, a practice that commonly entailed distinct rules for the Shudras in contrast to the three twice-born varnas.<sup>103</sup> Consequently, within the purview of colonial judicial proceedings, a pivotal concern revolved around the delineation of an individual's *Shudra* classification. To address this concern, the colonial courts formulated evaluative criteria grounded in Hindu textual jurisprudence aimed at determining the *varna* status of specific castes within a comprehensive Hindu framework. This framework, as articulated by Galanter, embodies a "sacral" interpretation of caste, which presupposes the assimilability of all Hindu groups within varna classifications.<sup>104</sup> Of notable relevance for future legal initiatives aimed at challenging caste-based oppression and discrimination is the classification presented by this interpretation, designating "untouchability" as a phenomenon rooted in "religious and ritual" aspects rather than being categorised as a "social or material" construction.<sup>105</sup> This conceptual demarcation holds critical

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<sup>101</sup> Milton Singer & Bernard S Cohn, eds, *Structure and Change in Indian Society*, 1st ed (Routledge, 2017) at 38–109.

<sup>102</sup> Ludo Rocher, "Hindu Conceptions of Law Religion and the Law" (1977) 29:6 *Hastings Law J* 1283–1306, online: <<https://heinonline.org/HOL/P?h=hein.journals/hastlj29&i=1305>> at 86–87.

<sup>103</sup> Marc Galanter & Rajeev Dhavan, *Law and society in modern India* (Delhi ; New York: Oxford University Press, 1989).

<sup>104</sup> Marc Galanter, *Competing equalities: law and the backward classes in India* (Berkeley: University of California Press, 1984).

<sup>105</sup> By stating that untouchability was rooted in the "religious and ritual" aspects rather than categorising them as a "social or material" construction, the Britishers brought untouchability within the realm of personal law, which was regulated by religious scriptures like Rig Veda or Manusmritie thereby giving a legal sanction to untouchability.

implications for the understanding and redressal of caste-based inequalities within the legal paradigm.<sup>106</sup>

In 1858, driven by the imperative to reassure indigenous sovereigns and subjects of the Crown's 'benevolent intentions', Queen Victoria issued a proclamation that unequivocally stipulated the protection of her subjects' interests. The proclamation underscored the principles of impartiality, non-interference, and respect for religious convictions. Specifically, it articulated the assurance that no individuals would face preferential treatment, harassment, or disturbance on account of their religious beliefs or practices.<sup>107</sup> The proclamation further asserted the non-involvement of the state in matters concerning religious beliefs or worship, thereby upholding the sacrosanct nature of these domains for all subjects.<sup>108</sup> In the realm of legal governance, a commitment was expressed to considerately acknowledge the historical rights, established customs, and age-old usages of India.<sup>109</sup> Implicit within this proclamation was a discernible indication that the entrenched caste-based discriminatory practices of the "upper castes" would remain inviolable, being subsumed under the protective umbrella of "religious or customary observances."<sup>110</sup> This insinuation suggested that these practices, often deemed unjust and inequitable, would not be subjected to legal challenge or alteration based on this proclamation's framework.

The colonial courts upheld the enforcement of "exclusionary practices" observed within the purview of "upper caste" groups, encompassing practices characterised by segregation. This endorsement was particularly evident in cases where these practices pertained to the utilisation of

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<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*



religious edifices, although this did not extend to secular public amenities such as roads. The justification underlying this judicial stance rested upon the premise that religious premises, defined expansively, constituted private properties from which Dalits were systematically excluded by virtue of caste-based customs.<sup>111</sup> As a consequence of this legal interpretation, dominant castes were strategically positioned to harness the colonial legal framework, notably property law, as a mechanism for safeguarding their caste-based status and attendant privileges. In parallel, this dynamic engendered a situation wherein the lower castes, most notably the Dalits, were effectively precluded from access to the protective ambit of the law, thus curtailing their entitlement to legal safeguards and redress.<sup>112</sup> This situation essentially laid the foundation for what constituted caste discrimination in the public sphere, such as on roads, and what constituted a private sphere, such as religious spaces. Consequently, it provided a legal justification for caste-based discrimination in private settings.

### **3. FROM OPPRESSION TO EMPOWERMENT**

The overarching objectives of this part encompass a profound investigation into [i] the conceptualisation of caste, alongside the formulation and application of legal constructs designed to combat discrimination and inequality rooted in caste-based considerations; [ii] the trajectory of caste-based discrimination, spanning its religious, social, and legal foundations, mechanisms for its amelioration, and the evolutionary trajectory of legal recourse; [iii] a judicious evaluation of the merits and limitations inherent within extant legal analyses and strategies concerning the

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<sup>111</sup> Galanter references instances from British Indian legal cases in which courts issued injunctions to prohibit individuals from lower castes from entering temples. These courts also awarded damages, citing trespass to the person, to higher castes to facilitate purification ceremonies prompted by the perceived "pollution" resulting from the presence of the lower castes. This legal recourse effectively positioned Dalits as agents of social disruption rather than acknowledging their historical role as victims of such systemic injustices. See Galanter & Dhavan, *supra* note 104.

<sup>112</sup> Waughray, *supra* note 20.

alleviation of caste-based discrimination within the Indian situation; and [iv] a meticulous examination of the forces that shape, as well as impede, the emergence of innovative legal analyses and strategies aimed at the eradication of caste-based discrimination.

### **3.1. FROM TRADITION TO TRANSFORMATION: CASTE REFORM AMIDST THE INDEPENDENCE STRUGGLE**

The era of British colonial rule, intricately interwoven with its legal apparatus, also ushered in novel avenues conducive to education and progression. These avenues, predominantly accessible to the upper caste and class of Indian society, held a theoretical promise of inclusivity for a modest segment of the 'lower caste'.<sup>113</sup> This period also marked the infusion of innovative concepts and paradigms, disseminated through the efforts of Indian and European intellectual luminaries, European missionary endeavours, and indigenous proponents of religious reform. Among these reformist advocates, the noteworthy figures of Jyotirao Phule and Savitribai Phule stood out as fervent challengers of the caste system and staunch promoters of social equality.<sup>114</sup>

As nationalist sentiments gained traction, India witnessed a diverse range of reform concerns intricately woven into its social fabric. These concerns primarily revolved around issues like the caste system. This era saw the rise of widespread caste-focused groups, as well as movements advocating for Hindu reform and the rights of those excluded from the Brahmin caste.

The drive for caste reform was intimately intertwined with the aspiration for personal advancement and upward mobility within the 'lower castes.' This aspiration often materialised through the emulation of practices associated with the 'upper castes,' a phenomenon later coined as

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<sup>113</sup> Galanter, *supra* note 105.

<sup>114</sup> Bipan Chandra, *History of modern India*, 1. publ., repr ed (New Delhi: Orient Blackswan, 2009).

"Sanskritisation" by the esteemed Indian sociologist MN Srinivas.<sup>115</sup> Interestingly, some of these practices, which reformers from the 'higher caste' strata contested, such as child marriage and the prohibition of remarriage for widows, were precisely the ones that the process of Sanskritisation aimed to adopt. Significantly, it was only towards the latter part of the 19th century that the discourse on reform evolved to acknowledge caste-based hierarchy and inherent inequalities as distinct and pressing dilemmas necessitating targeted intervention.

Galanter presents a notable dichotomy in the strategies employed to tackle caste-based inequality during the first half of the twentieth century, explicitly labelled as the "evangelical" and "secular" paradigms.<sup>116</sup> The evangelical approach, exemplified by the influential figure Mahatma Gandhi (1869–1948), revolved around uplifting untouchables to higher Hindu standards while prompting caste-affiliated Hindus to acknowledge their role in perpetuating untouchability. Under this perspective, untouchability was not considered an intrinsic aspect of Hinduism but rather an external contaminant. The envisioned result aimed at integrating uplifted untouchables and penitent Hindus into a reformed and purified version of Hinduism.<sup>117</sup>

In contrast, as expounded by Galanter, the secular approach, epitomised during the initial half of the twentieth century by Dr Ambedkar, launched an assault on the systemic deprivation of civil, economic, and social rights suffered by Dalits. This approach pursued through legal and policy interventions and achieved via political mobilisation, aimed to rectify and counteract the entrenched injustices endured by the marginalised Dalit community.<sup>118</sup>

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<sup>115</sup> M N Srinivas, "A Note on Sanskritization and Westernization" (1956) 15:4 Far East Q 481, online: <<https://www.jstor.org/stable/2941919?origin=crossref>>.

<sup>116</sup> Galanter, *supra* note 105.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

Until the early decades of the 20th century, the Dalits did not occupy a universally recognised pan-Indian classification. The term "untouchability," introduced in 1909, carried a rhetorical weight that aimed to delineate the specific and ritualised discrimination faced by the Dalit community. This nuanced understanding was astutely articulated by Ambedkar. His efforts were transformative, elevating "untouchability" from a mere descriptive expression to a distinct designation signifying a unified pan-Indian political identity. Moreover, he established it as a novel social and legal category.<sup>119</sup>

### **3.2. FROM VISION TO REALITY: CRAFTING A NEW INDIA THROUGH CONSTITUTIONAL PRINCIPLES**

In the year 1946, the British authorities established the Constituent Assembly, presided over by Dr. Rajendra Prasad, with the purpose of formulating a constitution for the forthcoming sovereign India. In a pivotal development on 29 August 1947, Dr BR Ambedkar, a distinguished member of the Constituent Assembly, was designated as the Chairman of the Constitution Drafting Committee. This appointment bestowed upon him the central responsibility of orchestrating the process of crafting the foundational framework of the Indian Constitution.<sup>120</sup>

With regard to the Dalits (Scheduled Castes), the Constitution embodies a multi-faceted strategy that finds its roots in the profound legal and political insights of Dr Ambedkar. This visionary

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<sup>119</sup> Simon Charsley, "‘Untouchable’: What is in a Name?" (1996) 2:1 J R Anthropol Inst 1, online: <<https://www.jstor.org/stable/3034630?origin=crossref>>.

<sup>120</sup> Ramachandra Guha, "Gandhi's Ambedkar" in Aakash Singh & Silika Mohapatra, eds, *Indian Polit Thought Read* (Routledge, 2010).

perspective culminated in the elevation of the “untouchables” to the status of a nationwide socio-political entity, thereby cementing their identity as a unique independent legal classification.<sup>121</sup>

The constitutional architecture encapsulates a tripartite framework meticulously designed to address the multi-faceted challenges faced by the Dalit community. Firstly, it extends legal safeguards to shield individuals from the tenets and manifestation of untouchability<sup>122</sup>, along with safeguarding them against disparities and prejudice within the domains of social and economic spheres.<sup>123</sup> Secondly, affirmative action mechanisms, often designated as “reservations,” find application in domains such as political representation, government appointments, public-sector employment, and admissions to higher education institutions.<sup>124</sup> These measures are tailored to enhance the representation of Dalits and Bahujans in the public sector. Thirdly, the Constitution envisions a range of measures aimed at catalysing socio-economic development.<sup>125</sup> The underlying intent of this strategic framework is multi-pronged: to shield Dalits from the imposition of social marginalisation<sup>126</sup> stemming from untouchability, to redress historical injustices and disadvantages perpetuated by untouchability, to augment their representation in sectors designated by quotas, and to facilitate and expedite their progress in economic and social dimensions.<sup>127</sup>

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<sup>121</sup> Upendra Baxi & Bhikhu C Parekh, eds, *Crisis and change in contemporary India* (New Delhi ; Thousand Oaks: Sage Publications in association with The Book Review Literary Trust, New Delhi, 1995) at 121–139.

<sup>122</sup> *Constitution of India Act*, 1950 art 17.

<sup>123</sup> *Ibid* arts 14–15.

<sup>124</sup> *Ibid* art 16.

<sup>125</sup> *Ibid* arts 36–51.

<sup>126</sup> The usage of the term "disability" within the context of caste-based discrimination is derived from the phrasing employed in Article 17 of the Indian Constitution.

*“Article 17- Abolition of Untouchability: Untouchability is abolished, and its practice in any form is forbidden. The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.”*

<sup>127</sup> *Indra Sawhney vs Union Of India and Others*, 1993 AIR 477.

The Constitution of India (COI) further lays the foundation for India as a ‘Sovereign, Socialist, Secular, Democratic Republic’.<sup>128</sup> Among the provisions of fundamental significance, Articles 14-31 of the COI establish an array of individual fundamental rights for all citizens, encompassing civil and political entitlements that hold direct enforceability within the higher courts of the judicial system. The realm of social and economic rights finds its mention in Part IV (Articles 36-51) of the COI, designated as Directive Principles of State Policy (DPSPs), classified as non-justiciable, yet deemed ‘fundamental in the governance of the country’ according to Article 37. It is incumbent upon the state to integrate these principles into legislative and policy initiatives. Article 14 confers the right to equality before the law, and Article 15(1) unequivocally proscribes any form of discrimination by the state based solely on considerations of religion, race, caste, sex, place of birth, or any combination thereof. A pivotal stride toward social reform is marked by Article 17, which abolishes untouchability by both public and private actors. This provision also imposes a comprehensive prohibition on the practice of untouchability in any manifestation, further criminalising the enforcement of marginalisation stemming from untouchability. Articles 16(1) and 16(2) consecutively extend the assurance of equality of opportunity and the prohibition of discrimination grounded in religion, race, caste, sex, place of origin, or residence within the sphere of public employment or state appointments.

These provisions serve as a manifestation of Ambedkar’s nuanced comprehension of freedom and equality. Ambedkar’s perspective perceives acts of discrimination, irrespective of whether instigated by entities in the public or private domain, as encroachments upon and antagonistic to the fundamental rights inherent to citizenship. This perspective accords parity to economic, social, civil, and political rights whilst conceiving of these rights not solely as instruments for restraining

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<sup>128</sup> *Constitution of India Act, 1950*, preamble.

state conduct but also as mandates or affirmative responsibilities incumbent upon both the state and the broader civil society.

#### **4. PROMISES FROM THE NATION: POST-CONSTITUTIONAL LEGISLATIVE LANDSCAPE.**

India's constitutional provisions pertaining to untouchability find their operationalisation through the enactment of criminal or "protective" statutes intended to safeguard specific demographic groups. Within this legislative framework, offences rooted in caste-based discrimination, which include instances of untouchability, incur penalties as delineated within the Indian Penal Code, the principal criminal law statute and/or under specialised legislation addressing "hate crimes".

In 1955, the government of India enacted the Protection of Civil Rights Act of 1955 (PCRA), previously recognised as the Untouchability (Offences) Act of 1955. The PCRA assumes the role of criminalising specific actions when they are committed "on the ground of untouchability". The parameters of civil rights, as outlined in section 2(a) of the PCRA, encapsulate entitlements accruing to individuals due to the elimination of "untouchability" as mandated by Article 17 of the COI. The PCRA defines the notion of "untouchability" through reference to its manifestations, encompassing actions such as enforcing religious or societal limitations, exemplified by acts such as denying access to commercial establishments, public restaurants, hotels, or venues of public amusement, as well as regulating the use of utensils within public dining establishments.<sup>129</sup> Furthermore, the definition extends to instances of refusing admission to medical facilities, withholding the sale of goods or the provision of services on an equitable basis, subjecting a member of a Scheduled Caste to insults based on the concept of "untouchability," or orchestrating

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<sup>129</sup> *Protection of Civil Rights Act, 1955*, ss 3 & 4.

a boycott against an individual by virtue of their exercise of rights prescribed under Article 17 of the COI.<sup>130</sup>

However, the PCRA enacted earlier did neither encompass instances of severe violence or what could be categorised as “hate crimes” against Dalits nor included instances of micro-aggressions or subtle-forms of private discrimination. Subsequently, three decades later, due to extreme anti-Dalit violence coupled with the perceived inadequacy of penalties stipulated under the PCRA, the government enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 (Atrocities Act). The Atrocities Act defined the term “atrocities” through reference to an enumerated list of twenty-two actions, where the recipient of harm (though not the instigator) is an individual belonging to a Scheduled Caste or Scheduled Tribe.<sup>131</sup> The proscribed actions encompassed a range of egregious acts, including compelling a SC and ST member to consume inedible or repugnant substances, tainting water sources utilised by SC, forceful dispossession of SCs from their land or property, and instances of sexual assault and humiliation targeted at Dalit women. The legislative framework concurrently established Special Courts to adjudicate cases related to such offences, in addition to delineating provisions for the relief and rehabilitation of victims.<sup>132</sup>

The very promulgation of the Atrocities Act, alongside the specific offences it sought to curtail, bears testament to the enduring and grave nature of the continued injustices suffered by Dalits in post-independence India. Nevertheless, the Atrocities Act itself has faced significant criticism for its perceived lack of efficacy. It underwent revision via the Amendment Act of 2015. This

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<sup>130</sup> *Protection of Civil Rights Act, 1955, s 6.*

<sup>131</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, s 3.*

<sup>132</sup> *Ibid, s 14.*



amendment introduced fifteen additional offences that encompassed actions such as publicly abusing an SC or ST individual using their caste affiliation, imposing or issuing threats of a social or economic boycott, dedicating a Scheduled Caste woman as a devadasi (temple dancer) against her will, preventing SC from accessing common property resources, and unlawfully entering a public place of worship, educational institution, or healthcare facility. Additionally, a new “presumption clause” was introduced, whereby if the perpetrator shared acquaintance with the victim or their family, the court would presumptively infer that the perpetrator possessed an awareness of the caste or tribal identity of the victim unless conclusive evidence to the contrary was presented (Section 6(ii)(c)). The inclusion of this clause aimed to counteract potential denials by perpetrators regarding knowledge of the victim’s identity, thereby precluding their exemption from prosecution under the Atrocities Act. However, due to widespread protests and directive by the SCI of India<sup>133</sup> asserting that the “presumption clause” was prone to abuse through the filing of false allegations or vexatious claims, often intended to blackmail innocent public officials or exact personal vengeance protests contending that the directives diluted the impact of the legislation, Parliament endorsed an Amendment Bill in August 2018<sup>134</sup>, nullifying the “presumption clause” and reinstating the original provisions stipulated by the 2015 legislation.<sup>135</sup>

Even though the aforementioned legal developments have impeded the solidification of caste-based barriers.<sup>136</sup> However, the nature of discrimination and exclusion faced by Dalits and Bahujans has transformed and the law has failed to take into consideration such transforming

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<sup>133</sup> *Dr Subhash Kashinath Mahajan v State of Maharashtra*, [2018] 6 SCC 454.

<sup>134</sup> Prachi Bhardwaj, “‘Can’t treat all of them as a liar’: SC while partially setting aside the 2018 SC/ST Act verdict [Full report]”, (1 October 2019), online: *SCC Blog* <<https://www.scconline.com/blog/post/2019/10/01/cant-treat-all-of-them-as-a-liar-sc-while-partially-setting-aside-the-2018-sc-st-act-verdict-full-report/>>.

<sup>135</sup> “Upper castes in Agra, Mathura to boycott BJP if SC/ST Act amendment not rolled back”, *Times India* (9 September 2018), online: <<https://timesofindia.indiatimes.com/city/agra/upper-castes-in-agra-mathura-to-boycott-bjp-if-sc-st-act-amendment-not-rolled-back/articleshow/65745211.cms>>.

<sup>136</sup> Baxi, *supra* note 48.

nature of caste discrimination. Over time, caste-based biases have metamorphosed, adapting and assuming new manifestations within modern rural and urban contexts.<sup>137</sup> Contemporary societal frameworks have devised modern means of isolating Dalits and Bahujans, elucidating the evolving nature of social discrimination.<sup>138</sup> For instance, a study spanning 565 villages across eleven Indian states revealed the presence of “almost universal residential segregation” in each village, with over 80% of them continuing to practice untouchability.<sup>139</sup> In a considerable proportion of villages surveyed, Dalits were prohibited from donning new attire, wearing sandals, or using umbrellas. Furthermore, approximately 75% precluded Dalit access to upper-caste households.<sup>140</sup> In all instances, Dalit labourers were subjected to segregated luncheons distinct from their counterparts and were systematically deprived of the services of barbers and tailors. A housing discrimination study of Delhi, in particular, illuminated that approximately 18 per cent of Dalits confront denials by upper-caste homeowners due to their caste affiliations. Similarly, an examination focused on educational institutions unveiled a pattern where students from upper castes frequently abstain from meeting or socialising with Dalits and OBCs beyond classrooms. If such interactions do transpire, invitations to their residences during festivals or extracurricular pursuits are rare occurrences.<sup>141</sup> These vivid instances of caste-based discrimination within private domains exhibit marked disparities, yet they are often dismissed under the aegis of “personal preferences” and thereby lack a legal safeguard.

The extant PCRA or Atrocities Act operating as criminal statutes, primarily orient legal attention towards singular and severe manifestations of caste-based discrimination and violence on an

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<sup>137</sup> Bisht, *supra* note 6; Ajit, Donker & Saxena, *supra* note 75; Thorat et al, *supra* note 26.

<sup>138</sup> Bhaskar, *supra* note 16.

<sup>139</sup> Ghanshyam Shah et al, *Untouchability in rural India* (New Delhi ; Thousand Oaks, Calif: Sage Publications, 2006).

<sup>140</sup> *Ibid.*

<sup>141</sup> Maurya, “In their Own Voices”, *supra* note 27.

individual level. While the imperative of penalising such transgressions is pivotal, the scope of criminal law treats each instance of discrimination or violence as an isolated event perpetrated by one or more individuals, often overlooking its intricate socio-cultural and historical context. This approach, centred on identifying discrimination through its overt or violent expressions, results in a disconcerting divide between cases of extreme violence and prevailing societal norms. India's current anti-discrimination set-up lacks a comprehensive civil equality legislation framework capable of effectively addressing commonplace occurrences of private discrimination, such as those encountered in recruitment processes, housing or private sphere, which are not covered by existing criminal statutes. While criminal law confers upon the state the authority to initiate legal action on behalf of victims, often relegating the victim's role as a witness to a secondary position. In contrast, civil anti-discrimination legislation adopts a more interactive approach by actively engaging the victim in the pursuit of their legal claims. However, the civil legislative framework exhibits a notable limitation; it is inherently reactive rather than proactive in nature. Consequently, claims under this framework can only be instigated once harm has already been inflicted. Moreover, there exist various impediments, unrelated to the merits of the claim, which must be surmounted. These obstacles encompass issues such as the lack of access to financial resources or legal representation. Furthermore, individuals are compelled to confront the psychological and practical pressures and burdens associated with initiating and subsequently maintaining a legal case.

Chapter 4 of this thesis further elaborates upon the questions regarding the limitation of existing Indian legal system in dealing with such cases of caste based private discrimination that does not fall within the category of 'atrocities' and further argues for anti-discrimination legislation to address caste based structural inequalities.

## 5. CONCLUSION

Casteism pervades the fabric of the Indian social structure. As elucidated in this chapter, casteism entails the intricate system of social stratification inherent within Hindu Indian society, delineating individuals into distinct factions and endorsing unequal prerogatives. Its historical underpinnings are profoundly entrenched and cast enduring shadows upon the contemporary societal setup. The Rigveda laid the groundwork for the establishment of the caste system.<sup>142</sup> The division of caste groups into *jatis* (sub-castes) introduces additional layers of hierarchical differentiation within the caste structure. Throughout an individual's lifespan, caste becomes an immutable trait inherited along patrilineal lines, resistant to alteration. As such, caste assumes the status of an enduring, unchangeable characteristic.<sup>143</sup>

In India, the historical instances of caste-based oppression trace their origins to systematic acts of brutality, enslavement, and genocide from the Vedic era to this date. These historical manifestations persist in the present day due to the enduring influence of systemic mechanisms. Analogous to other forms of oppression, legislative measures aimed at eradicating untouchability and caste-based discrimination have not successfully uprooted the deeply entrenched structural manifestations of casteism. By exerting authority over individuals situated lower in the caste hierarchy, caste-based prejudice and inequalities persist, perpetuating tangible disparities in social and economic realms.<sup>144</sup> Even though practices associated with "untouchability" may have been

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<sup>142</sup> Ambedkar, *supra* note 10.

<sup>143</sup> *Ibid.*

<sup>144</sup> Deshpande, *supra* note 45.

considerably eradicated, their influence endures within the systemic dynamics of labour, economy, social interactions, and interpersonal relationships.<sup>145</sup>

The upcoming chapter endeavors to present a comprehensive and critical theoretical framework, known as Critical Caste Theory. This framework is designed to facilitate a nuanced comprehension, analytical assessment, and effective challenge of the deeply ingrained social hierarchy and caste-based discrimination. Its primary objective is to provide the tools necessary for dissecting the intricate dimensions of caste-based discrimination, interrogating the systemic mechanisms that perpetuate it, and fostering progress towards a more equitable society where the persistent shadows of casteism are gradually dispelled.

## CHAPTER-3

### CRITICAL CASTE THEORY: DECONSTRUCTING DISCRIMINATION

#### 1. INTRODUCTION

This chapter is divided into two distinct parts. Part I, titled “*Exploring parallels of marginalisation*” is further divided into two sections. Section A undertakes a comprehensive and nuanced exploration of the interplay between Critical Race Theory (CRT) and the phenomenon of casteism while concurrently assessing the degree to which CRT’s theoretical foundations can be acclimatised to the specific parameters of the Indian context. Next section expounds upon the origins of the Indian caste system as a cosmological framework, diverging from the binary

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<sup>145</sup> Kumar & Preet, “Manual Scavenging”, *supra* note 19; Abhinav Narayan Jha Shukla Jinendra Parakh and Abhinav, “Taking ‘life’ out of people: On the degrading practice of manual scavenging”, (8 December 2020), online: *Dly Guard* <<https://thedailyguardian.com/taking-life-out-of-people-on-the-degrading-practice-of-manual-scavenging/>>.

architecture of racial categorisation. Caste system manifests gradations characterised by historical mobility and complexity. This dynamism inherent in the caste structure has engendered advancements for marginalised sections, albeit marked by resistance and instances of violence. This section further embarks upon the endeavour of transplanting CRT into the Indian setting, underscoring the semantic and conceptual challenges that accompany the translation of terminologies such as “race” and “caste.” This conversational trajectory forms the bedrock for the evolution of Critical Caste Theory (CCT), serving as an analytical framework that extends CRT’s foundational underpinnings to comprehensively scrutinise the nuances of caste-based discrimination within the multifaceted realm of the Indian social and legal tapestry.

Part II of this chapter, titled “*Intersections of Identity and Power: Unravelling caste dynamics through the Lens of Critical Caste Theory*”, builds a nuanced foundation for a more profound investigation into CCT, an investigation that is animated by CRT’s fundamental principles and rigorously disentangles the interplay between casteism and discrimination within the Indian context. This part undertakes an extensive and probing inquiry into CCT, advocating for its deployment as the conceptual underpinning for the analysis of caste-based discrimination, encompassing the ramifications of multi-layered marginalisation. Within this contextual framework, an exhaustive exploration of the core tenets and conceptual underpinnings of CRT is undertaken. This endeavour is directed towards creating a sensitive understanding of themes intrinsic to caste-based discrimination, the dynamics of social marginalisation, prevailing power structures, and the multifarious dimensions of identity.

## 2. EXPLORING PARALLELS OF MARGINALISATION: CRITICAL RACE THEORY AND THE EMERGENCE OF CRITICAL CASTE THEORY

### 2.1. CRITICAL RACE THEORY: PRINCIPLES AND CHALLENGES IN ADDRESSING CASTE DISCRIMINATION

Within the context of the United States, CRT directs attention toward the interplay between race and the legal system.<sup>146</sup> A fundamental tenet of CRT resides in its contention that race is a construct forged by societal influences rather than an innate or immutable trait and further posits that systemic racism is entrenched within the very fabric of U.S. society.<sup>147</sup>

CRT casts light upon a paradoxical facet of legal functioning, wherein the law ostensibly functions to dismantle racial subordination through the enforcement of Civil Rights while simultaneously perpetuating racial hierarchies through alternative mechanisms.<sup>148</sup> Notable instances include the widespread incarceration of racial minorities, the bestowal of legal impunity upon instances of excessive force perpetrated by law enforcement against racial minorities, the erosion of race-based affirmative action policies, and the emergence of the 'school-to-prison pipeline,'<sup>149</sup> disproportionately affecting racial minority groups. CRT elucidates the complex dynamics at play by probing the core philosophy of experience of legal dynamics and their interrelation with race.<sup>150</sup>

This theoretical framework asserts that racial classifications are socially constructed, malleable, and subject to manipulation based on expediency, all serving the overarching objective of

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<sup>146</sup> Delgado & Stefancic, *supra* note 29.

<sup>147</sup> *Ibid.*

<sup>148</sup> *Ibid.*

<sup>149</sup> Stacey Dutil, "Dismantling the School-to-Prison Pipeline: A Trauma-Informed, Critical Race Perspective on School Discipline" (2020) 42:3 Child Sch 171–178, online: <<https://academic.oup.com/cs/article/42/3/171/5896256>>.

<sup>150</sup> Delgado & Stefancic, *supra* note 29.

establishing the supremacy of one racial group over others.<sup>151</sup> Consequently, racism is characterized by the belief in the inherent superiority of one racial category over another, thus rationalizing and perpetuating unequal and oppressive societal structures.<sup>152</sup> Moreover, CRT contends that racism is deeply ingrained within the societal framework, causing solely overt manifestations of racism to attract attention, with the subtler manifestations of everyday racism often escaping notice.

By underscoring the interaction between race and the legal framework, CRT unveils the nuanced mechanisms through which racial subjugation is both contested and perpetuated. This theoretical framework also underscores the socially constructed nature of racial identities. It highlights the pervasive influence of racism in society, thereby shedding light on the multifaceted dimensions of this phenomenon.<sup>153</sup>

Within the sphere of jurisprudence, the antecedent legal movement identified as critical legal studies (CLS) laid the theoretical foundation upon which CRT was subsequently built.<sup>154</sup> The guiding principles of CLS expounded upon the persistent validity and pragmatic utility of oppressive social constructs within the United States.<sup>155</sup> These principles were rooted in the intellectual framework devised by Gramsci,<sup>156</sup> with a specific focus on his conception of cultural

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<sup>151</sup> Richard Delgado & Jean Stefancic, *Critical race theory: an introduction*, 2nd ed ed (New York: New York University Press, 2012).

<sup>152</sup> *Ibid.*

<sup>153</sup> Crenshaw, *supra* note 53.

<sup>154</sup> Delgado & Stefancic, *supra* note 152 at 4–5.

<sup>155</sup> Gloria Ladson-Billings, “Just what is critical race theory and what’s it doing in a nice field like education?” (1998) 11:1 *Int J Qual Stud Educ* 7–24, online: <<http://www.tandfonline.com/doi/abs/10.1080/095183998236863>>.

<sup>156</sup> Douglas Litowitz, “Gramsci, Hegemony, and the Law.” (2000) 2000:2 *Brigh Young Univ Law Rev* 515, online: <<https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=3273418&site=ehost-live>> at 532; Allan C Hutchinson & Patrick J Monahan, “Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought” (1984) 36:1/2 *Stanford Law Rev* 199, online: <<https://www.jstor.org/stable/1228683?origin=crossref>>.



hegemony.<sup>157</sup> The term "cultural hegemony" pertains to the ascendancy that the intellectual and cultural apparatuses of the dominant echelons hold over the broader social milieu, encompassing aspects such as worldviews, morality, and ethics.<sup>158</sup> This dominant ideological framework is emblematic of the ruling class's domination as it solidifies into the universally acknowledged norm. The strength of this paradigm is reinforced by the circumstance that those subject to the authority of the ruling class voluntarily participate in their subordination by conforming to the ruling class's ideology.<sup>159</sup>

While the notion of hegemony was not without precedent, Gramsci's innovative adaptation to explicate the mechanisms of oppression marked a departure of considerable novelty. Gramsci's conception of cultural hegemony was expanded to present an analytical methodology through which individuals could critically examine the existing status quo, thereby shedding light on the influential, albeit often tacitly accepted, mechanisms through which the ruling class maintains its dominion.<sup>160</sup> Although CLS played a pivotal role in enhancing legal discourse by furnishing an analytical framework for comprehending oppression, a conspicuous void within CLS existed concerning the absence of an analytical perspective to apprehend the role of race and racism in perpetuating oppression within the context of legal discourse in the United States.<sup>161</sup> CRT arose as a response to the notably slow line of racial reform within the United States and as a rejoinder to the oversight of a racial analysis within the ambit of legal discourse championed by CLS.<sup>162</sup>

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<sup>157</sup> T J Jackson Lears, "The Concept of Cultural Hegemony: Problems and Possibilities" (1985) 90:3 *Am Hist Rev* 567, online: <<https://www.jstor.org/stable/10.2307/1860957?origin=crossref>>.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> "What Critical Race Theory Was — and is — at Harvard Law School | News | The Harvard Crimson", (25 May 2023), online: <<https://www.thecrimson.com/article/2023/5/25/critical-race-theory-harvard-law/>>.

<sup>162</sup> Mari J Matsuda, "Looking to the bottom: critical legal studies and reparations" (1987) 22:2 *Harv Civ Rights-Civ Lib Law Rev* 323; Delgado & Stefancic, *supra* note 29 at 512.

Derrick Bell, an African American scholar, and Alan Freeman, a White American scholar, assumed pivotal roles in the genesis of CRT by asserting that prior eras' conventional civil rights strategies were yielding progressively diminished outcomes.<sup>163</sup> Consequently, CRT emerged as a theoretical framework designed to address the previously unexamined dimension of meticulously dissecting the mechanisms through which race and racism operated as significant agents in the perpetuation of societal oppression within the United States.

The foremost objective of CRT is to meticulously expose the latent and typically unquestioned mechanisms by which race, racism, and privilege collaboratively play a role in perpetuating enduring societal inequalities.<sup>164</sup> Advocates of CRT channel their analytical pursuits not solely towards exposing diverse forms of oppression but also towards actively participating in the liberation from all manifestations of such oppression.<sup>165</sup>

Despite its substantive roots within CLS, CRT has been moulded by influences stemming from diverse community movements and academic disciplines. Furthermore, CRT has provided the foundational framework from which various specialised theories have emerged to address the specific needs of marginalised populations.<sup>166</sup> For instance, Latino CRT places emphasis on factors such as immigration, skin colour, and language,<sup>167</sup> while Asian CRT highlights elements like nativism, the model minority myth, and language, to illuminate the experiences of Latinx and

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<sup>163</sup> “The Man Behind Critical Race Theory | The New Yorker”, online: <<https://www.newyorker.com/magazine/2021/09/20/the-man-behind-critical-race-theory>>.

<sup>164</sup> Kimberlé Crenshaw, ed, *Critical race theory: the key writings that formed the movement* (New York: New Press, 1995).

<sup>165</sup> Delgado & Stefancic, *supra* note 152.

<sup>166</sup> Goodnight, *supra* note 30.

<sup>167</sup> Elvia R Arriola, “LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids” (1996) 28:2 Univ Miami Inter-Am Law Rev 245–262, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40176417>>.

Asian individuals<sup>168</sup> in the United States, respectively. Furthermore, while race and racism constitute the foundational focus of CRT, LatCRIT and AsianCRIT, these theories also acknowledge their intersection with other forms of subordination. For example, TribalCRIT asserts that colonization is deeply ingrained within societal structures, spotlighting how U.S. policies are rooted in imperialism and settler-colonialism, profoundly affecting the experiences of Indigenous peoples.<sup>169</sup>

Within this examination of race and the legal domain, an array of questions, critiques, arguments, terminology, and conceptual frameworks prove pertinent. These elements are poised to facilitate an inquiry into the interplay between caste and the legal system in India. While this exploration could potentially evolve into a more extensive endeavour to affirm or challenge the applicability of CRT to the realm of caste, it is important to acknowledge that neither this chapter nor the encompassing thesis claims to comprehensively undertake such an extensive undertaking.

### **3. INTERSECTIONS OF IDENTITY AND POWER: UNRAVELING CASTE DYNAMICS THROUGH THE LENS OF CRITICAL CASTE THEORY**

When placed within the Indian context, CRT presents a practical framework for analysing how racism and white supremacy contribute to the prevailing socioeconomic disparities in the nation, particularly considering its historical colonial experiences. However, it is essential to expand our examination to encompass other dimensions of identity that intricately shape societal configurations and individual circumstances, particularly in the discourse concerning the influence of caste on Dalit or Bahujan identity. In this context, CRT holds the potential for significant

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<sup>168</sup> Robert S Chang, "Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space" (1993) 81:5 Calif Law Rev 1241, online: <<https://www.jstor.org/stable/3480919?origin=crossref>>.

<sup>169</sup> Bryan McKinley Jones Brayboy, "Toward a Tribal Critical Race Theory in Education" (2005) 37:5 Urban Rev 425-446, online: <<http://link.springer.com/10.1007/s11256-005-0018-y>>.

advancement.<sup>170</sup> Within this theoretical framework, it becomes imperative to afford similar attention to the discourse surrounding "upper-caste supremacy" as is allocated to discussions of "white supremacy" within the historical context of Indian colonialism.<sup>171</sup> This resonance is especially prominent in the scrutiny of Dalit identity. Consequently, the primary focus of this chapter's inquiry will be on elucidating the operational dynamics of upper-caste dominance and its role in perpetuating the enduring oppression faced by India's Dalit community through the lens of CCT.

### 3.1. CRITICAL CASTE THEORY

The term "Critical Caste Theory" was initially introduced by *Natarajan* and *Greenough* in their publication titled "Against Stigma: Studies in Caste, Race, and Justice in Durban."<sup>172</sup> This work delves into the pervasive stigma and prejudice inherent in the caste system, investigating the experiences of various scholars who encountered instances of caste-based and racially biased attitudes during a racism-focused conference held in Durban, South Africa, in 2001.<sup>173</sup> The book provides an analysis of the contemporary significance of the caste system within the context of globalisation. Suraj Yengde's conceptual framework of "global caste" shares a similar objective in addressing marginalized and historically oppressed groups within postcolonial nations.<sup>174</sup> In particular, it focuses on those who have long experienced exclusion and discrimination. Yengde advocates for the acknowledgment of casteism as an integral component of global anti-oppression analysis, emphasizing its relevance within a broader international context. This perspective

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<sup>170</sup> Goodnight, *supra* note 30.

<sup>171</sup> *Ibid.*

<sup>172</sup> edited by Balmurli Natrajan and Paul Greenough, *Against stigma : studies in caste, race, and justice since Durban* (New Delhi : Orient BlackSwan, 2009., 2009).

<sup>173</sup> *Ibid.*

<sup>174</sup> Suraj Yengde, "Global Castes" (2022) 45:2 *Ethn Racial Stud* 340–360 at 1; Venkatesh, *supra* note 9 at 175.

underscores the imperative of recognizing and confronting caste-based discrimination and oppression as issues that transcend national boundaries. It encourages adopting a more expansive viewpoint that acknowledges the intricate interplay of various forms of oppression and seeks comprehensive solutions and counter-ideologies on a global scale.

Certain scholars have put forward the notion that the issue of caste needs to be addressed prior to delving into matters related to class, whereas others have argued that the elimination of class disparities will eventually result in the dissolution of caste as well as other manifestations of injustice, including patriarchy.<sup>175</sup> While I share the agreement that oppressive and coercive systems frequently trace back to class dynamics and power structures, the endeavour to tackle oppression necessitates a simultaneous consideration of all forms of oppression. In the context of India, movements against caste-based discrimination must encompass challenges not only to class inequalities but also to patriarchy and various other forms of oppression. Similarly, endeavours within anti-capitalist and feminist movements should address caste, class, patriarchy, and other forms of oppressive influence concurrently. Singularly focusing on one type of oppression while disregarding others runs the risk of unintentionally perpetuating new oppressive systems or reinforcing existing ones.

### **3.2.TENETS OF CRITICAL CASTE THEORY**

Based on the scholarship of previous CRT theorists, I aim to define the emerging theory of CCT with the following proposed tenets based on tenets of CRT.

1. Casteism is endemic
2. Structural inequalities

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<sup>175</sup> Bêteille, *supra* note 37.

3. Interest Convergence;
4. Intersectionality
5. Caste neutrality; and
6. Social justice advocacy

### **3.2.1. Casteism is endemic**

Casteism is deeply ingrained in Indian society, manifesting as a system of social stratification that segregates individuals, endorses inequality, and casts enduring shadows on contemporary life. Caste, inherited along patrilineal lines, remains an immutable and unchangeable characteristic throughout an individual's life.

Historically, caste-based oppression in India traces back to systematic acts of brutality, enslavement, and genocide. These historical injustices persist due to the enduring influence of systemic mechanisms. Despite legislative efforts to eradicate untouchability and caste-based discrimination, the deeply entrenched structural manifestations of casteism endure. This persistence perpetuates caste-based prejudice and inequalities, resulting in tangible disparities in social and economic spheres. Even though practices associated with "untouchability" have diminished, their influence continues to shape labor, the economy, social interactions, and interpersonal relationships within the systemic dynamics of India.

As an example, despite the implementation of affirmative action policies, individuals hailing from caste-privileged backgrounds predominantly occupy higher echelons of society, including professions such as medicine and law.<sup>176</sup> Faculty members within public universities occasionally exhibit biases against Dalit students who access reservation and affirmative action opportunities.

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<sup>176</sup> "Over 75% of High Court Judges Appointed Since 2018 Are from Upper Castes: Centre", online: *The Wire* <<https://thewire.in/law/over-75-of-high-court-judges-appointed-since-2018-are-from-upper-castes-centre>>.

These biases manifest through patronizing attitudes and the derogatory label 'category/quota walas,' insinuating that their accomplishments are unmerited and inferior. The persistent scrutiny of Dalit meritocracy parallels the anti-affirmative action movements in the United States, wherein the qualifications of students admitted through such policies are consistently challenged. Dalit students encounter what can be termed an "inequality of outcomes," where the school environment contributes to diminished skill acquisition and the perpetuation of a cycle of disadvantage.<sup>177</sup>

Similarly, individuals subjected to caste-based oppression are disproportionately represented in occupations characterised by lower incomes, precarity, and temporary employment. In the context of employment, research endeavours such as the study conducted by Thorat and Attewell demonstrated that resumes featuring names associated with caste-oppressed individuals and religious minorities received fewer responses compared to identically qualified counterparts with names reflecting caste-dominant backgrounds.<sup>178</sup> Paradoxically, despite its pervasive nature, instances of overt casteism are often singled out as problematic, while routine occurrences frequently escape recognition or remain hidden from view.

Likewise, CRT offers a parallel insight into the intrinsic nature of racism within society. Racism extends beyond sporadic and irrational individual actions. It operates as a systemic construct. Underpinning the persistence of racism within U.S. society and democracy are systemic mechanisms. This perspective contends that racism is woven into the very fabric of U.S. democracy, not as an indictment of democracy itself but rather as a pervasive influence shaping

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<sup>177</sup> Desai & Dubery, *supra* note 41.

<sup>178</sup> Sukhadeo Thorat & Paul Attewell, "The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India" (2007) 42:41 *Econ Polit Wkly* 4141–4145, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40276548>>.

the body politic. Law, as an instrument of political authority, is inherently entwined with racism during its conception, formulation, and implementation.<sup>179</sup>

Similarly, the inherent nature of caste is discernible within the contours of Indian society. It serves as the foundational cornerstone of inequality in India's societal structure. Despite sustained endeavours to introduce reforms, caste has managed to retain significant aspects of its original composition, including the pernicious concept of "untouchability".<sup>180</sup> Furthermore, it has adapted and evolved in response to contemporary circumstances, while subtly permeating the landscape of neoliberal reforms.

### 3.2.2. *Structural inequalities*

One of the fundamental principles at the heart of CCT is the emphasis on deeply rooted structural biases and inequalities that form an integral part of caste-based discrimination. This awareness allows us to address the far-reaching effects of systemic manifestations of caste discrimination that exist within various facets of our society, including political and economic institutions, legal structures and social hierarchies. Together, these elements contribute to the perpetuation of caste-based inequalities, even in the face of well-intentioned attempts at reform. At its essence, CCT prompts us to recognise that caste-based discrimination isn't isolated to sporadic incidents or individual biases. Instead, it has become deeply embedded in the very fabric of our Indian society's structures and systems. These structural inequalities, born from historical legacies, continue to be sustained by the practices of contemporary institutions and policies.

This is particularly evident when we look at the realm of education. Despite efforts to ensure equal educational opportunities, Dalit students often encounter substantial barriers that hinder their

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<sup>179</sup> Crenshaw, *supra* note 53.

<sup>180</sup> Shah et al, *supra* note 140.



educational journey.<sup>181</sup> Discriminatory practices within educational institutions,<sup>182</sup> coupled with limited resources and biased teaching methods, create a cycle of disadvantage that obstructs the progress of these students.<sup>183</sup> As a result, higher education and its potential benefits often remain elusive for many individuals from marginalised backgrounds, amplifying existing caste-based disparities.

As an example, the institutionalisation of affirmative policies, executed through proportional representation, aims to ensure Dalit inclusion in state-funded Higher Educational Institutions (HEIs). However, the transition to higher education is riddled with challenges. Many Dalits lack the socio-economic and cultural resources needed to navigate these academic spaces effectively.<sup>184</sup> Even among those who excel in competitive entrance exams, the journey is marred by hostility and discrimination from upper-caste peers and faculty who exploit these ostensibly secular settings to perpetuate caste practices.<sup>185</sup>

In institutions like IITs, IIMs, and NLU, if surnames do not reveal caste identity directly, other markers such as ranks or specialized branches can serve as proxies for caste location.<sup>186</sup> Dalit students pursuing advanced degrees in central universities face an administration staffed by upper-

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<sup>181</sup> Savitha Rajamani, *Critical Caste Theory in Education* (Ph.D., University of Massachusetts Boston, 2020) [unpublished] 28086976.

<sup>182</sup> Bhaskar, *supra* note 16.

<sup>183</sup> “India’s Universities Are Falling Terribly Short on Addressing Caste Discrimination”, online: *The Wire* <<https://thewire.in/caste/india-universities-caste-discrimination>>.

<sup>184</sup> Rama Devi & Sawmya Ray, “*Mahaul* and *Mazboori* : educational aspirations and realities of Dalit youth in Delhi” (2022) *Int J Qual Stud Educ* 1–20, online: <<https://www.tandfonline.com/doi/full/10.1080/09518398.2022.2061740>>.

<sup>185</sup> Deccan Chronicle, “Exclusive well constructed in University of Hyderabad”, (22 January 2016), online: *Deccan Chron* <<https://www.deccanchronicle.com/current-affairs/230116/exclusive-well-constructed-in-university-of-hyderabad.html>>.

<sup>186</sup> “Dalit Student’s Suicide Points to Well-Known – But Ignored – Caste Discrimination in IITs”, online: *The Wire* <<https://thewire.in/caste/iit-bombay-darshan-solanki-suicide>>.

caste individuals who identify their caste based on awarded scholarships like the Rajiv Gandhi National Fellowship (now titled 'National Fellowship for Higher Education for ST Students').<sup>187</sup>

The additional challenge of communicating and writing in proficient English compounds the existing struggles faced by newcomers on campuses. Instead of mitigating linguistic disparities, educators often leave Dalit students to grapple with lectures and dissertations in English. This language-centric focus often leads to the formulation of incoherent arguments and writing, resulting in repeated rejections by supervisors, further delaying research progress or causing students to abandon their studies entirely.<sup>188</sup>

Similarly, the impact of structural inequalities is keenly felt in the world of employment. Caste-oppressed individuals frequently find themselves confined to lower-paying, unstable, and temporary jobs, while individuals from privileged caste backgrounds disproportionately secure positions of higher prestige and financial reward. Even affirmative action policies designed to address these disparities often fall short of uprooting the profoundly ingrained biases that influence hiring practices and workplace dynamics. In his book titled "*Scheduled Castes in the Indian Labour Market: Employment Discrimination and Its Impact on Poverty*" Sukhdeo Thorat delves into the nuanced dynamics of employment for SCs in the Indian labour market. He contends that the occupational divide not only segregates workers but also brings about distinct situations for untouchables. Their employment situation is characterised by both exclusion and inclusion, shaped by the interplay of these opposing processes.<sup>189</sup> He argues the exclusion of SC workers is

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<sup>187</sup> "After Rohith Vemula: the Sunday Magazine team discovers the new contours of discrimination", *The Hindu* (6 February 2016), online: <<https://www.thehindu.com/features/magazine/After-Rohith-Vemula-the-Sunday-Magazine-team-discovers-the-new-contours-of-discrimination/article59820530.ece>>.

<sup>188</sup> Deepak Kumar, "Language Discrimination in Indian Higher Education" in Prabhpreet Singh, ed, *Contouring Exclusion Manif Implicit* (Lokmitra Publication, 2019) 149.

<sup>189</sup> Thorat, Madheswaran & Vani, *supra* note 45.

influenced by multifaceted factors. Occupational divisions based on caste lead to the denial of job opportunities for untouchable workers across various professions. For instance, he argues that, teaching and religious roles are typically reserved for Brahmins, militarily oriented roles for Kshatriyas, trade and non-farm work for Vaishyas, and self-employed farming for Shudras as a testament to how historical legacies from the Vedic era continue to permeate today. Additionally, their “polluting” social status excludes them from roles involving physical contact, domestic work, and tasks associated with religious events.<sup>190</sup>

Conversely, the caste system mandates that untouchables predominantly serve higher castes, particularly Brahmins, as manual wage laborers. During times of distress, they may also work for the other three castes. This dichotomy creates a situation where they are excluded from specific roles but are obligated to engage in these very roles as manual labourers, often involving physically demanding tasks.

This arrangement is rooted in the Hindu law of caste, as Chapter 2 explained. Consequently, untouchables find themselves frequently engaged in agricultural and allied activities requiring strenuous physical labour. Moreover, they are compelled to undertake tasks considered inferior and polluting, such as scavenging or occupations related to leather. Government data starkly portrays that a significant 97 per cent of individuals engaged in manual scavenging are from the Dalit community.<sup>191</sup> When dissecting the numerical composition, it becomes evident that out of the total manual scavengers, 42,594 fall under the SC category, with an additional 421 representing ST and 431 from Other Backward Classes, all three groups are considered lower caste. These

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<sup>190</sup> *Ibid* at 16–20.

<sup>191</sup> Kumar & Preet, “Manual Scavenging”, *supra* note 19.

figures inherently provoke a pressing inquiry: Would the abhorrent practice of manual scavenging persist if it were not relegated exclusively to Dalits? This contemplation underscores the discriminatory nature of the practice and the unjust burden it places solely on a marginalised community, raising critical concerns about the perpetuation of caste-based inequalities within such deplorable labour arrangements.<sup>192</sup>

This dual nature of SC employment, characterised by both exclusion and obligatory inclusion, has been aptly termed by Amartya Sen (2000) as "*unfavourable exclusion and unfavourable inclusion*."<sup>193</sup> While they are barred from specific roles enjoyed by higher castes, they are simultaneously subjected to mandatory inclusion in manual wage labour aligned with the occupations of those higher castes.

The noteworthy case of the Bochasanwasi Shri Akshar Purushottam Swaminarayan (BAPS) sect, a conservative Hindu organization founded in 1907 in the United States, merits attention in this regard. BAPS possesses temples and cultural centers worldwide, renowned for their extravagant architecture, touted as a celebration of global Hindu culture rooted in Brahminical Vedas.<sup>194</sup> In May 2021, following a complaint and FBI raid at a BAPS temple construction site in New Jersey, a lawsuit was filed against the temple for labour rights violations against approximately 200 workers, primarily Dalit and Adivasi. These workers endured meager hourly wages, extensive work hours, passport confiscation upon arrival, confinement on-site, abuse with anti-casteist slurs,

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<sup>192</sup> *Ibid*; "Failure to acknowledge existence of manual scavenging is deplorable", (23 February 2022), online: *Indian Express* <<https://indianexpress.com/article/opinion/columns/failure-to-acknowledge-existence-of-manual-scavenging-is-deplorable-7786337/>>.

<sup>193</sup> Amartya Sen, *Social capital, local capacity building, and poverty reduction*, Social development papers no. 3 (Manila, Philippines: Office of Environment and Social Development, Asian Development Bank, 2001).

<sup>194</sup> Ambedkar King Study Circle, "FAQ about the BAPS Case", online: *Ambedkar King Study Circ* <<https://akscusa.org/faq-about-the-baps-case/>>; Parita Mukta, "The public face of Hindu nationalism" (2000) 23:3 *Ethn Racial Stud* 442–466; Chetan Bhatt, "Dharmo rakshati rakshitah : Hindutva movements in the UK" (2000) 23:3 *Ethn Racial Stud* 559–593; Venkatesh, *supra* note 9.

and restrictions on visitor interaction under threat of punitive measures.<sup>195</sup> The Pathar Gadhai Mazdoor Suraksha Sangh (PGMSS), a Dalit and Adivasi stone carvers' labour union, has used this U.S. case to spotlight caste oppression and advocate for caste equality in Rajasthan, illustrating the transnational dimension of Dalit mobilization. As Venkatesh points out, this case exemplifies the global perpetuation of casteism through discourse, migration, citizenship laws, and the intertwining of racial/caste-based capitalism and religion..<sup>196</sup>

Notably, even mechanisms established within institutions that were initially designed to counteract caste-based inequalities can, at times, inadvertently contribute to their perpetuation. This is evident in the case of the private sector in urban areas, which was anticipated to operate in a caste-neutral manner, with merit outweighing caste preferences. However, contrary to expectations, reality has taken an opposing course. Urban private sectors in India have transformed into enclaves dominated by upper-caste individuals, displaying a dearth of diversity.<sup>197</sup> A 2012 study highlights that approximately 93 per cent of Indian corporate board members hail from upper castes, with Brahmins and Vaishyas constituting 45 percent each.<sup>198</sup> Furthermore, research indicates that mergers and acquisitions predominantly occur among directors belonging to the same castes.<sup>199</sup>

Neoliberal reforms, exemplified by their focus on economic growth and privatization, fail to address the foundational structural inequalities entrenched within caste-based discrimination.

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<sup>195</sup> Ambedkar King Study Circle, *supra* note 195.

<sup>196</sup> Adrian A Smith, "Racialized in Justice: The Legal and Extra-Legal Struggles of Migrant Workers in Canada" (2015) 31:2 Windsor Yearb Access Justice 15–38; Vasanthi Venkatesh, "Confronting myths: agricultural citizenship and temporary foreign worker programs" (2019) 5:1–2 Int J Migr Bord Stud 82–98; Evelyn Encalada Grez, "Vulnerabilities of female migrant farm workers from Latin America and the Caribbean in Canada" (2011) FOCAL Policy Brief; Venkatesh, *supra* note 9.

<sup>197</sup> Pardeep Attri, "Annihilation of caste in Indian corporate possible. But firms must say Dalit lives matter", (19 June 2020), online: *ThePrint* <<https://theprint.in/opinion/annihilate-of-caste-in-indian-corporate-possible-but-firms-must-say-dalit-lives-matter/444244/>>; Teltumbde, *supra* note 3.

<sup>198</sup> Ajit, Donker & Saxena, *supra* note 75.

<sup>199</sup> "The Caste Is Alive And Kicking In Corporate India", online: *Forbes India* <<https://www.forbesindia.com/article/iim-bangalore/the-caste-is-alive-and-kicking-in-corporate-india/53059/1>>.

Consequently, such policy initiatives inadvertently possess the potential to intensify existing inequalities rather than ameliorate them.<sup>200</sup>

In summation, CCT serves as a lens that illuminates the systemic and structural dimensions of caste-based discrimination. It reveals the active role played by institutions, policies, and societal norms in upholding and perpetuating these disparities. Recognizing the deeply entrenched nature of these inequalities, CCT underscores the necessity for comprehensive and transformative efforts that surpass superficial alterations. By addressing and rectifying these underlying structural inequities within the context of casteism, we take essential strides towards establishing a more equitable and just society that genuinely encompasses all its members.

### **3.2.3. *Interest Convergence***

Borrowing this concept from CRT, the concept of "interest convergence" holds a central position within the framework of CCT, also shedding light on the interplay between the objectives of marginalised communities and those of dominant groups or institutions. Coined by legal scholar Derrick Bell, interest convergence posits that substantial progress in matters of racial or caste equality is realised during those moments when the interests of marginalised groups align with those of dominant entities, thereby facilitating advancements.<sup>201</sup>

Interest convergence brings to the fore the intricacies inherent in effecting social change while also acknowledging the potential reluctance of individuals in positions of authority to relinquish their power. It proposes that meaningful reforms stand a greater chance of success, even if short-lived, when they align with interests that resonate across a wider spectrum of society.

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<sup>200</sup> Teltumbde, *supra* note 36; Guru, *supra* note 44; Deshpande, *supra* note 45.

<sup>201</sup> Derrick A Bell, "Brown v. Board of Education and the Interest-Convergence Dilemma" (1980) 93:3 Harv Law Rev 518–533.

An illustrative instance of "interest convergence" within the framework of CCT can be gleaned from India's struggle for independence. In its initial stages, the Indian freedom movement faced criticism for its distinct casteist and patriarchal underpinnings, given its predominant leadership by upper-caste and upper-class Hindu men. Consequently, marginalised sections of Indian society found themselves marginalised even within the movement, with their participation and representation being severely restricted. This internal division further exacerbated societal fragmentation, hampering the movement's efficacy by failing to resonate with and engage the broader populace.<sup>202</sup> Both Gandhi and Ambedkar recognized the urgency of addressing this disconnect. They adopted distinct strategies to enhance the inclusivity of the freedom movement. Gandhi chose a reformative approach, envisioning a transformation where upper-caste Hindus would abandon untouchability practices and treat Dalits and Brahmins as equals. In contrast, Ambedkar embraced a more radical stance, contending that an independence movement led by upper-caste Hindu leaders would lack the capacity to emancipate Dalits from the yoke of caste-based oppression.<sup>203</sup>

By the time of the Quit India Movement, particularly around the year 1942, a discernible shift emerged. Gandhi and Nehru championed a call for greater inclusiveness, leading to heightened participation by women and individuals from lower-caste backgrounds in the freedom movement. This phase marked a pivotal juncture in India's history, as upper-caste Hindu men underwent a reconsideration of their approach to caste oppression in pursuit of India's liberation from colonial

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<sup>202</sup> Ramachandra Guha & Ramachandra Guha, *Gandhi: the years that changed the world, 1914-1948*, first united states edition ed (New York: Alfred A. Knopf, 2018) at 71.

<sup>203</sup> Guha, *supra* note 121.

rule.<sup>204</sup> This transformation in perspective catalyzed increased engagement by Dalits and other marginalized communities.

Interest convergence, as pointed by Bell,<sup>205</sup> although capable of driving positive changes, comes with inherent limitations that necessitate recognition and comprehension in navigating the complexities of caste-related injustices within the CCT framework. One significant constraint of interest convergence lies in its inclination to yield selective policies. When the upper caste's interests align with addressing a particular issue, progress may ensue. However, such alignment often results in policies that address specific aspects of caste-based discrimination while overlooking others, yielding an incomplete and fragmented approach to justice.

Furthermore, interest convergence may yield short-term gains for marginalized caste groups. Immediate improvements may occur when the interests of the upper caste align with addressing a specific issue. Nevertheless, these gains can be precarious, subject to reversal if the dominant group's interests shift, rendering progress transient and fragile.<sup>206</sup> Another limitation pertains to interest convergence's propensity to concentrate on surface-level changes, sidestepping the structural and systemic factors perpetuating caste-based discrimination. Achieving meaningful and enduring transformation in societal structures, essential for addressing caste-based injustices comprehensively, may necessitate efforts beyond the scope of interest convergence alone.

In conclusion, while interest convergence can serve as a catalyst for change, its limitations underscore the importance of supplementing it with endeavours to dismantle deeply ingrained

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<sup>204</sup> Aakash Singh, "Gandhi and Ambedkar: Irreconcilable Differences?" (2014) 18:3 *Int J Hindu Stud* 413–449, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24713655>>.

<sup>205</sup> Bell, *supra* note 203.

<sup>206</sup> "Derrick Bell's Interest Convergence and the Permanence of Racism: A Reflection on Resistance", online: *Harv Law Rev* <<https://harvardlawreview.org/blog/2020/08/derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance/>>.



injustices. A society where the alignment of interests coincides with genuine equity and justice for all necessitates a multifaceted approach that extends beyond the confines of interest convergence alone.

#### 3.2.4. *Intersectionality*

"Intersectionality" serves as a pivotal cornerstone within the framework of CCT, shedding light on the interplay of diverse social identities and systems of oppression that mould individuals' experiences and broader societal structures. Coined by Kimberlé Crenshaw,<sup>207</sup> the concept of intersectionality recognises that an individual's experience is not singularly defined by one facet of their identity but rather arises from a complex interweaving of intersecting identities, including caste, gender, race, class, religion, and more. This perspective acknowledges that these identities are not isolated and they intersect and mutually reinforce each other, influencing an individual's encounters, opportunities, and marginalisation.<sup>208</sup>

In the context of CCT, intersectionality serves as a nuanced lens that facilitates an exploration of the multidimensional essence of caste-based discrimination. This concept discerns that caste-related oppression is not solely contingent on an individual's caste identity but is intricately entwined with other dimensions of identity, such as gender, class, and religion.

Dalit women may confront distinct forms of discrimination that emerge from the convergence of their caste and gender identities as will queer caste-oppressed person or disabled caste-oppressed person who face multiple forms of intersectional stigmatisations. For instance, the *Bhanwari Devi* case wherein five individuals from an upper caste were acquitted despite being implicated in the gang rape of a Dalit woman employed in rural development. Bhanwari Devi was a woman, hailing

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<sup>207</sup> Crenshaw, *supra* note 53.

<sup>208</sup> *Ibid.*

from a lower caste, who was involved in public education against social ills like child marriages through Women's Development Programme (WDP). On 5<sup>th</sup> May 1992, when she was engaged in her job, men from a higher caste village subjected her to caste-based slurs and threats to teach her a lesson. Subsequently, on 22<sup>nd</sup> September 1992, she and her husband were brutally assaulted, and she was gang-raped in front of her husband. Despite her pursuit of justice, systemic biases against a woman from a low caste hindered her quest for redressal. The Trial Court acquitted the accused, stating that their social standing as "well-respected elderly individuals" makes Bhanwari Devi's accusation that they would participate in such a heinous act "incredible".<sup>209</sup> The *Bhanwari Devi* case prompted the Vishaka NGO to file a Public Interest Litigation (PIL)<sup>210</sup> in the Supreme Court of India, seeking protection for women from workplace sexual harassment. The Supreme Court endorsed the contentions of the petitioner NGOs and formulated guidelines for the prevention of sexual harassment of 'women' in the workplace, known as the Vishaka guidelines.<sup>211</sup> However, in this process, the specifics of Bhanwari Devi's incident and the underlying issues related to 'caste and gender' were eclipsed by the broader Vishaka guidelines. The discourse largely omitted reference to her caste and the intersecting identities that played a pivotal role in the case.<sup>212</sup>

As highlighted by Sumit Baudh,<sup>213</sup> this case presented an opportunity to revolutionise the prevailing understanding of sexual harassment in India. Until then, sexual harassment was

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<sup>209</sup> "Women's group shaken after Jaipur court dismisses Bhanwari Devi rape case and clears accused", online: *India Today* <<https://www.indiatoday.in/magazine/special-report/story/19951215-womens-group-shaken-after-jaipur-court-dismisses-bhanwari-devi-rape-case-and-clears-accused-808044-1995-12-14>>.

<sup>210</sup> Public Interest Litigation is a unique tool allowed within the rubric of Indian Constitutional jurisprudence wherein any individual or organisation can file a petition seeking remedy for an issue that may concern the public at large. The petitioner does not have to prove that they are directly affected by the wrong.

<sup>211</sup> *Vishaka & Ors vs State Of Rajasthan & Ors*, 1997 AIR 3011.

<sup>212</sup> Nikita Sonavane Wadekar Disha, "Dalit Bahujan women need to reclaim Vishaka guidelines — they started Indian #MeToo first", (25 February 2021), online: *ThePrint* <<https://theprint.in/opinion/dalit-bahujan-women-need-to-reclaim-vishaka-guidelines-they-started-indian-metoo-first/611188/>>.

<sup>213</sup> Sumit Baudh, "Demarginalizing the intersection of caste, class, and sex" (2021) 20:1 J Hum Rights 127–142, online: <<https://www.tandfonline.com/doi/full/10.1080/14754835.2020.1858402>>.

perceived to concern urban, middle-class, and Westernized women. The court's caste-blind approach, however, projected “all women as akin to forward-caste women”, overlooking the 'caste' aspect of Bhanwari Devi's ordeal. An intersectional perspective involving caste would have also highlighted other anti-caste laws founded on principles of horizontal equality.<sup>214</sup>

CCT’s intersectional insight can be used, for example, to address the multilayered discrimination endured by women entangled in manual scavenging- a deplorable practice of manually cleaning the human excreta, dry latrines, sewers and septic tanks. As previously stated, the majority of manual scavengers or sanitation workers in India belong to the Dalit community. Among the 1.2 million manual scavengers, approximately 95% to 98% are women.<sup>215</sup> Despite their substantial representation, scant research or governmental reports illuminate their plight. Besides caste-based interventions, a gender-sensitive approach is requisite to eradicate this practice.

An intersectional analysis through CCT can also provide a novel perspective for comprehending the discrimination faced by disabled individuals belonging to lower castes. In India, the prevalence of disability is higher among Dalits compared to upper castes, 2.4 per cent as opposed to 1.8 per cent respectively.<sup>216</sup> As previously discussed, an individual's caste can influence the quality of services received from institutions and administration. Consequently, Dalits are more vulnerable to systemic indifference due to the compounded impact of caste-based stigma and physical disabilities. The convergence of disability and caste can exacerbate the multifaceted challenges confronting Dalits. Disabilities compound the disadvantages arising from Dalit identity, intensifying the denial of rights, opportunities, and resources. Dalit children, who already grapple

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<sup>214</sup> *Ibid.*

<sup>215</sup> Kumar & Preet, “Manual Scavenging”, *supra* note 19.

<sup>216</sup> “Disability and caste bias: A shared struggle | The Indian Express”, online: <<https://indianexpress.com/article/opinion/columns/disability-and-caste-bias-a-shared-struggle-8505522/>>.

with obstacles to education, such as physical distance, segregation, and discriminatory treatment, face even more formidable barriers when they have disabilities.<sup>217</sup>

In rural areas, where conditions are particularly dire, the lack of essential skills acquired through education curtails opportunities for vocational and other training, thus hindering employment prospects. However, access to employment also hinges on social capital, and individuals with disabilities and Dalits grapple with stigmatisation and negative stereotypes, which portray them as unproductive and reliant. The inferior educational and employment status of Dalits with disabilities increases the likelihood of their households, already strained due to limited resources, experiencing reduced living standards and heightened poverty.<sup>218</sup>

Dalit women and girls with disabilities, situated at the lowest echelon of India's social hierarchy, are particularly susceptible. Often, they engage in hazardous and degrading labour that jeopardizes their well-being, leaving them exposed to the risk of sexual violence from both members of their community and upper-caste individuals. Those with disabilities experience heightened vulnerability to abuse and exploitation. While the majority of cases remain unreported, several recent incidents underscore the gravity of their predicament. For instance, in January 2016, a deaf-mute Dalit woman was gang-raped and thrown from a train in Uttar Pradesh. Similarly, a man was arrested for raping a deaf-mute Dalit girl in Berhampur, Odisha, at the beginning of February 2016.<sup>219</sup>

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<sup>217</sup> *The Intersection of Disability and Caste: A Policy Paper*, Policy Paper, by Jayana Kothari, Almas Shaikh & Aj Agarwal, Policy Paper (CLPR, 2020).

<sup>218</sup> “Case study: Dalits with disabilities in India ~ Life at the Margins: The Challenges of Multiple Discrimination ~ Minority Stories”, online: <<https://stories.minorityrights.org/lifeatthemargins/chapter/case-study-living-with-the-stigma-of-caste-and-disability-the-challenges-facing-disabled-dalits-in-india/>>.

<sup>219</sup> *Ibid.*

Intersectionality challenges the simplistic notion that oppression originates from a singular source. Instead, it illuminates the intricate and multifaceted nature of discrimination. By recognising the interconnections between various dimensions of identity with caste, the CCT underscores the imperative for solutions to caste-based discrimination to address the complex ways these identities intersect and interact. This approach underscores the significance of comprehensive and all-encompassing strategies that account for the various axes of oppression that individuals navigate.

In essence, within the realm of CCT, intersectionality compels us to transcend the examination of caste-based discrimination in isolation. It advocates for a comprehensive exploration of the intertwining nature of multiple forms of oppression, shaping individuals' lived experiences. This perspective steers the development of strategies and policies that effectively grapple with the multidimensional nature of discrimination, promoting social justice and equity for all, regardless of the intricacies of their intersecting identities.

### **3.2.5. *Caste neutrality***

The notion of "caste neutrality" is often championed as a meritocratic approach that disregards an individual's caste identity. While on its surface, it might project an equitable stance, the concept of caste neutrality implicitly amplifies caste-based discrimination and reinforces biases that are deeply entrenched within a casteist society.

Caste neutrality functions on the principle that an individual's value should be evaluated exclusively based on their merits, skills, and qualifications rather than being influenced by their caste background. This stance is grounded in the pursuit of equal opportunity and the eradication of discrimination, aiming to create an equitable arena for all members of society. However, within

a society profoundly entwined with caste hierarchies and historical injustices, the practical implications of implementing caste neutrality only reinforces casteist hierarchies.

In a casteist society, caste identities extend beyond superficial labels. They are societal constructs that mould an individual's access to resources, opportunities, and social interactions. The historical prevalence of caste-based discrimination has consistently denied marginalised groups, particularly Dalits, their rightful share of opportunities, contributing to enduring structural and systemic disadvantages. The concept of caste neutrality tends to overlook this historical context and the enduring effects of caste-based discrimination.

In practice, the application of caste neutrality can inadvertently solidify existing power dynamics by sidestepping entrenched social hierarchies. This approach presupposes an egalitarian starting point for all, dismissing the reality that historical injustices have led to inherently uneven starting positions. It fails to recognise the structural impediments faced by marginalised groups, consequently perpetuating the cycle of caste-based inequalities. Also, the indiscriminate treatment of all individuals without acknowledgement of historical injustices negates the need for affirmative action or policies that uplift marginalised communities.<sup>220</sup>

CCT sheds light on how caste neutrality can serve as a smokescreen for sustaining prevailing power structures. Concealing underlying biases and discrimination projects an illusion of an even playing field when, in actuality, caste-based disparities endure. Moreover, caste neutrality disregards the interplay of intersecting identities, such as caste and gender, leading to further marginalisation of individuals who experience multiple layers of discrimination.<sup>221</sup>

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<sup>220</sup> *Indra Sawhney vs Union Of India and Others*, *supra* note 128.

<sup>221</sup> *Ibid.*

Within a casteist societal framework, the concept of caste neutrality risks effacing caste-based identities and struggles. It negates the urgency of acknowledging historical injustices endured by marginalized communities, perpetuating the notion of a casteless society. This erasure not only impedes efforts to confront caste-based discrimination but also obstructs the implementation of pragmatic and effective policies aimed at uplifting marginalized groups.

In conclusion, while the concept of caste neutrality may outwardly epitomize impartiality, its consequences intensify caste-based discrimination and fortify biases within a casteist society. CCT underscores the necessity of acknowledging historical injustices, recognizing caste identities, and implementing targeted policies to rectify deeply ingrained disparities. The objective should not be limited to neutrality alone but rather should encompass proactive endeavours to deconstruct caste-based discrimination and cultivate a society that genuinely champions equality and justice for all.

### **3.2.6. *Social justice advocacy***

Social justice advocacy, deeply ingrained within the framework of CCT, embodies a purposeful and concerted endeavour to confront, challenge, and rectify the deeply entrenched inequalities and injustices that stem from caste-based discrimination that persist within society. Operating through a multifaceted approach, this advocacy seeks to foster inclusivity and solidarity among diverse individuals and communities who recognise the collective struggle against caste-based discrimination. This unity serves as a potent instrument to dismantle oppressive structures and cultivate a more just and equitable society.

At its core, the endeavour of social justice advocacy involves the reconstruction of narratives that have historically perpetuated caste-based discrimination. By contesting prevailing stereotypes and narratives that have marginalised specific groups, advocates strive to amplify the voices and

experiences of marginalised communities. This reconfiguration reshapes societal perceptions and comprehension of the impact of caste-based discrimination. This process not only highlights the hardships faced by marginalised individuals but also emphasises the imperative for broader societal transformation.

Moreover, education and awareness constitute pivotal components of social justice advocacy. Through workshops, seminars, public discourse, and impactful campaigns on social media, advocates work towards augmenting public awareness concerning the historical context, implications, and strategies to counter caste-based discrimination. These efforts empower individuals to engage in informed dialogues, fostering a culture of empathy and comprehension that counteracts bias and misinformation.

The notion of an intersectional approach underscores the multifaceted nature of social justice advocacy within CCT. Recognising that discrimination does not occur in isolation, advocates attend to the intersection of caste with other identities, including gender, class, religion, and more. This comprehensive perspective ensures that endeavours to combat discrimination encompass the multifaceted layers of oppression that individuals may encounter.

The influence of social justice advocacy extends to media and public discourse. Advocates diligently work to challenge prejudiced depictions of caste within media, striving to promote narratives that humanise and uplift marginalised communities. This effort entails questioning stereotypes in films, television shows, news coverage, and literature, ultimately reshaping public perceptions and fostering greater empathy.

Central to social justice advocacy is the empowerment of marginalised voices. By providing platforms for individuals from marginalised communities to share their experiences, advocates



create spaces wherein those directly affected by caste-based discrimination can articulate their rights and narratives. This amplification challenges prevailing narratives and raises awareness about the extent and severity of caste-based injustices.

Integral to this advocacy is community mobilisation. Advocates closely collaborate with grassroots organisations and community leaders to mobilise marginalised communities for collective action. Grassroots movements, rallies, protests, and demonstrations serve as potent instruments to spotlight caste-based discrimination, mobilise public sentiment, and demand change from those in positions of authority.

In the realm of advocacy efforts, scholars and academics have also endeavored to furnish a substantial foundation of evidence, empirical data, and comprehensive contextual insights. These elements are indispensable in substantiating the imperative for policy reforms and broader societal transformations. Notably, a multitude of eminent scholars specializing in the study of caste-related issues, including individuals such as Chinnaiah Jangam,<sup>222</sup> Anand Teltumbde,<sup>223</sup> Sukhdeo Thorat,<sup>224</sup> Suraj Yengde,<sup>225</sup> Vasanthi Venkatesh,<sup>226</sup> Disha Wadekar,<sup>227</sup> Anurag Bhaskar,<sup>228</sup> Srinivas Burra,<sup>229</sup> and others,<sup>230</sup> have made notable contributions to theory and methods. They

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<sup>222</sup> Jangam, *supra* note 43.

<sup>223</sup> Teltumbde, *supra* note 3; Teltumbde, *supra* note 36.

<sup>224</sup> Thorat & Attewell, *supra* note 179; Thorat, Madheswaran & Vani, *supra* note 45; Thorat et al, *supra* note 26.

<sup>225</sup> Yengde, *supra* note 175.

<sup>226</sup> Venkatesh, *supra* note 9.

<sup>227</sup> Disha Wadekar, “Rejecting Ideal Victimhood” (2021) *Econ Polit Wkly*.

<sup>228</sup> Anurag Bhaskar, “‘Ambedkar’s Constitution’: A Radical Phenomenon in Anti-Caste Discourse?” (2021) 2:1 *Caste* 109–131.

<sup>229</sup> Srinivas Burra, “TWAIL’s others: A caste critique of TWAILers and their field of analysis” (2016) 33:3 *Windsor Yearb Access Justice* 111–128.

<sup>230</sup> Paik, *supra* note 4; Jose, Cherayi & V., “Does Caste Matter for Social Disability of Dalit Women?”, *supra* note 2; Kumar & Preet, “Manual Scavenging”, *supra* note 19; Nigam, *supra* note 31; Rao, *supra* note 43; Sharma, *supra* note 98.

effectively advocate for and present compelling arguments, illuminating the deeply entrenched systemic nature of caste-based discrimination, drawing upon the insights offered by CCT itself.

This scholarly inquiry constitutes an integral facet of social justice advocacy within the purview of CCT. The purpose is to explicate and underscore the intricacies of discreet forms of discrimination encountered by individuals belonging to lower castes across domains encompassing housing, education, employment, and even within private realms like social interactions, dining experiences, or isolation by peers. Subsequent sections of this work delve deeper into diverse dimensions of caste-based private discrimination, offering further substantiation of these delineated contours.

## **CHAPTER-4**

### **CONSTITUTIONAL MORALITY AND PRIVATE CASTE-BASED DISCRIMINATION: UNRAVELING THE DILEMMA**

#### **1. INTRODUCTION**

This chapter is divided into three parts. Part I, titled “*Beyond prejudice: Constitutional morality’s role in eradicating caste-based private discrimination*” engages in an exploration of the legal and constitutional difficulties that emerge while regulating caste-based discrimination within private realms.

Part II of this chapter, titled “*The caste, constitution and countering private discrimination in India*” meticulously scrutinises instances of caste-based discrimination within private domains in India. This chapter further analyses the cases decided by the Supreme Court of India pertaining to

private discrimination. These cases shed light on the divide between the recognition of discriminatory practices within private spaces within India's legal framework and the conspicuous absence of efficacious remedies accessible to the victims of such systemic bias. The selected cases underscore the limitations of the legal structure in addressing caste-based discrimination within private contexts, exposing a discernible discord between acknowledgement and concrete action. While India's legal architecture acknowledges the existence of discriminatory practices, it regrettably falls short of furnishing substantial recourse for those adversely impacted.

Part III of this chapter titled "*Critiquing constitutional and judicial responses to caste-based private discrimination*". The central proposition articulated in this discourse advocates for a more comprehensive paradigm within the framework of CCT, encompassing both punitive measures and proactive preventive strategies. Here I use illustrative case studies to highlight how daily instance of private discrimination faced by lower caste persons may not be afforded any legal protection in the present legislative and policy framework. This chapter further argues that while the indispensability of criminal statutes targeting caste-based discrimination remains indisputable, the discourse ardently advocates for the assimilation of civil remedies and social justice advocacy within the CCT framework to grapple with this multifaceted issue of caste based private discrimination.

## 2. BEYOND PREJUDICE: CONSTITUTIONAL MORALITY'S ROLE IN ERADICATING CASTE-BASED PRIVATE DISCRIMINATION

Constitutional morality, at its essence, signifies the collective dedication to upholding the principles enshrined within the constitutional framework.<sup>231</sup> This transcends a mere observance of legality, encompassing the embodiment of democratic values, fundamental rights, and equitable governance.<sup>232</sup> This commitment underscores the urgency of disbanding deeply ingrained social hierarchies, specifically the caste system, which has perpetuated discrimination, inequality, and marginalisation across generations.

The caste system, a cornerstone of India's historical and cultural heritage, has presented formidable challenges to the nation's pursuit of equality and justice. As per CCT, rooted in a divisive structure, caste-based discrimination has marginalized innumerable individuals, depriving them of fundamental rights and opportunities. The perpetuation of such a system stands in stark contrast to the foundational tenets of equality and social justice enunciated by the Constitution. Constitutional morality is supposed to operate as a catalytic force necessitating a departure from antiquated practices that stand in direct contradiction to the principles of equity and justice.<sup>233</sup> In essence, it prompts society to address the deeply entrenched injustices propagated by the caste system.

Ambedkar's central objective was anchored in the establishment of conditions conducive to social endosmosis, an instrumental strategy aimed at the eradication of the foundational elements of untouchability and caste-based discrimination that pervaded Indian society. This unwavering

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<sup>231</sup> Andre Béteille, "Constitutional Morality" (2008) 43:40 Econ Polit Wkly 35–42, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40278025>>.

<sup>232</sup> Abhinav Chandrachud, "The Many Meanings of Constitutional Morality" (2020) SSRN Electron J, online: <<https://www.ssrn.com/abstract=3521665>>.

<sup>233</sup> *Indian Young Lawyers Association v State of Kerala*, 2018 SCC Online 1690.

commitment endured even during his presentation of the Constitution of India to the nation.<sup>234</sup> Ambedkar harboured an unshakeable belief in the pre-eminence of constitutional values within the framework of democratic politics.<sup>235</sup> His argument posited that the mere codification of laws fell short of adequacy. He underscored that cultivating a “public conscience” harmonised with Constitutional morality held paramount significance, surpassing even *the Constitution itself in importance*.<sup>236</sup> He contended that the absence of such careful adherence and civic conduct would render “democracy defunct.”<sup>237</sup> The transition from a society demarcated by caste divisions to one unified by a sense of collective citizenship necessitated, in Ambedkar’s analysis, the nurturing of “constitutional morality.” He asserted its indispensability, cautioning that its absence would render the essence of liberalism hollow.<sup>238</sup>

Ambedkar echoed this sentiment, asserting that the absence of constitutional morality would inevitably precipitate arbitrariness and inconsistency, even within meticulously crafted constitutions.<sup>239</sup> He argued that the caste structure posed a substantial impediment to the cultivation of constitutional morality. Its construct obstructed the development of the fundamental elements requisite for constitutional morality. This predicament consistently thwarted the formation of a unified self, an essential core of constitutional morality. Overcoming this challenge required multifaceted dissociation detaching individuals from their viewpoints and cultivating the

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<sup>234</sup> B R Ambedkar & Vasant Moon, *Dr. Babasaheb Ambedkar: writings and speeches* (New Delhi: Dr. Ambedkar Foundation, 2014) vol 13.

<sup>235</sup> Bêteille, *supra* note 233.

<sup>236</sup> Ambedkar & Moon, *supra* note 237.

<sup>237</sup> *Dr B R Ambedkar’s Constituent Assembly Speech on Dec 17, 1946*.

<sup>238</sup> Pratap Bhanu Mehta, “What is constitutional morality”, online: <[https://www.india-seminar.com/2010/615/615\\_pratap\\_bhanu\\_mehta.htm](https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm)>.

<sup>239</sup> Ambedkar & Moon, *supra* note 237 vol 13.

confidence to place trust in others despite profound disparities. This trust rested on the assurance of shared processes for dispute resolution and unwavering adherence to constitutional principles.<sup>240</sup>

In conclusion, constitutional morality, akin to CCT, emphasizes the inherent dignity of individuals, regardless of their caste, challenging the caste system's foundation within the foundational principles of the Constitution of India. This emphasis on social justice disrupts the perpetuation of caste-based inequalities and highlights the need to address systemic inequities. The intersection of CCT and constitutional morality is pivotal in the pursuit of social justice in India. Both frameworks vehemently critique caste-based discrimination as a moral and ethical violation, stressing the imperative of justice and equality for all citizens, regardless of caste. CCT aims to dismantle caste-based oppression, while Constitutional Morality provides the normative framework, as advocated by Ambedkar, for justice through legal and constitutional means.

Constitutional Morality forms the legal basis for anti-discrimination laws and affirmative action policies addressing caste-based injustices. This legal framework complements CCT by facilitating structural change and legal redress. Both frameworks act as potent catalysts for change, advocating for a more just and equitable society, upholding principles of justice, equality, and individual rights as fundamental values. The nexus between constitutional morality and the imperative for caste reforms occupies a critical juncture. Progress in this discourse necessitates recognizing that India's commitment to combat caste-based discrimination extends beyond addressing state actions; it encompasses proactively addressing discrimination within private domains.

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<sup>240</sup> *Ibid.*

### 3. THE CASTE, CONSTITUTION, AND COUNTERING PRIVATE DISCRIMINATION IN INDIA

#### 3.1.PRIVATE DISCRIMINATION IN THE CONSTITUTION OF INDIA

The jurisprudential stance of the Supreme Court of India regarding the applicability of fundamental rights, enshrined in Part III of the Constitution, remains consistently tethered to the principle that these rights are invoked exclusively against ‘the state’ apparatus and not against private individuals. This interpretation aligns with the constitutional framework articulated within Articles 12 and 13, which establish the invocability of fundamental rights vis-à-vis the state, but not with a CCT-informed approach nor what Ambedkar intended. These encompass provisions such as Article 14, safeguarding individuals from state-inflicted denial of equality before the law or equal protection of laws; Article 15(1), prohibiting state-based discrimination on specified grounds; and Article 16, mandating equal opportunity in public employment.

HM Seervai expounds on this, elucidating that Article 13(2) specifically targets a particular genre of state action and is not conventionally construed to encompass violations by private individuals of individual rights.<sup>241</sup> Nevertheless, the Supreme Court has identified particular cases that deviate from this general principle. In these instances, the Court has determined that certain provisions, while not explicitly intended to apply horizontally, that is, to private individuals hold undeniable and indisputable enforceability.<sup>242</sup> Examples include Article 17, which addresses the eradication of ‘untouchability’, Article 23, which prohibits human trafficking and forced labor, and Article 24, which prevents the employment of minors under the age of fourteen in hazardous industries. In

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<sup>241</sup> Stephen Gardbaum, “Horizontal Effect” in Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, eds, *Oxf Handb Indian Const*, 1st ed (Oxford University Press, 2017) 600.

<sup>242</sup> Bhatia, “Horizontal Discrimination and Article 15(2) of the Indian Constitution”, *supra* note 65.

these cases, the Court has extended the applicability of these provisions beyond the boundaries of state actions, recognising their pertinence across various private contexts such as forced employment of labours or employment of minors in hazardous industries by private individual, or practicing untouchability.<sup>243</sup>

A meticulous analysis of both the textual contours and the discourse held within the Constituent Assembly during 1947–48 reveals that Article 15(2) proscribes specific manifestations of ‘private discrimination’ predicated on religion, caste, race, gender, or place of birth.<sup>244</sup> This prohibition on caste based-discrimination extends to individual conduct affecting ‘access to shops, public restaurants, hotels, and places of public entertainment’.<sup>245</sup> Article 15 states that:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

(a) access to shops, public restaurants, hotels and palaces of public entertainment;  
or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

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<sup>243</sup> Gardbaum, *supra* note 244.

<sup>244</sup> *Ibid.*

<sup>245</sup> *Constitution of India Act, supra* note 123 art 15.



The architects of the Indian Constitution acknowledged that the mere proscription of discriminatory conduct by the state might prove insufficient in realising a truly egalitarian society. As a result, the incorporation of Article 15(2) emerged as a vital inclusion, extending the ambit of anti-discrimination provisions to encompass private individuals as well. This legislative move was motivated by the recognition that fostering equality necessitates a broader and more comprehensive approach.

Nevertheless, the contemporary scenario remains disconcerting as marginalised segments of Indian society, notably Dalits and Bahujans, continue to encounter stark hindrances in exercising their basic rights. Their access to public spaces remains obstructed, the use of communal pathways is circumscribed, and they endure the indignity of derogatory and disparaging treatment, often meted out by individuals hailing from privileged upper castes. This perpetuation of discriminatory practices underscores the glaring gap between legal provisions and their effective implementation, rendering the promise of constitutional equality a distant reality.

Regrettably, the potential of Article 15(2) to rectify such injustices remains largely untapped within the realm of judicial enforcement. Courts have rarely invoked or decisively acted upon this provision. This inclination is indicative of a larger trend wherein the judicial machinery appears hesitant in wielding its authority to safeguard fundamental rights against non-state actors, particularly in the context of caste-based discrimination.

## 3.2.THE JUDICIARY'S STAND ON PRIVATE DISCRIMINATION IN INDIA

In this section, I analyse two SC decisions pertaining to the adjudication of Article 15(2). One of the cases deals with housing discrimination and the other deals with discrimination by a private educational institution. In these two cases, SC has exhibited two completely different approaches.

### 3.2.1. Zoroastrian Cooperative Society case

In the Indian context, housing discrimination often manifests through “exclusionary covenants,” which impose restrictions on the sale, transfer, or occupation of real property based on criteria such as race, caste, religion, ethnicity, sex, and nationality.<sup>246</sup> The challenge posed by exclusionary covenants lies at the intersection of private contractual rights, which are deemed significant in capitalist societies and liberal constitutional frameworks, and the insidious issue of discrimination. These covenants frequently target groups historically relegated to a subordinate status in both law and practice and who have recently gained legal emancipation. Exclusionary covenants thus serve as a substitute for erstwhile state-sanctioned discrimination and other overt forms of repression that have been rendered impermissible by legal developments.<sup>247</sup>

In the matter of *Zoroastrian Cooperative Housing Society Limited v District Registrar Cooperative Societies (Urban)*<sup>248</sup>, the SCI confronted a housing discrimination case involving non-state actor i.e. private housing society. In this case, the Zoroastrian Cooperative Housing Society was established as a registered entity with its own bylaws under the overarching Bombay Cooperative Societies Act. According to these bylaws, membership was limited to individuals adhering to the

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<sup>246</sup> Bhatia, “Horizontal Discrimination and Article 15(2) of the Indian Constitution”, *supra* note 65.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Zoroastrian Co-operative Housing Society Ltd v District Registrar Co-operative Societies*, 2005 (5) SCC 632.

Parsi faith (followers of Zoroastrianism). Only Parsis were eligible to purchase plots facilitated by the Cooperative Society. However, a member of the Society, Respondent No. 2, initiated negotiations with Respondent No. 3, a non-Parsi builders' association, to sell its property. Following a series of legal proceedings, the Supreme Court was presented with the matter.

The Cooperative Society contended that their restriction was validated by the bylaws of the Cooperative Societies Act, which did not infringe upon the parent statute. The Constitution, according to the Society, did not hold jurisdiction in adjudicating such private conduct. Interestingly, the Society invoked the Constitution to support its position, referencing Article 19(1)(c) - safeguarding citizens' freedom of association - to protect the Parsis' right to association. Furthermore, the Society relied on Article 29, which grants minority groups the right to preserve their cultural identity. On the opposing side, Respondents argued that restrictive covenants of this nature were invalid due to their violation of public policy, as per various constitutional provisions, particularly Article 15 and other anti-discrimination clauses.

In its ruling and subsequent analysis, the Supreme Court accepted the appeal and embarked on an exhaustive examination of cooperative society legislation in India. It discerned that the concept of restricted membership prevailed consistently in such enactments. For housing societies, this entailed a shared affinity arising from common habits and usage among members, often tied to community, caste, or other cohesive groups. The Court, in response to the constitutional challenge premised on non-discrimination, maintained that the Society's bylaws resembled the articles of association governing a company. Such provisions, the Court asserted, were binding solely among the affected parties and were not akin to statutes. The Court held that private contractual agreements were subject to scrutiny under the relevant parent legislation (e.g., the Indian Contract

Act), rather than through general fundamental rights assessment. It clarified that the fundamental rights chapter did not impinge upon citizens' contractual rights.

This explanation makes sense because restrictions on membership based on geographic location, for example, a society in a given area, are fair and don't discriminate against any prohibited categories. This aligns with the core purpose of housing societies. However, it doesn't cover restrictive agreements that are based on constitutionally prohibited criteria like caste, sex, race, or religion. The Court's examples of other cooperative societies, such as those for agricultural laborers, workers, and vegetarians,<sup>249</sup> are not relevant because they don't involve discrimination based on prohibited categories.<sup>250</sup>

An issue arises with regard to invoking Article 19(1)(c), which guarantees freedom of association, as a constitutional justification to substantiate the Society's claim. The statutory right to contract in this case, authorized by the Cooperative Societies Act's bylaws, diverges from the constitutional freedom of association as it discriminates on the basis of constitutionally prohibited criteria like caste, sex, race, or religion. Section 23 of the Indian Contract Act also imposes limitations on the freedom to contract that violates the 'public policy' and violate on the constitutional freedom. The Constituent Assembly Debates show that freedom of association was deemed an essential aspect of personal civil liberty, akin to freedom of speech and movement.<sup>251</sup> Historical jurisprudence has also understood freedom of association as a means of safeguarding the rights of labour unions, religious minorities, and other marginalised groups.

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<sup>249</sup> Within some societies, the practice of vegetarianism can be employed as a subtle or overt marker of one's caste identity. Those adhering to vegetarian diets may be associated with higher caste groups, while non-vegetarians are often associated with lower caste or marginalised communities.

<sup>250</sup> Bhatia, "Horizontal Discrimination and Article 15(2) of the Indian Constitution", *supra* note 65.

<sup>251</sup> "Constituent Assembly Debates On 2 December, 1948 Part I", online: <<https://indiankanoon.org/doc/1389880/>>.

However, the ruling of the SCI in the *Zoroastrian Housing Cooperative Society* case poses significant concerns when viewed through the lens of CCT. In India, housing discrimination often takes the form of "exclusionary covenants," which are contractual restrictions placed on property transactions, based on criteria like caste, religion, race, and more. These discriminatory covenants frequently target historically marginalized groups, effectively serving as a substitute for the overt repression that have now been prohibited by law. From the perspective of CCT, the Court's decision to treat these bylaws as akin to articles of association governing a company, rather than as statutory provisions, raises questions about the extent to which private discrimination can be challenged under the umbrella of fundamental rights. The Court ruled that private contractual agreements should be subject to scrutiny under the relevant parent legislation, such as the Indian Contract Act, rather than through a general assessment of fundamental rights. This interpretation potentially poses challenges when addressing housing discrimination against individuals from lower castes. The Court's narrow interpretation of "public policy" as the policy established by the parent statute limits its capacity to address caste based private discrimination rooted in societal values and principles. To overcome these challenges, a more comprehensive legislative framework is necessary to effectively combat cases of private discrimination. Such legislation should encompass a broader definition of "public policy" and provide a legal basis for addressing private discrimination in housing and other domains. This approach would align with the objectives of CCT, which seeks to dismantle all forms of discrimination and oppression, including those perpetuated by private entities.

### **3.2.2. Indian Medical Association Case**

This case revolves around the Army College of Medical Sciences (ACMS) located in Delhi Cantonment, which, in 2008, devised its own admission procedure for the inaugural year of the

MBBS course. This procedure was established from a predefined framework created by the college itself and its parent society, the Army Welfare Education Society (AWES). The policy aimed to exclusively admit students who were either children or dependents of present or former Army personnel, as well as widows of Army personnel. A series of writ petitions were filed by students who were otherwise eligible for admission but were excluded due to this policy. The Indian Medical Association (IMA) also raised a challenge against the policy. ACMS is recognized as a private, unaided, non-minority professional institution. As per a verdict from the Supreme Court's Constitution Bench in *TMA Pai Foundation vs State of Karnataka*<sup>252</sup>, further elucidated in *P.A. Inamdar vs State of Maharashtra*<sup>253</sup>, admissions to private, unaided, non-minority professional institutions should solely be predicated on merit. This merit should be gauged through the inter-se ranking of all students who partook in a standardised entrance examination.<sup>254</sup>

The foundation of ACMS' admission policy rested on the belief that the offspring of Army personnel encounter educational disadvantages compared to the civilian population, thus impacting the morale of the military personnel. As a result, the college reserved 100% of its seats for the dependents of Army personnel. The Delhi government also sanctioned this policy. When the policy was initially contested by petitioners in the Delhi High Court, it was upheld as valid.

The pivotal question before the SCI was whether a private, non-minority higher educational institution that relied solely on entrance test scores for admissions violated Article 15(2). This assertion was grounded in the unequal impact of test-based admission programs on underprivileged castes in terms of education. However, before addressing this question, the Court

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<sup>252</sup> *PA Inamdar v State of Maharashtra*, (2005) 6 SCC 537.

<sup>253</sup> *TMA Pai Foundation v State of Karnataka*, (2002) 8 SCC 481.

<sup>254</sup> *Indian Medical Association v Union of India*, (2011) 7 SCC 179.

needed to establish whether Article 15(2) was indeed applicable to this scenario. If applicable, the Court needed to discern how an educational institution could be accommodated within the ambit of “shops, public restaurants, hotels, and places of public entertainment.”<sup>255</sup>

The SCI determined that Article 15(2) did indeed apply, as educational institutions fell within the definition of “shops.” The SCI referenced and endorsed Dr Ambedkar’s statements in the Constituent Assembly Debates wherein he had observed that the term “shop” transcended mere entry permissions. Instead, it encompassed the concept of ‘offering services’ to those who sought them. The Court deviated from conventional interpretations of “shop” in favour of an abstract and rarified “generic” usage. This interpretation aimed to encompass educational institutions within the definition. Within this framework, a “shop” effectively represented the concrete manifestation of the abstract concept of the impersonal, abstract market inherent to modern liberal capitalist economies. This perspective enabled the Court to encompass educational institutions within the scope of Article 15(2).<sup>256</sup>

While advocating for a comprehensive interpretation of “shops,” it is apparent that the scope of this term is not boundless. The term itself implies a commercial relationship, and Dr. Ambedkar’s focus on “terms of service” indicates that Article 15(2) pertained to economic transactions. This aligns with classical economic theories that mandate transactions to be conducted at arm’s length. However, this perspective does not extend to non-economic, associative relationships. For instance, Article 15(2) would apply if one intended to sell or provide goods or services in the market, but it would not apply if one wished to gift the same goods or services. This interpretation harmonizes with the historical nature of the term “shops” and aligns with the constitutional

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<sup>255</sup> Raj, *supra* note 68.

<sup>256</sup> Bhatia, “Horizontal Discrimination and Article 15(2) of the Indian Constitution”, *supra* note 65.

cohesiveness required by Article 19(1)(c), which guarantees the freedom of association. However, the confinement of Article 15(2) to commercial relationships imposes constraints on its applicability and extent concerning cases of private discrimination that do not involve goods or services. For instance, instances of institutional bullying directed at Dalit students within educational institutions, persistent questioning of the merit of individuals from lower caste backgrounds by their colleagues, or the segregation of Dalits in the workplace due to perceptions of caste-based impurity would not receive protection if Article 15(2) is exclusively restricted to commercial relationships and transactions.

Further, Tarunabh Khaitan's perspective underscores the necessity of striking a balance between the imperative of non-discrimination and the legitimate right to autonomy within private relationships.<sup>257</sup> Khaitan's argument asserts that only specific types of private relationships warrant the scope of discrimination law, particularly those involving service providers and consumers, landlords and tenants, and so forth. The criterion for such determination hinges on the extent to which these relationships possess a "public character" and their potential to affect individuals' access to essential physical and social infrastructure, consequently enabling dignified lives. This balancing act is informed by unique facets of Indian constitutional and political history that address the intricate interplay between non-discrimination and autonomy within private spheres.

Khaitan's argument hinges upon the debate concerning autonomy versus State's right to interfere in personal choices if those personal choices are based upon discriminatory grounds mentioned under the Constitution of India. In the next section, I argue why private discrimination law in India

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<sup>257</sup> Khaitan, *supra* note 64.



should move beyond the Bhatia’s “economic goods” principle or Khaitan’s “public character” principle.

#### **4. CRITIQUING CONSTITUTIONAL AND JUDICIAL RESPONSES TO CASTE-BASED PRIVATE DISCRIMINATION**

In this section, I argue that we need a CCT approach to prohibit the caste-based private discrimination in India. I shall be doing so by hypothetical cases pertaining to caste-based discrimination faced by lower caste persons by other individuals on a daily basis.

The inquiry at hand focuses on why Indian courts have conspicuously not invoked Article 15(2) in cases of caste-based private discrimination, despite a clear prevalence of instances of atrocities and discrimination against Dalits and Bahujans. To decipher these dynamics, I investigate three distinct scenarios of caste-based private discrimination spanning realms such as housing, employment, and private spaces. Each scenario offers a unique vantage point to assess how the existing legal landscape in India addresses these factual circumstances. Through this analytical framework, a nuanced comprehension emerges of the mechanisms at play in the judicial response to caste-based discrimination within private domains. This multidimensional exploration enables an informed assessment of the legal paradigms in place, affording insights into the potential roles of Article 15(2) and specialised legislation in confronting the multifaceted dimensions of discrimination faced by Dalits and Bahujans. By situating these scenarios within the broader context of Indian jurisprudence, this investigation strives to illuminate the nuanced interplay between legislative provisions, judicial interpretations, and the quest for effective redressal of caste-based discrimination within private spheres.

***Hypothetical Scenario 1 (Housing case):*** Kapil, an individual belonging to the upper caste, advertises for potential tenants for an apartment situated in New Delhi through an online platform. Ramjanam, an interested individual seeking a residence within the same neighbourhood, calls on Kapil to garner information about the rental terms and other pertinent details. Subsequently, Ramjanam views the apartment and finds it to his liking, prompting negotiations between the two parties. An agreement is reached, prompting Ramjanam to urge Kapil to expedite the preparation of a lease deed to formalise their arrangement. However, upon learning that Ramjanam carries a Dalit surname, Kapil contacts Ramjanam to confirm his caste identity. It transpires that Ramjanam is affiliated with the *Chuhaad* jati (Dalit), historically classified as untouchables. The following day, Kapil initiates a renewed interaction with Ramjanam, and uses caste to justify the annulment of their previously established accord. Kapil casually brings Ramjanam's caste identity to the forefront, using it as a pivotal factor to substantiate his decision to revoke the agreement. He articulates that, due to Ramjanam's Dalit background, the prospect of securing lodging within a locality predominantly inhabited by members of the Brahmin community (upper caste) would be challenging. As a result of Kapil's actions, Ramjanam was discouraged from looking for anything else in the area.

***Hypothetical Scenario 2 (Domestic employment case)-*** Sarita, an interior designer, along with her family, resides in an affluent residential enclave situated in Gurgaon, an esteemed IT hub bordering Delhi, India. She takes to her social media profiles to solicit domestic assistance for tasks encompassing culinary responsibilities, household maintenance, and cleanliness. As prerequisites, she specifies that the candidate should possess prior experience in comparable domestic settings, exhibit cleanliness and hygiene, and hail from a good community and social background. Nirmala, meeting the stipulated criteria, proceeds to submit her application for the

mentioned role. Subsequently, Sarita extends an invitation to Nirmala for an interview. During the interview, Sarita delves into various aspects of Nirmala's background, including her native village and her affiliations within a particular 'community,' alongside making inquiries concerning her spouse's occupation and her cooking practices pertaining to non-vegetarian cuisine at other households. Subsequent to the interaction, Sarita proceeds to reject Nirmala's application, invoking the rationale that her family strictly adheres to vegetarianism, whereas Nirmala's affiliation with a community historically associated with leather craftsmanship and thereby nonvegetarian habits renders her unsuitable for the role.

***Hypothetical Scenario 3 (Social discrimination case)***- Mukesh Sharma works in a grocery establishment situated in Mumbai, where he has ten co-employees working with him in various capacities: one store manager, two cashiers, two home delivery personnel, one inventory manager, two cleaners, and two security personnel. Mukesh conducted a ceremony to celebrate his marriage anniversary. Strikingly, this celebration witnessed the attendance of all his co-staffs, with the exception of the cleaning personnel. Subsequently, during another instance, Mukesh organised a birthday celebration for his daughter, extending invitations to all his colleagues for the festivity at his residence. Surprisingly, yet again, the cleaning staff found themselves excluded from the guest list. Mukesh possesses knowledge of the fact that both the cleaning staff members are Dalits, and notably, one among them had previously been employed as a sanitation worker under a daily wage scheme by the Bombay Municipal Corporation.

#### 4.1.CONSTITUTIONAL REMEDY

The scenarios are for illustrative purposes. However, their semblance to real-life instances is undeniable, representing a pervasive phenomenon across diverse domains in India.<sup>258</sup> In the context of housing discrimination, the denial of accommodation to Ramjanam by Kapil, prompted solely by the revelation of Ramjanam's caste, unveils an unsettling reality. Correspondingly, in the context of domestic employment, the refusal of Nirmala's employment by Sarita finds its justification in the perceived impurity of the food prepared by Nirmala due to her Dalit background and involvement in cooking non-vegetarian meals for other households. The social discrimination case further manifests in Mukesh's deliberate exclusion of cleaning staff colleagues from personal gatherings, predicated on their occupation and the attendant caste-based stigma.

These cases conspicuously underscore the deeply ingrained bias against individuals hailing from the Dalit community, evident across disparate domains encompassing housing, domestic employment, and social interactions. Such instances unequivocally reflect the manifestation of social and economic ostracism directed at Dalits. A pertinent inquiry emerges: within the purview of the judicial directives elucidated earlier and the legislative proscriptions against caste-based discrimination, does the extant legal framework possess the efficacy to provide redressal to victims of caste-based private discrimination encapsulated within these scenarios?

The instances described above fail to fit within the contours of the "public service" principle articulated in the *IMA case* or its expansive interpretation of 'shops'. In the case of housing discrimination involving Kapil, his actions were borne out of individual choice, devoid of any manifest exclusionary covenants akin to those encountered in the *Zoroastrian Cooperative Society*

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<sup>258</sup> Ajit, Donker & Saxena, *supra* note 75; note 184; Thorat, Madheswaran & Vani, *supra* note 45.

case. Furthermore, Kapil's conduct, while morally questionable, lacks the "public service" element critical to invoking Article 15(2) as per IMA case. Similarly, in the context of domestic employment discrimination, Sarita's prerogative to engage house help remains situated within the realm of private affairs, thereby circumventing the requisite public service dimension. Moreover, Mukesh's guest list for personal celebrations aligns with his individual autonomy, underscoring his right to choose his guests without infringing upon the public service criterion. The elasticity granted by the IMA judgment facilitates personal determinations in matters of association, housing agreements, private employment, and social gatherings.

Both Dr. Ambedkar and the judicial stance have notably focused on addressing discrimination by non-state actors, provided that the discriminatory act has a clear 'public service element.' To invoke Article 15(2), there must be a connection to the public service doctrine. The Court's doctrinal assertion requires the presence of activities considered 'vital' and 'crucial for the wider public' to qualify for constitutional coverage under Article 15(2). Consequently, instances of private discrimination in housing matters, private employment, or even private social spheres may not receive constitutional protection under Article 15(2).

Neither Article 15(2)(a) nor Article 15(2)(b) are tailored to accommodate the housing discrimination encountered by Ramjanam or the adversities faced by Nirmala and the cleaning staff. Furthermore, the actions of Kapil, Sarita, and Mukesh do not strictly align with the characterisation of 'practising untouchability', which is prohibited under Article 17. Even when we employ the "economic goods" or "public interest" principle, it becomes apparent that a comprehensive remedy might not be attainable for all instances. The perspectives presented by Bhatia or Khatian may contend that housing and employment encompass the exchange of services vital to the broader public, thus warranting their inclusion within the existing framework

addressing private discrimination. Nevertheless, even upon considering their arguments, the current interpretation and breadth of constitutional jurisprudence impose limitations on our ability to provide recourse for situations where the cleaning staff were selectively discriminated against by their employer relating to a social event. These cases, although deeply troubling, would remain unaddressed constitutionally unless we significantly expand the scope of private discrimination to encompass even the caste-based discrimination that unfold in private sphere within its purview.

In contrast, other countries, like Canada as discussed in the upcoming chapter, utilize alternative legislative avenues such as provincial and federal human rights statutes to supplement Constitutional protections. However, in India, the special legislations enacted to address caste-based discrimination do not provide remedies in the hypothetical scenarios mentioned earlier, as the next section will demonstrate.

#### **4.2. OTHER LEGISLATIONS PROHIBITING CASTE DISCRIMINATION**

Amidst the backdrop of widespread caste-based discrimination and the persisting practice of untouchability in post-independence India, many legislations address caste discrimination. The Untouchability (Offences) Act of 1955 emerged as a watershed moment, signifying the Parliament's earnest attempt to prohibit the perpetuation of untouchability practices. The Act defines the notion of "untouchability" through reference to its manifestations, encompassing actions such as enforcing religious or societal limitations, exemplified by acts such as denying access to commercial establishments, public restaurants, hotels, or venues of public amusement, as well as regulating the use of utensils within public dining establishments.<sup>259</sup> However, the Untouchability Act did neither encompass instances of severe violence or what could be

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<sup>259</sup> *Protection of Civil Rights Act, supra* note 130, ss 3 & 4.

categorised as “hate crimes” against Dalits nor included instances of micro-aggressions or subtle-forms of private discrimination. Further, the punishment prescribed for practicing ‘untouchability’ was meagre six months of imprisonment or a fine of Rs. 500.<sup>260</sup> Recognising the shortcomings of this legislation in encapsulating the multifaceted manifestations of caste-based discrimination such as instances of increased caste based violence, the act underwent a transformative amendment in 1976, culminating in its renaming as the Protection of Civil Rights Act (POCR Act).<sup>261</sup> This transformation expanded the scope of the legislation to encompass a broader range of offenses related to untouchability and caste discrimination. For instance, it extended the reach of discrimination to any location where goods are sold, whether by a hawker, vendor, mobile van, cart, laundry, or hair cutting salon, as well as any other place where services are provided to customers.<sup>262</sup> The act also broadened the scope of religious areas where untouchability is prohibited to include all lands and subsidiary shrines connected to such places, privately owned places of worship that are permitted by their owners to be used for public worship, and any land or subsidiary shrine linked to such privately owned places of worship that is authorized by the owner for public religious worship.<sup>263</sup>

While the POCR Act was envisaged to rectify the inadequacies of its predecessor and encompassed more areas of private discrimination, it encountered notable limitations, such as, the Act neither included extreme cases of caste-based violence nor included caste-based private discrimination in matters of housing, education, employment or marriage. Moreover, the prescribed punitive measures were disproportionately lenient in relation to the gravity of offenses, confined to a

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<sup>260</sup> *Untouchability Offences Act*, 1955, ss 3–6.

<sup>261</sup> *Untouchability (Offences) Amendment and Miscellaneous Provision Act*, 1976.

<sup>262</sup> *Ibid.*, s 2.

<sup>263</sup> *Ibid.*

maximum of six months imprisonment to two years only. Equally critical was the absence of a dedicated mechanism to fortify the efficacy of the legislation. Strikingly, the very enforcement agencies entrusted with upholding this legislation often exhibited latent prejudices aligned with casteist ideologies.

Consequently, to address these persistent fissures and instil greater potency into the legislative framework, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act emerged in 1989, referred to as the ‘Atrocities Act.’<sup>264</sup> This legislative edifice assumed a more comprehensive mandate by prohibiting and criminalising the commission of atrocities against members of the Scheduled Castes and Scheduled Tribes. Manifesting a proactive stride, Section 3 of the Act enumerated an exhaustive set of acts that, when perpetrated against a SC or ST person, would be designated as atrocities, thereby inviting punitive measures. Section 3 of the Act prohibits forceful feeding of inedible or obnoxious substance; dumping of excreta, sewage, carcasses or other obnoxious substances in premises; garlanding with footwear or parading naked or semi-naked; forcibly removing clothes from the person, forcible tonsuring of head, removing moustaches, painting face or body or any other similar act, which is derogatory to human dignity; wrongfully occupying or cultivating any land; wrongfully dispossessing from land or premises or interfering with the enjoyment of rights, including forest rights, over any land or premises or water or irrigation facilities or destroying of the crops; fabricating records of such land; forcefully begging or making work as bonded labour other than any compulsory service for public purposes imposed by the Government; employing for manual scavenging; dedicating a SC/ST women to a deity, idol, object of worship, temple, or other religious institution as a *deva dasi*; intimidating not to vote or to vote for a particular candidate or doing acts which is against the voting rights; instituting false,

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<sup>264</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, supra* note 132.



malicious or vexatious suit or criminal or other legal proceedings; intentionally insulting or intimidating; denying right of passage to a place of public resort; force to leave their house.<sup>265</sup>

The comprehensive scope of Section 3 within the framework of the Atrocities Act stands as a poignant testament to the entrenched nature of caste-based violence and hostility aimed at the SCs and STs. This provision, meticulously outlining an extensive array of acts classified as atrocities, not only highlights the legislative determination to confront these deeply embedded societal maladies but also accentuates the severity and pervasiveness of such detrimental behaviours. Notably, the legislative fabric of this enactment extends its purview to encompass both the public and private realms of discrimination. However, amidst its commendable provisions, a striking parallel can be drawn with its predecessor, the Protection of Civil Rights Act (POCR Act), as an examination of its stance on private discrimination unfolds. The POCR Act, akin to the Atrocities Act, operates as a criminal statute and primarily addresses the more overt and extreme manifestations of caste-based discrimination and violence. While the imperative of penalising such transgressions remains vital, the criminal law lens often treats each instance of discrimination or violence as an isolated event perpetrated by one or more individual wrongdoers, often sidelining the socio-cultural and historical contexts that underlie them.

Notwithstanding the comprehensiveness exhibited by Section 3 within the purview of the Atrocities Act, its capacity to offer a definitive recourse to the nuanced and pervasive caste-based discrimination encountered by individuals such as Ramjanam, Nirmala, or the two cleaning staff members employed with Mukesh remains regrettably inadequate. The Atrocities Act is unequivocally geared towards addressing instances of caste discrimination that are conspicuously

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<sup>265</sup> *Ibid*, s 3.

aggravated or tantamount to atrocities, thereby epitomising the most extreme end of the discriminatory spectrum. While it unequivocally extends its reach to encapsulate these severe manifestations, a gap surfaces in its ability to proffer effective redress for victims ensnared within subtler and ostensibly less overt forms of discrimination.

Evidently, the rationale underpinning the Atrocities Act is rooted in the imperative to confront acts that bear the hallmark of intentionality to degrade, dehumanize, and perpetrate egregious offenses against marginalized groups. It thereby hinges upon the manifestation of explicit animus and overt aggression as pivotal prerequisites for its applicability. This criterion is inarguably justifiable when the intent is to combat the most flagrant forms of discrimination and to impose stringent legal measures to deter and penalize such deeply entrenched prejudice. However, this very focus renders the Act ill-equipped to address the nuanced and intricate fabric of caste-based discrimination that emanates from private interactions, everyday transactions, and the subtler echelons of social dynamics. This limitation does not necessarily impugn the efficacy of the Atrocities Act itself, but rather underscores the inherent constraints in employing this legislative framework to address the caste-based discrimination faced by numerous individuals like Ramjanam, Niramala or the cleaning staffs.

In essence, while the Atrocities Act aptly caters to instances of explicit animus and direct aggression, it remains conspicuously silent on the more complex realm of private interactions, personal choices, and seemingly mundane decisions that nevertheless bear the imprints of caste-based prejudice. This chasm in legislative provision becomes palpable when confronted with cases like those encountered by Ramjanam, Nirmala, and the cleaning staff, where the discriminatory impact is not driven by manifest aggression but is rather entwined with the subtleties of day-to-

day existence. The Act's orientation, which presupposes overt hostility and palpable harm, may inadvertently disregard these more insidious forms of discrimination.

This shortcoming underscores the necessity for a nuanced approach that augments the legislative framework to encompass these subtler dimensions of caste-based discrimination, thereby accommodating the complexities of private actions and choices. While the Atrocities Act functions as a vital tool against the most severe manifestations of caste-based discrimination, it concurrently accentuates the need for supplementary mechanisms that can adroitly address the latent biases that underscore more covert instances of discrimination. This calls for an innovative perspective that recognizes the spectrum of discriminatory behaviors, spanning from explicit aggression to covert biases, and accordingly, forges an inclusive legal response that commensurately grapples with this multifaceted reality.

In the context of CCT, it becomes increasingly clear that updating legislation is crucial to effectively tackle the ever-changing challenges presented by caste-based discrimination in India. CCT suggests that India's hierarchical caste system hasn't merely persisted but has also adapted and transformed itself over time, influencing various aspects of society, both in private and public sphere. Therefore, any legal response aimed at combating caste-based discrimination must be as dynamic and comprehensive as the issue itself. One of the core principles of CCT highlights that caste-based discrimination isn't confined to overt acts of bias or violence. It permeates into every aspect of an individual's life, including their opportunities for education, employment, housing, and social interactions. Discrimination often takes subtle, systemic, and structural forms, making it essential to address these intricacies within the legal framework. To truly align with the ideals of CCT, laws should broaden their scope to encompass these subtler aspects of caste-based private discrimination under its aegis. In essence, the evolution of legislation within the realm of CCT

should reflect a commitment to challenging all forms of discrimination, no matter how subtle or deeply ingrained they may be. It should recognize that caste-based discrimination is a multifaceted and widespread issue that requires a diverse and inclusive response.

## **5. CONCLUSION: IT IS NOT DIFFICULT TO REGULATE CASTE-BASED PRIVATE DISCRIMINATION**

Article 15(2) of the Indian Constitution and Section 3 of the Atrocities Act collectively proscribe private discrimination, albeit limited to “aggravated forms of private discrimination,” neglecting the more nuanced and subtle manifestations detailed in preceding sections. A plausible rationale behind this regulatory dichotomy also lies in the comparative ease and cost-efficiency with which the State can identify and address overt forms of discrimination. It is conceivable that the decision to distinguish between the regulation of these two categories of private discrimination is not grounded in the assumption that the latter lacks inherent wrongfulness. Rather, it hinges upon the challenge of detection, thus warranting their exclusion from legal oversight.

The contention herein is that the spectrum of discriminatory manifestations is expansive, encompassing diverse forms that elude facile detection. This underscores the overarching difficulty of ascribing motivations to instances of private discrimination, further compounded by its often intimate and insular nature, known exclusively to the individuals concerned or their immediate circles. Such complexities are observable in the instances of Ramjanam, Nirmala and cleaning staff, as mentioned in the previous section. It is worth noting that the absence of concrete evidence, compounded by epistemic constraints and enforcement impediments, cannot be solely attributed to the rationale behind non-regulation.<sup>266</sup> This is evidenced by the existence of private

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<sup>266</sup> Bilchitz, *supra* note 82.

acts, most of which happens in private sphere, that are both proscribed and punishable, such as cases of sexual abuse, domestic violence, child abuse, drug abuse, adultery, among others. Although the State may encounter difficulties in gathering information or evidence in these cases, their prohibition reflects the gravity of societal repudiation.

In certain scenarios, while direct evidence may be elusive for deducing caste-based private discrimination, ample instances offer discernible traces of bias. Ramjanam's predicament serves as a paradigmatic case, as he is overtly denied housing accommodations on the grounds of his caste. Even in the other two cases involving Sarita and Mukesh, their caste bias can easily be inferred. Notably, some individuals are vocal about their biases, consistently exhibiting prejudices against SCs, STs, OBCs, ethnic minorities, LGBTQ+ individuals, the disabled, and other marginalised groups. In these instances, the acquisition of circumstantial evidence is not as insurmountable as perceived within the system. Moreover, certain cases of private discrimination are inherently easier to identify, such as housing societies exclusively permitting particular castes to own or rent properties, senior professors exclusively selecting upper-caste students as Ph.D. candidates, and the deliberate caste-based selection or rejection of domestic help or employees.

From a CCT perspective, the differential treatment accorded to aggravated and subtle forms of private discrimination inherently dilutes the foundational aspirations of India's constitution, predicated upon the pursuit of an egalitarian and discrimination-free society. While enforcement complexities may indeed arise upon regulating subtle forms of private discrimination, it is pivotal to acknowledge that in a caste-stratified society, the law not only functions as a punitive instrument but also as a societal message against pernicious acts. The potential deterrent effect is underscored, with individuals likely to reconsider their involvement in private discrimination if it is legally proscribed, coupled with the looming prospect of prosecution for transgressions.

Further, liberal constitutions, deeply rooted in the tenets of ‘personal autonomy’ and ‘individual liberty’, assign paramount significance to the sovereignty of personal choices.<sup>267</sup> Central to this perspective is the conception of humans as self-sufficient and autonomous entities, endowed with the prerogative to mold their lives in accordance with their own volitions. This understanding predicates that individuals possess the liberty to make choices congruent with their preferences, so long as these choices do not impinge upon the rights and freedoms of others. These doctrinal underpinning finds resonance in the seminal work of John Stuart Mill, specifically his treatise “On Liberty,” wherein he posits that individuals harbor a vested interest in delineating the boundaries of their existence.<sup>268</sup> In light of this, proponents of the autonomy-based argument contend that regulating private discrimination proves unreasonable, as such behaviors or actions operate within a sphere where individuals ideally enjoy the latitude to act autonomously without constraint or curtailment of their liberty, even if these actions transgress moral norms.<sup>269</sup>

Constitutionalism with caste transformation mitigates the constraint evident in liberal constitutions by emphasizing a departure from the primacy of individual rights in favor of an emphasis on discrimination rooted in group identities. It underscores the pervasive nature of caste-based discrimination, encompassing both public and private spheres, and underscores its collective impact on entire communities. CCT places particular importance on the historical backdrop of caste-based discrimination and oppression, asserting that the enduring legacy of centuries-long discrimination cannot be adequately redressed through adherence to the liberal tenets of equal

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<sup>267</sup> Sebastiano Maffettone, “Liberalism and its critique: Is the therapy worse than the disease?” (2000) 26:3 *Philos Soc Crit* 1–37, online: <<http://journals.sagepub.com/doi/10.1177/019145370002600301>> at 10.

<sup>268</sup> John Stuart Mills, *On Liberty* (Toronto Metropolitan University, 2022).

<sup>269</sup> Bilchitz, *supra* note 82.

opportunity alone. Consequently, the implementation of affirmative action and reparative justice measures emerges as an imperative in rectifying the historical injustices perpetrated.

In conclusion, as highlighted in this chapter, India's legal system does not offer adequate remedies in cases of caste-based private discrimination pertaining to housing, employment and social interaction. Next chapter of this thesis examines the scope and impact of the Charter of Rights and Freedoms, delves into Human Rights Legislation, and evaluates the extant and constraints of private discrimination law within the Canadian context.

## CHAPTER-5

### INCLUSIVITY MATTERS: INTEGRATING CASTE-BASED DISCRIMINATION IN CANADIAN ANTI-DISCRIMINATION LEGAL FRAMEWORK

#### 1. INTRODUCTION

Privileged caste Hindus have emerged as a prominent and accomplished minority within the North American landscape.<sup>270</sup> Occupying prestigious corporate, governmental, and political roles, they assumed positions of influence that cast them as significant contributors to the cultural dialogue between India and the host countries.<sup>271</sup> Notably, the legacy of their caste-based privileges afforded them seamless access to elite educational institutions, thus equipping them with the dexterity required to navigate and thrive within the prevailing socio-political structures.<sup>272</sup> Paradoxically, the ascendancy of privileged caste Hindus, who have garnered recognition as

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<sup>270</sup> *Caste in the United States: A Survey of Caste Among South Asian Americans*, M., Soundararajan, T., Dar, N., Bheel, R.F., and Balakrishnan, P. (2018) *Caste in the United States. A Survey of Caste among South Asian Americans. Equality Labs, USA.*, by Maitreyi Zwick et al (USA: Equality Labs, 2018).

<sup>271</sup> *Ibid.*

<sup>272</sup> "Who Is Afraid of Caste Equity in Canada?", online: *The Wire* <<https://thewire.in/caste/who-is-afraid-of-caste-equity-in-canada>>.

cultural emissaries of India and emblematic figures of the Indian diaspora, has coincided with propagating a Hindu supremacist ideology. This ideology, rooted in notions of hierarchical dominance, seeks to normalise itself through the agency of these influential caste Hindus.<sup>273</sup>

Their presence within the Canadian demographic landscape and significant contributions to the nation have been extensively documented.<sup>274</sup> As per data from the 2021 Canadian census, the number of individuals in Canada with ancestral origins from South Asia reached 2,571,400.<sup>275</sup> This population segment accounted for approximately 7.1 per cent of the overall national populace and constituted a notable 35.1 per cent of the entire cohort identifying as Asian Canadians.<sup>276</sup> Consequently, South Asians emerged as the preeminent visible minority cluster in Canada, encompassing 26.7 per cent of the visible minority populace. This demographic status surpassed other visible minority groups, such as Chinese and Black Canadians.<sup>277</sup> This increased migration of South Asians to Canada have led to the adaptation and preservation of caste identities in a new cultural context. While such caste-based networks play a crucial role in helping newcomers settle and find employment within the South Asian diaspora. These networks provide a sense of familiarity and support in an unfamiliar environment. However, such persistence with caste identities have led to instances of caste-based discrimination in Canada.<sup>278</sup>

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<sup>273</sup> Venkatesh, *supra* note 9.

<sup>274</sup> Shlok Talati · for CBC News ·, “Prejudice rooted in an ancient social system has migrated from India to Canada | CBC News”, (16 May 2022), online: *CBC* <<https://www.cbc.ca/news/canada/nova-scotia/caste-india-canada-students-1.6450484>>.

<sup>275</sup> Statistics Canada Government of Canada, “Visible minority and population group by generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts”, (26 October 2022), online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810032401>> Last Modified: 2022-10-26.

<sup>276</sup> *Ibid.*

<sup>277</sup> Statistics Canada, *Religion by visible minority and generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts* (Government of Canada, 2022).

<sup>278</sup> note 275.



Brampton council recently approved a motion pledging to collaborate with the Ontario Human Rights Commission to outlaw caste classifications and include caste discrimination in the city’s anti-discrimination policy.<sup>279</sup> Similarly, Burnaby, situated within the province of British Columbia, has also taken a unanimous decision to proscribe discrimination predicated upon caste distinctions.<sup>280</sup> Noteworthy developments are also evident within the academic sphere, as the California State University system and various universities in the United States have moved to proscribe caste-based discrimination, with caste being explicitly integrated into their comprehensive frameworks for diversity, equity, and inclusion.<sup>281</sup> The trajectory of this progression is further evidenced by the Seattle city council’s recent prohibition of caste-based discrimination, a measure motivated by the city’s role as a host to numerous corporate headquarters that attract a migrant demographic from South Asia.<sup>282</sup>

The Toronto District School Board’s trustees have substantiated their commitment to addressing the issue of caste oppression through a pivotal resolution, which garnered a majority vote of 16 in favour and five against.<sup>283</sup> This resolution demonstrates the Board’s recognition of caste-based oppression as a significant concern, prompting them to appeal to the Ontario Human Rights Commission to develop a structured framework to address caste-based oppression within the realm of public education. It is crucial to underscore the historic nature of this initiative within the

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<sup>279</sup> Graeme Frisque Guardian Rohan Puri Brampton, “Brampton looking to ban caste-based discrimination”, (31 May 2023), online: *Brampton Guard* <[https://www.bramptonguardian.com/news/council/brampton-looking-to-ban-caste-based-discrimination/article\\_b2dd42b1-9fad-50bc-9a30-20f77320551c.html](https://www.bramptonguardian.com/news/council/brampton-looking-to-ban-caste-based-discrimination/article_b2dd42b1-9fad-50bc-9a30-20f77320551c.html)>.

<sup>280</sup> Shilpashree Jagannathan, “Burnaby council votes unanimously to include caste as a protected category”, (26 April 2023), online: *New Can Media* <<https://newcanadianmedia.ca/burnaby-council-votes-unanimously-to-include-caste-as-a-protected-category/>>.

<sup>281</sup> Business Standard, “US universities add policies to counter caste-based discrimination”, (9 December 2022), online: <[https://www.business-standard.com/article/international/us-universities-add-policies-to-counter-caste-based-discrimination-122120900176\\_1.html](https://www.business-standard.com/article/international/us-universities-add-policies-to-counter-caste-based-discrimination-122120900176_1.html)>.

<sup>282</sup> “Caste - CivilRights | seattle.gov”, online: <<https://www.seattle.gov/civilrights/civil-rights-enforcement/new-laws-and-amendments/caste>>.

<sup>283</sup> “In a First in Canada, Toronto School Board Votes to Recognise Caste Oppression”, online: *The Wire* <<https://thewire.in/caste/in-a-first-in-canada-toronto-school-board-votes-to-recognise-caste-oppression>>.

Canadian context, as it places caste oppression on a parallel footing with instances of racism and sexism.<sup>284</sup> Upon creating a comprehensive framework and establishing protocols by the Ontario Human Rights Commission to redress caste-based oppression, this mechanism is poised to be incorporated into the broader Human Rights Code. Consequently, a mandate of this nature would compel public and private institutions to integrate provisions against caste-based discrimination within the framework of their diversity, equity, and inclusion policies. This, in turn, would grant victims of such discrimination access to legal avenues for recourse.

Racial oppression often manifests in visible forms, offering victims at least some avenues for legal redress. In contrast, caste oppression remains concealed and lacks formal legal acknowledgement. Within spheres of influence, privileged individuals from upper castes, while refraining from overtly acknowledging their caste-based advantages, perpetrate subtle acts of discrimination, micro-aggressions, and demeaning behaviours within professional environments and social gatherings.<sup>285</sup> Those well-acquainted with the burdens of caste-based stigma and the systemic injustices endured by marginalised Dalits and other minority groups have regarded the initiative as a progressive stride. The Canadian context, particularly the Greater Toronto Area, hosts a considerable population of individuals subjected to caste-based oppression. These individuals routinely encounter subtle yet pervasive forms of hostility, marginalisation, and bias. Even school-going children in Toronto are not immune to the scourge of caste-based taunts and derogatory treatment.<sup>286</sup>

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<sup>284</sup> *Ibid.*

<sup>285</sup> Julieanne Acosta, “Caste-based discrimination in Canada? It’s more likely than you think”, (31 March 2023), online: *The Gauntlet* <<https://thegauntlet.ca/2023/03/31/caste-based-discrimination-in-canada-its-more-likely-than-you-think/>>.

<sup>286</sup> News , *supra* note 277.

Despite Canada's reputation as an open and inclusive society, individuals oppressed by caste dynamics are restrained from openly reporting their ordeals. This reluctance arises from the pervasive dread of caste-associated stigma and the potential repercussions they might face, including retaliation from colleagues and neighbours who belong to dominant castes.<sup>287</sup> The narratives of caste-oppressed communities in South Asia exhibit striking parallels to the experiences of Indigenous peoples within Canada, both groups having historically been deprived of essential human rights and denied their inherent human dignity.

The present chapter is organised into two distinct sections. The initial portion, designated as Part 1, is dedicated to providing a comprehensive analysis of the existing anti-discrimination framework within Canada. This part is further subdivided into three sections. Section A briefly examines the scope and extent of the Charter of Rights and Freedoms; Section B briefly delves into the Human Rights Legislation; and Section C assesses the limitations of private discrimination law in Canada. Part II pertains to the status of caste discrimination in Canada and its regulatory framework. Within this section, I undertake an examination of a case decided by the Human Rights Tribunal to underscore the constraints intrinsic to the legal framework in Canada, particularly its effectiveness in addressing issues associated with caste-based discrimination.

## **2. CANADIAN FRAMEWORK FOR EQUITY: ANTI-DISCRIMINATION AND EQUALITY INSTRUMENTS**

The governance of Canada, operating as a democratic constitutional monarchy within a federated structure, comprises ten provinces and three territories. As outlined in clause 92(13) of the

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<sup>287</sup> Olivia Bowden, "'I came here to escape': Toronto tackles caste-based discrimination in schools", *The Guardian* (17 March 2023), online: <<https://www.theguardian.com/world/2023/mar/17/toronto-caste-discrimination-schools>>.

Constitution Act of 1867, the provinces bear the responsibility for overseeing and executing regulations about civil rights and property. Embedded within the realm of civil rights lies the pivotal framework of anti-discrimination laws, intricately interwoven therein. Given this backdrop, coupled with Canada's widely acknowledged global stature as an exemplar of progressive jurisprudential advancement in safeguarding human rights, I have utilised the Canadian legal system as a yardstick for comparison. Currently, Canada's federal anti-discrimination statutes stand as a paragon of sophistication among nations belonging to the Organisation for Economic Co-operation and Development (OECD), signifying a significant milestone in the evolution of contemporary anti-discrimination jurisprudence.

Although Canada lacks explicit laws prohibiting caste-based discrimination, every individual is inherently entitled to the right to equality, equal protection under the law and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. This section presents an exposition concerning the primary legal structures accessible to all Canadian citizens to pursue remedies in cases where their entitlements to equality and prevention of discrimination have been violated.

## **2.1.THE CHARTER OF RIGHTS AND FREEDOMS**

The Canadian Charter of Rights and Freedoms (Charter) was passed in 1982 as an integral component of Canada's constitutional framework. The enactment of Section 15 of the Charter, pertaining to equality rights, transpired three years subsequent to the enactment of the remaining

portions of the Charter, precisely on April 17, 1985.<sup>288</sup> The delay was designed to allow governments to align their laws with the principles delineated within the section.

Establishing a comprehensive scope, the Charter assures equality rights in conjunction with fundamental freedoms, democratic entitlements, mobility rights, legal protections, and language rights. Its ambit encompasses all governmental actions, extending its application to provincial legislatures and the federal Parliament and to all acts performed under their auspices. Consequently, the Charter obligates governments to factor its principles into formulating all laws and policies.<sup>289</sup>

However, the Charter acknowledges the inherent reality that within a democratic framework, rights and freedoms are not without limitations. Hence, the federal or provincial legislative bodies possess the authority to curtail fundamental rights, albeit subject to the stipulation that such rules are rational, are established through legislative means, and are demonstrably justifiable within the context of a democratic and liberated society. In effect, a balance must be struck between societal interests and individual prerogatives, with a view to ascertain whether constraints on individual rights can be reasonably vindicated.<sup>290</sup>

As aforesaid, enshrined within the fabric of Canada's constitutional framework, particularly as a pivotal component of the Charter of Rights and Freedoms, Section 15(1) establishes a robust assurance of equitability within the realm of jurisprudence. Section 15 states:

*15. Equality before and under the law and equal protection and benefit of law*

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<sup>288</sup> “Section 15 of the Canadian Charter of Rights and Freedoms: The Development of the Supreme Court of Canada’s Approach to Equality Rights Under the Charter”, online: <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201383E#](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201383E#)>.

<sup>289</sup> Canadian Heritage, “How your rights are protected”, (23 October 2017), online: <<https://www.canada.ca/en/canadian-heritage/services/how-rights-protected.html>> Last Modified: 2022-05-04.

<sup>290</sup> *Ibid.*

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Section 15 of the Charter unambiguously affirms the principle that each individual within the Canadian context, irrespective of factors such as race, religion, national or ethnic origin, colour, sex, age, or physical or mental disability, is entitled to be treated with parity, reverence, and regard. By implication, this necessitates that governmental entities refrain from engaging in discrimination based on any of these delineated criteria within their legislative enactments or programmatic initiatives.<sup>291</sup>

Judicial rulings have affirmed that Section 15 additionally extends its protective ambit to encompass equality grounded in attributes not expressly delineated therein. For instance, the courts have established that this provision operates to preclude discriminatory practices rooted in factors such as sexual orientation, marital status, or citizenship.<sup>292</sup>

The Supreme Court of Canada has enunciated that the fundamental purpose of section 15 resides in safeguarding marginalised segments of society who grapple with social, political, and legal disadvantages. Discrimination is manifested when an individual, by virtue of a personal attribute, confronts adversities or is precluded from accessing opportunities available to other constituents of society.<sup>293</sup>

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<sup>291</sup> *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143.

<sup>292</sup> *Fraser v Canada (Attorney General)*, [2020] SCC 28.

<sup>293</sup> *Ibid* at para 81.

Even with its exalted status as the preeminent legislative instrument proscribing discriminatory conduct, the recourse to remedies enshrined within the Charter has been less frequently invoked than analogous remedial measures offered by Human Rights legislation.<sup>294</sup> This phenomenon finds its roots in the circumscribed ambit of the Charter's jurisdiction, which is confined exclusively to activities conducted under the aegis of governmental agencies.<sup>295</sup>

## 2.2.HUMAN RIGHTS LEGISLATION

### 2.2.1. History of Anti-Private Discrimination Legislations

The history of the regulation of discrimination by non-state actors dates back to 1793 when the province of Upper Canada enacted a statute titled 'An Act to Prevent the further introduction of slaves to limit the term of Enforced Servitude within this Province.' This statute granted freedom to the offspring of enslaved individuals once they reached the age of twenty-five. This legislative measure remained in effect for forty years until it became obsolete following the implementation of the English Emancipation Act of 1833, which abolished slavery throughout the British Empire.<sup>296</sup>

However, the foundation of contemporary Ontario's human rights legislation can only be traced back to the passage of the *Racial Discrimination Act in 1944*. This pivotal legislation prohibited the publication, display, or broadcast of anything that indicated an intention to discriminate based on race or creed.<sup>297</sup> In 1951, the Ontario provincial legislature introduced the Fair Employment Practices Act, which prohibited discriminatory employment practices. A year earlier, the

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<sup>294</sup> *Ibid.*

<sup>295</sup> *Ibid.*

<sup>296</sup> Ian A Hunter, "The Development of the Ontario Human Rights Code: A Decade in Retrospect" (1972) 22:4 Univ Tor Law J 237, online: <<https://www.jstor.org/stable/825340?origin=crossref>>.

<sup>297</sup> *Ibid.*

Conveyancing and Law of Property Act in Ontario underwent an amendment that eliminated real estate provisions mandating purchasers of houses to agree that their property "*shall never be sold, assigned, transferred, leased to, and shall never be occupied by any person of Jewish, Hebrew, Semitic, Negro, or coloured race or blood.*"<sup>298</sup> In 1952, the Female Employees Fair Remuneration Act was enacted, safeguarding a woman's right to equal pay. Subsequently, in 1954, the Fair Accommodation Practices Act was established to prevent discrimination in services, facilities, and accommodations within public spaces. All these statutes were enacted with the intent to regulate discrimination by state as well as non-state actors. Later, in 1959, the Ontario Anti-Discrimination Commission was established to foster awareness and educate the public regarding the new anti-discrimination statutes.<sup>299</sup>

Finally, in 1962, the substantive provisions from these diverse statutes were amalgamated into the Ontario Human Rights Code. The Code prohibited discrimination in signs, services, facilities, public accommodation, employee and trade union membership on the grounds of race, creed, colour, nationality, ancestry and place of origin.<sup>300</sup> Concurrently, a revamped and renamed Commission, known as The Ontario Human Rights Commission (OHRC), was instituted. This commission was tasked with the administration and enforcement of the Code.

In the year 1963, OHRC had its first case, *Khoun v. Rosedale Manor*, which revolved around incidents of private discrimination in the realm of housing.<sup>301</sup> This case was adjudicated by the *Board of Inquiry* (the precursor to the contemporary Human Rights Tribunal of Ontario. It centred on the discrimination faced by an Indonesian student who was denied accommodation on account

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<sup>298</sup> "A bit of history | Ontario Human Rights Commission", online: <<https://www.ohrc.on.ca/en/bit-history>>.

<sup>299</sup> *Ibid.*

<sup>300</sup> "Reflect, reimagine, respond: results – Annual Report 2021-2022 | Ontario Human Rights Commission", online: <<https://www.ohrc.on.ca/en/reflect-reimagine-respond-results-%E2%80%93-annual-report-2021-2022>>.

<sup>301</sup> *Ibid.*



of his racial background. Notably, the respondents, in this case, consented to a comprehensive settlement.

In 1986, pivotal amendments were introduced to the Code to align it more closely with the principles outlined in the Canadian Charter of Rights and Freedoms. A seminal alteration entailed the inclusion of sexual orientation as a protected ground, thus realising the vision initially articulated in the OHRC's 1977 Life Together report. Additionally, these amendments conferred upon the OHRC the authority to initiate complaints autonomously or upon the request of another concerned party.<sup>302</sup> This also serves as an illustrative example for India to consider the adaptation of legal measures aimed at proscribing caste-based private discrimination, as enshrined in Article 15 of the Constitution of India. As highlighted in the previous chapter, there exists a need to harmonize anti-discrimination legislation in India with the constitutional mandates of equality, ensuring the prohibition of caste-based private discrimination in various domains, including but not limited to housing, education, employment, and general social interactions -the way it has been done in Canada through the *Charter and Code*.

### **2.2.2. Combatting Discrimination in Private Spheres: Canadian Human Rights Legislation**

Similar to Ontario, all provinces and territories have enacted comprehensive human rights statutes to safeguard individuals against discriminatory practices in domains including employment, housing, and the provision of goods, services, and public amenities.<sup>303</sup> This sphere of protection extends across diverse areas, encompassing interactions with various establishments such as restaurants, retail outlets, educational institutions, residential lodgings, and the majority of

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<sup>302</sup> *Ibid.*

<sup>303</sup> Overview of Human Rights Codes by Province and Territory in Canada by Canadian Centre for Diversity and Inclusion, <https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf>

workplaces.<sup>304</sup> These legislative provisions are designed to address instances of discriminatory behaviour originating from both ‘individuals within the *private sector*’ and governmental bodies at the provincial or federal level.<sup>305</sup>

Characterised as possessing a “quasi-constitutional” status,<sup>306</sup> Canadian anti-discrimination statutes have flexibility that permits alteration or nullification solely through unequivocal legislative measures. These enactments are designed to ensure equitable treatment and safeguard against discrimination and harassment within both public and private domains. Notably, their tenets still need to be more impervious to waiver or modification via private contractual agreements, including collective bargaining accords, even if entered into following equitable collective negotiations.<sup>307</sup> On the other hand, in India, anti-discrimination mechanism is unitary in nature where multiple legislations like Protection of Civil Rights Act<sup>308</sup>, Untouchability Offences Act<sup>309</sup> and Prevention of Atrocities Act<sup>310</sup> offer protection against caste-based private discrimination and apply across all the states.

In Canada, the process of adjudication of grievances pertaining to human rights are presented before human rights commissions, which endeavour to facilitate their resolution through mediation. Should these attempts prove unsuccessful, the matter may advance to the jurisdiction’s human rights tribunal, where a quasi-judicial panel of decision-makers adjudicates it.<sup>311</sup> In contrast, in India, instances of caste-based atrocities are adjudicated through the Special Courts

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<sup>304</sup> *Ibid.*

<sup>305</sup> *Ibid.*

<sup>306</sup> *Béliveau St Jacques v Fédération des employées et employés de services publics inc.*, [1996] 208 SCC .

<sup>307</sup> *Ibid.*

<sup>308</sup> *Protection of Civil Rights (Amendment) Act*, 1976.

<sup>309</sup> *Untouchability Offences Act*, *supra* note 263.

<sup>310</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, *supra* note 132.

<sup>311</sup> *Ontario Human Rights Code*, RSO 1990, c H19, s 34.

instituted pursuant to Section 14 of the Prevention of Atrocities Act, 1989, specifically established to facilitate expeditious trials of complaints related to caste-based atrocities.<sup>312</sup> These specialized courts are established at the district level to handle cases involving severe acts of violence against individuals belonging to Scheduled Castes and Scheduled Tribes. However, it is important to note that the Atrocities Act does not incorporate any provision for mediation or the compounding of offenses. This omission is primarily attributed to the particularly egregious nature of such offenses and the absence of civil remedies or mediation provisions in the context of caste-based atrocities.

A human rights complaint, in Canada, undergoes scrutiny through the lens of a *discrimination analysis* irrespective of whether presented before a Commission or Tribunal.<sup>313</sup> The Supreme Court of Canada has conducted an exhaustive examination of the evidentiary foundation underpinning claims of discrimination, as well as the associated evaluative criteria. A foundational requirement in this context is establishing a *prima facie* case of discrimination by the individual initiating the grievance.<sup>314</sup> The initial facet of *prima facie* discrimination does not present any inherent complexities: the plaintiff is tasked with substantiating the existence of disparate treatment, where a decision, measure, or conduct affects them in a distinct manner compared to others to whom it might be applicable. Regarding the second facet, the plaintiff is responsible for demonstrating a cogent connection between a prohibited basis of discrimination and the differentiation, exclusion, or preference that forms the basis of their grievance. This necessitates showcasing that the identified ground contributed to the differentiation, exclusion, or preference.<sup>315</sup> Notably, exclusivity in this connection is not a prerequisite; the presence of the prohibited ground must only

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<sup>312</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, *supra* note 132, s 14.

<sup>313</sup> *Ibid.*

<sup>314</sup> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, [2015] 2 SCR 789.

<sup>315</sup> *Moore v British Columbia (Education)*, [2012] SCC 61 at para 3.

exert a contributory influence for a specific decision or action to be classified as discriminatory.<sup>316</sup> Lastly, concerning the third element, the plaintiff is required to illustrate that the differentiation, exclusion, or preference significantly impinges upon the comprehensive and equitable exercise of a right or freedom guaranteed to them.<sup>317</sup> The burden of establishing *prima facie* discrimination lies with the plaintiff as the initial legal obligation.<sup>318</sup>

In India, in cases involving caste-based atrocities by private individuals, the criminal law procedure is followed whereby either the victim or anyone on behalf of the victim can initiate a complaint.<sup>319</sup> After registration of the complaint, a high ranked police officer (not below the rank of Deputy Superintendent of Police) investigates the offence and files a chargesheet post which the trial starts in the Special Court for its speedy disposal. Unlike Canada, the Atrocities Act places the burden of proof on the accused if it is proven that the accused rendered the knowledge of the victim or his family, the Court in that case shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved.<sup>320</sup>

In next sub-sections, this thesis deals with how Canada deals with private discrimination in employment, housing and in goods, service and facilities. In the conclusion, I bring the hypothetical cases discussed in the previous chapter to find whether or not they are offered any protection in Canada.

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<sup>316</sup> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, *supra* note 317.

<sup>317</sup> *Ibid.*

<sup>318</sup> *Canada (Attorney General) v PHS Community Services Society*, [2011] SCC 44.

<sup>319</sup> *Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules*, 1995 r 7.

<sup>320</sup> *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, *supra* note 132, s 8.

### 2.2.2.1. Private Discrimination in Employment

The Ontario Human Rights Code encompasses laws pertaining to discrimination by non-state actors in the context of employment. The Code asserts that every individual possesses the right to equal treatment in employment, devoid of discrimination or harassment based on various enumerated grounds, including race, ancestry, place of origin, color, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offenses, marital status, family status, or disability.<sup>321</sup> The right to "equal treatment in employment" extends across all facets of the workplace environment and the employer-employee relationship. This encompasses aspects such as job applications, recruitment, training, transfers, promotions, apprenticeship terms, dismissal, and layoffs. It also pertains to elements like remuneration, overtime, working hours, holidays, benefits, shift work, disciplinary measures, and performance evaluations. Consequently, employers and service providers bear the responsibility of ensuring uniform and equitable treatment of all employees.<sup>322</sup>

However, there are instances where 'differential treatment' is necessary to prevent or mitigate discrimination. In such cases, employers may be required to modify an employee's work conditions or responsibilities to enable them to perform their duties effectively, a concept known as the "duty to accommodate." This duty exclusively applies to requirements grounded in one of the grounds of discrimination. Employers must exert reasonable efforts to mitigate discrimination against their employees. For example, imposing a written test as a requirement for all job applicants might be unfair to an individual with a visual disability. In such scenarios, the duty to accommodate may

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<sup>321</sup> "Employment | Ontario Human Rights Commission", online: <[https://www.ohrc.on.ca/en/social\\_areas/employment](https://www.ohrc.on.ca/en/social_areas/employment)>.

<sup>322</sup> *Ibid.*

necessitate alternative arrangements to facilitate full participation.<sup>323</sup> Similar to this, in India, governmental organisations have affirmative action policies aimed at the recruitment and advancement of individuals hailing from lower castes or marginalized communities. These policies are implemented with the overarching objective of fostering greater diversity and inclusivity within the workforce while redressing historical instances of employment discrimination.<sup>324</sup>

#### **2.2.2.2. Private Discrimination in Housing**

The Ontario Human Rights Code also regulates and proscribes any discrimination related to housing by non-state actors. It is instrumental in upholding equitable access to housing accommodation and its associated benefits, free from discrimination based on a range of grounds, including race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, disability, or the receipt of public assistance. Furthermore, Subsection 2(2) of the Code explicitly addresses harassment within accommodation settings, affirming the right to be free from harassment related to specific Code-protected grounds.<sup>325</sup>

The principle of equal treatment concerning rental housing accommodation encompasses a broad spectrum of scenarios. This entails not only the right to enter into a housing agreement and occupy a residential dwelling but also the right to be free from discrimination in all facets related to accommodation.<sup>326</sup> Instances of discrimination tied to protected grounds may manifest in various ways, including differential treatment in the application process, outright denial of accommodation, disparate treatment concerning landlord obligations during occupancy, variations

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<sup>323</sup> “Policy on Removing the ‘Canadian experience’ barrier | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier>>.

<sup>324</sup> *Constitution of India Act*, *supra* note 123 art 16.

<sup>325</sup> “Housing | Ontario Human Rights Commission”, online: <[https://www.ohrc.on.ca/en/social\\_areas/housing](https://www.ohrc.on.ca/en/social_areas/housing)>.

<sup>326</sup> “Housing [4] | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/part-i-%E2%80%93-freedom-discrimination/housing-4>>.

in access to amenities, and adverse impacts stemming from ostensibly neutral rules. Additionally, discrimination based on association, such as refusing to rent to someone in an interracial relationship, is also actionable.<sup>327</sup> However, the Code in Section 21 narrows the limits of private discrimination. Section 21 of the Ontario Human Rights Code stipulates that instances of private discrimination do not encompass situations where the tenant is required to share a kitchen or bathroom with the landlord or their family. This particular provision imposes restrictions on the scope of the Code's applicability, rendering it inapplicable to rental accommodations featuring shared bathroom facilities. It is crucial to note that many instances of discrimination transpire within these shared rental units, and the exception delineated in Section 21 significantly narrows the purview of the Code concerning cases of private discrimination within the realm of housing.

Beyond individual behaviour, as argued by both CRT and CCT framework, discrimination can be systemic or institutionalised, representing a more complex form of discrimination. Housing providers bear a proactive obligation to prevent engagement in systemic or institutional discrimination. Such discrimination involves patterns of behaviour, policies, or practices entrenched within an organisation's social or administrative structures that perpetuate a position of relative disadvantage for individuals identified by Code grounds.<sup>328</sup> These policies may appear neutral on the surface but have exclusionary consequences for protected individuals.

Unintentional discrimination can emerge when rules or practices inadvertently single out particular groups, resulting in unequal treatment. This form of discrimination, known as "constructive" or "adverse effect" discrimination, can give rise to substantial systemic barriers.<sup>329</sup> For example, the

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<sup>327</sup> "Types of Rental Housing Discrimination | Ontario Human Rights Commission", online: <<https://www.ohrc.on.ca/en/human-rights-and-rental-housing-ontario-background-paper/types-rental-housing-discrimination>>.

<sup>328</sup> *Ibid.*

<sup>329</sup> *Ibid.*

hypothetical case of Ramjanam (a Dalit home-seeker), in previous chapter, was unequally treated by Kapil (an upper caste home-owner) and singled out owing to him belonging from a lower caste. Such practices of singling out particular groups resulting in unequal treatment is prohibited under the Code.

### **2.2.2.3. Private Discrimination in Goods, Services and Facilities**

Section 1 of the Ontario Human Rights Code establishes provisions against discrimination within the purview of "services, goods, and facilities." This encompasses a wide array of domains, including educational institutions, healthcare services like hospitals, community care access centres, long-term care facilities, insurance providers, public venues such as shopping malls and parks, public transportation services, retail establishments, and restaurants.<sup>330</sup> Likewise, providers of goods, services, and facilities are under a compelling obligation to ensure diligent consideration has been given to accommodating the diverse needs and requisites of every individual in accordance with the Code.<sup>331</sup> The entities with these obligations must actively facilitate the implementation of accommodations to guarantee that individuals to whom this duty is owed are afforded equitable opportunities and safeguarded against discrimination in the provision of services. This section bears a substantial resemblance to Article 15(2) of the Indian Constitution, which expressly prohibits private discrimination based on protected characteristics.

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<sup>330</sup> "Goods, services and facilities | Ontario Human Rights Commission", online: <[https://www.ohrc.on.ca/en/social\\_areas/goods\\_services\\_facilities](https://www.ohrc.on.ca/en/social_areas/goods_services_facilities)>.

<sup>331</sup> Jacobs, *supra* note 89.



### 2.3.UNMET EXPECTATIONS: SHORTCOMINGS OF PRIVATE DISCRIMINATION RESPONSE IN CANADA

In the previous section, the human rights and anti-discrimination framework of Canada has been elucidated in detail. Canadian Courts have dealt with both public and private discrimination matters quite skillfully. The Ontario Human Rights Code proscribes such private discriminations related to contracts, employment, housing, goods, services and facilities, but at the same time, it does not interfere with the realm of private autonomy of an individual.

However, to avoid confusion, in this section- *private discrimination* is referred to as discriminating within the private or non-public spheres such as *social interaction, private gatherings, private institutions, private clubs or associations, etc.*, rather than regulated social areas like employment or public services held publicly or for general public use.<sup>332</sup> Such instances of private discrimination broadly fall outside the scope of the Canadian Human Rights Act, provincial human rights codes and anti-discrimination laws and regulations, which means thereby that those who face such forms of discrimination may have minimal legal remedies compared to those facing other forms of discrimination, namely in public domains. This distinction arises from the concept of separation of the public and private spheres of life.

In contemporary sociology, two distinct spheres are acknowledged: the domain of politics, public institutions, and gainful employment, and the private realm encompassing the household and family dynamics. Public life adheres to collective norms and values, whereas private life delves into the personal, the facets of individual identity, and the exercise of free will. Historically, the origins of this demarcation are often associated with modernity, industrialisation, urbanisation,

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<sup>332</sup> Kasper Lippert-Rasmussen, "Private Discrimination: A Prioritarian, Desert-Accommodating Account" (2006) 43:4 San Diego L Rev 817.

and the gender-specific division of labour. However, within the discourse of postmodernism, these public and private spheres, if they can be distinguished at all, exhibit a fluid and dynamic nature.<sup>333</sup>

The Canadian anti-discrimination legal framework comprising the *Charter*, the Canadian Human Rights Act and provincial human rights codes specifically address behaviours within defined sectors, irrespective of underlying motivations; opinions, beliefs, preferences, and choices are only deemed unlawful when they give rise to proscribed behaviours or adverse consequences. However, legal jurisdiction does not extend to discriminatory actions categorised within the private or intimate realms (such as personal affiliations, intimate social engagements, or marital unions). The concept of the “privacy barrier” has historically and continues to be invoked to exempt caste-based discrimination from the scope of anti-discrimination statutes. Nonetheless, discerning a clear boundary between associational preferences and discrimination within regulated spheres, including distinguishing between “personal choices” within “business networks” and discrimination in providing goods and services, is not always straightforward.<sup>334</sup>

The notion of separating public and private spheres is a prevailing foundational principle within liberal legal discourse, wherein the “private” sphere is typically considered beyond the purview of state regulation.<sup>335</sup> However, as asserted by critical theorists, the demarcation line between private and “non-private” conduct remains malleable and subject to contestation and legal reappraisal. In fact, the construct of “private” behaviour is inherently socio-political and legal: “All struggles against oppression in the modern world begin by re-defining what had previously been considered ‘private,’ non-public, and non-political issues as matters of public concern.”<sup>336</sup> As time has

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<sup>333</sup> Kasper Lippert-Rasmussen, *Born Free and Equal?: A Philosophical Inquiry into the Nature of Discrimination* (Oxford University Press, 2013) DOI: 10.1093/acprof:oso/9780199796113.001.0001.

<sup>334</sup> Bilchitz, *supra* note 82.

<sup>335</sup> Waughray, *supra* note 20.

<sup>336</sup> Lippert-Rasmussen, *supra* note 336.

progressed, the realm categorised as “private” and exempt from legal scrutiny has contracted, while areas subject to legal oversight have expanded. Instances of “private” behaviour that have come under legal purview encompass racial discrimination in private contractual relationships, domestic violence, marital rape, and forced marriage. The dichotomy between public and private domains and the boundary separating these spheres has encountered challenges, especially from feminist legal theorists. The exclusion of “real private discrimination” from legal regulation remains a significant critique within the framework of liberal anti-discrimination law.<sup>337</sup>

Such differentiation in the regulation of discrimination, distinguishing between the public sphere and the private sphere, implies that Mukesh's deliberate exclusion of his cleaning staff colleagues from personal gatherings, even if rooted in caste-based prejudice, would remain unregulated. Despite facing social isolation due to their caste, these cleaning staff members would neither find recourse within the Indian anti-discrimination mechanism, as their grievances may not reach the threshold for invoking provisions related to atrocities, nor would they find recourse within the Canadian anti-discrimination framework, due to the absence of regulations pertaining to private gatherings. Neither would a multitude of other cases, including caste-discriminating marriage and dating advertisements in community newsletters, rental housing and cooperatives where there is shared bathroom and kitchen, membership in private associations, distinctions made on neutral but casteist religious exclusions like vegetarianism and beef-eating, and everyday casteist stigmatisations.

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<sup>337</sup> *Ibid.*

### 3. CASTE DISCRIMINATION IN CANADA

As previously indicated, Canada lacks specific legislation addressing instances of caste-based discrimination, and the concept of caste does not appear within the provisions of any human rights legislation within the various provinces. Nonetheless, substantial evidence attests to the existence of caste-based discrimination throughout Canada, particularly in regions with a higher concentration of the South Asian population, such as Greater Toronto, Vancouver, Calgary, and similar areas. The absence of explicit reference to caste within human rights legislation poses challenges for individuals who seek to file complaints or pursue appropriate legal remedies in cases involving caste-based discrimination.

During my research, I employed the keywords “caste discrimination” within the legal search engine ‘Westlaw Canada’ to identify instances of legal cases heard by Canadian Courts, Tribunals, and Commissions pertaining to caste-based discrimination. This search query yielded a total of 22 outcomes. Among these 22 cases, a majority of 20 were adjudicated by the Immigration and Refugee Board of Canada. In these particular instances, the applicants had submitted requests to the Canadian government for refugee status, citing caste-based violence and persecution experienced in India as grounds.<sup>338</sup> These cases are not included in the current research’s analytical framework, given that they contribute limited insight into caste-based discrimination within Canada.<sup>339</sup>

In addition to the cases mentioned above, there are two instances that shed some light on the presence of caste-based discrimination in Canada and their subsequent deliberation by the

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<sup>338</sup> See *Singh v Canada (Citizenship and Immigration)*, [2021] CarswellNat 300.

<sup>339</sup> However, it is interesting to research and analyse the trend of the Immigration and Refugee Board of Canada and study whether there exists any systemic bias in Canada regarding the granting of refugee status to individuals who have faced caste-based violence in South Asia and are seeking refugee status in Canada.

Tribunal. The two cases are identified as *Kang v. UBC* (University of British Columbia)<sup>340</sup> and *Bhangu v. Inderjit Dhillon and others*.<sup>341</sup> The first case *Kang v. UBC* (University of British Columbia), pertains to the complainant, who was already working as a building service worker at the respondent university. The complainant alleged discrimination in hiring a “Head Service Worker” for which he had applied and was subsequently rejected. He alleged that Mr Manji (Superintendent, Building Operations) denied his application and gave “preference in hiring to other persons of Indian background who are of the same caste and discriminates against yellow skin people”.<sup>342</sup> In this case, the Tribunal did not investigate the merits of the complainant’s complaint regarding caste-based discrimination and dismissed it due to more than six months delay in filing it.<sup>343</sup>

In the other case, *Bhangu v. Inderjit Dhillon and others*, M. Bhangu lodged a complaint with the British Columbia Human Rights Tribunal, alleging Inderjit, Avninder, and Ullah of engaging in discriminatory conduct within the realm of his employment, based on the grounds of ancestry, place of origin, religion, and race. Bhangu contended that Avninder addressed him with a derogatory term, explicitly using the word “chamar”<sup>344</sup> (referred to as “slur” by the Tribunal) while leaving from a staff Christmas party.<sup>345</sup> Following its examination, the Tribunal acknowledged the presence of caste-based discrimination and subsequently awarded damages to the aggrieved party. The Tribunal held that this discrimination was based on Mr Bhangu’s ancestry, place of origin,

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<sup>340</sup> *Kang v UBC*, [2015] BCHRT 10.

<sup>341</sup> *Bhangu v Inderjit Dhillon and others*, [2023] BCHRT 24.

<sup>342</sup> *Kang v UBC*, *supra* note 343 at paras 1–14.

<sup>343</sup> *Ibid* at para 48.

<sup>344</sup> Chamar is a Dalit sub-caste. They are treated as untouchables and have been subjected to subjugation and social exclusion for years.

<sup>345</sup> *Bhangu v. Inderjit Dhillon and others*, *supra* note 344 at para 2.

and race, evidenced by their use of the derogatory term “Chamar” (the Slur) during a physical altercation at the Party.<sup>346</sup>

This judicial pronouncement functions as an exemplar case study, illustrating the intricate dynamics inherent in substantiating discrimination claims according to section 13 of the Code, particularly within the context of caste bias. The analytical approach adheres to a systematic framework that mandates the claimant, Mr Bhangu, to establish a *prima facie* case by satisfying specific prerequisites..

In the context of caste discrimination, Mr Bhangu’s success in validating his protected attributes—namely, his origins, lineage, racial identity, and religious affiliation—carries significant importance. Given the historical significance of the Dalit caste, the Tribunal duly acknowledges the inherent importance of these elements. The judgment sheds light on the evolving understanding of caste-driven discrimination, emphasising its complex interaction with crucial identity components, including ancestral lineage, geographical roots, and religious beliefs. The inclusion of authoritative perspectives, such as the *Yengde Report*, signifies progress in comprehending caste as a distinctive form of discrimination.

Moreover, the Tribunal’s examination of the link between the incidents occurring at the Staff Party and the realm of employment underscores the necessity of a holistic comprehension of workplace discrimination. The verdict highlights the broader ramifications of the professional environment, encompassing both interpersonal dynamics and physical spaces. This interpretation reflects a

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<sup>346</sup> *Ibid* at paras 88–89.

perceptive acknowledgement of the multifaceted manifestations of caste-based bias, even within seemingly informal contexts.

Nevertheless, despite being a progressive judgment, the Tribunal, in its discrimination analysis, reiterates a ‘common mistake’ in its treatment of caste, namely, construing caste within the confines of race. I refer to Tribunal’s following remarks:

“16. I find that Mr. Bhangu’s race involves him being a person from the Slur caste. I treat the term race as a social construct within which a person or group labels another person or group based on their physiological appearance, their social, cultural, and political make-up, their legal status in society, and other personal attributes. When one person or group assigns a race identity to another person or group, it is an arbitrary process. Race-related labels do not account for genetic or physical variations naturally occurring within biological groups, or for the cultural, social, political, legal status and other identity shifts that occur as persons move about the world, or as time passes and societies evolve. Mr. Bhangu provided evidence regarding the social, political, and legal status aspects of others labelling him as a member of the Slur caste group. Mr. Bhangu provided evidence that as a child his friend’s parents kicked him out of a playground and told him that Slur people could not use that playground. Other children chased and beat him up for being a Slur caste member. His friend’s parents gave him a glass to drink out of and said in front of him that they would throw the glass out later because he was from the Slur caste, and he had drunk out of it. Last, people kicked him out of temple areas for being from the Slur caste.”

While there exist several similarities between race and caste, they also possess fundamental differences that warrant their distinct treatment in decision-making processes. Caste and race constitute different forms of social stratification, each grounded in its own historical, cultural, and structural contexts.<sup>347</sup> In the abovementioned quoted paragraph, the Tribunal’s approach of treating caste solely as a manifestation of racial identity carries the risk of neglecting the intricate power dynamics, historical intricacies, and systemic oppression inherent to caste-based discrimination. While the Tribunal acknowledges the discrimination endured by Mr Bhangu due to his Dalit caste background, it falls short of adequately addressing the profound multilayered and intersectionally

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<sup>347</sup> “Comparing Race to Caste Is an Interesting Idea, But There Are Crucial Differences Between Both”, online: *The Wire* <<https://thewire.in/books/book-review-isabel-wilkerson-caste-racism-america>>.

systemic nature of the caste-based discrimination he encountered. As argued in CCT, caste discrimination extends beyond singular labelling, encapsulating deeply ingrained inequalities manifesting across multiple axes of discrimination that have historically marginalised and oppressed individuals from lower castes. Additionally, applying a racial framework to the experiences of caste-based discrimination risks obscuring the unique intricacies and complexities intrinsic to such discrimination, which are deeply interwoven with religious practices, traditional norms, and social hierarchies in South Asian societies.

Notwithstanding the aforementioned limitations, the Bhangu judgment assumes significant relevance for both India and Canada. Caste-based private discrimination in India is not a recent occurrence; however, its regulation in matters related to employment, housing, education, and social interaction is marred by the absence of legislative intent, primarily concentrating on overt, severe, and extreme instances of caste-based private discrimination. The Bhangu case stands as an illustrative case study for the Indian judiciary, elucidating the missed opportunity inherent in the IMA case. In the Bhangu case, despite 'caste' not being designated as a protected ground for discrimination in Canada, the Tribunal interpreted 'caste discrimination' within the framework of existing protected grounds, thereby providing redress to the aggrieved party. Similarly, the Supreme Court of India (SCI), in the IMA case, had the opportunity to broaden the purview of private discrimination under Article 15(2) of the Indian Constitution to encompass employment, housing, education, and social interaction. Regrettably, the SCI refrained from doing so, confining private discrimination solely to "services essential to the public." The SCI ought to employ a broader interpretation of Article 15(2) in consonance with the Canadian Charter of Rights and Freedoms (CCT) and the constitutional morality framework to furnish protection in instances of private discrimination. This judgment assumes significance from Canada's perspective as well, as



it underscores that despite Canada's legal framework providing avenues for addressing discrimination, the absence of explicit inclusion of caste as a protected category presents impediments for individuals encountering caste-based discrimination.

#### **4. CONCLUSION**

In the preceding chapter, the analysis of Indian legislative enactments and judicial decisions was found to be inadequate in addressing instances of caste-based private discrimination in the domains of housing, employment, and social interactions. A glaring limitation of Indian law pertaining to the prohibition of caste-based private discrimination lies in its focus on addressing only the most egregious cases of caste-based violence while neglecting the subtler forms of discrimination, micro-aggressions, and demeaning conduct prevalent in professional settings and social gatherings.

This chapter delves into the anti-discrimination legal framework of Canada, particularly in relation to the regulation of private discrimination concerning housing, employment, and the provision of goods and services. Unquestionably, despite its shortcomings, Canada possesses a more advanced jurisprudential approach to private discrimination compared to India. Each province in Canada has its own Human Rights legislation, safeguarding individuals against a spectrum of private discrimination encompassing housing, employment, and the provision of goods and services. The meticulously structured legal system, coupled with the codification of private discrimination, has empowered Canada to address such cases through the utilization of Tribunals and Commissions.

It is undeniable that caste-based violence continues to be a tragic reality in India, where Dalits are subjected to violence for reasons as trivial as sporting a mustache or coerced into degrading occupations such as manual scavenging. Consequently, legislations like the Atrocities Act remain

as pertinent as ever. However, the discourse on caste-based discrimination should not exclusively revolve around these extreme cases. It is imperative to also scrutinize the various subtle forms of discrimination experienced by individuals like Ramjanam, Nirmala, and sanitation workers, whose plight remains unattended due to the perception that the discrimination they endure does not meet the threshold of severity required to trigger the provisions of the Atrocities Act.

In this context, India can draw valuable lessons from the Canadian experience, where private discrimination in domains such as housing, employment, education, and the provision of goods and services has not been overlooked. It is feasible for India to address these issues by enacting comprehensive civil anti-discrimination legislation founded on the principles of the CCT and the CRT framework. Such legislation should prescribe civil remedies for cases of caste-based private discrimination and should also encompass provisions for community service and caste-sensitivity training, alongside mediation processes prior to the formal adjudication of complaints by a Tribunal specifically established to handle violations under the anti-discrimination law.

However, when considering the incorporation of the Canadian model, it is crucial to exercise caution in not adopting Canada's stringent demarcation of the public-private dichotomy inherent in the regulation of private discrimination. This is because such an approach may present challenges in addressing instances of caste-based private discrimination, as exemplified by the hypothetical situation involving discrimination experienced by cleaning staff workers and the other examples alluded to throughout this thesis. Under this approach, these individuals may not receive adequate protection, as their experiences would be categorized as matters of personal preference and outside of the jurisdiction of the Code. These commonplace occurrences serve as clear examples of the deeply rooted and widespread nature of caste-related issues in contemporary society. Despite ongoing efforts to confront and address this deeply ingrained societal problem, it

continues to persist as a pervasive and systemic challenge. The primary reason for its enduring presence can be attributed to the legal immunity granted to these everyday incidents. The lack of rigorous legal consequences for instances of caste-based discrimination and bias has allowed these discriminatory practices to persist without restraint, further embedding casteism within the social fabric. Therefore, it is essential not only to acknowledge the existence of these everyday realities but also to establish comprehensive legal reforms and enforcement mechanisms aimed at challenging and ultimately eradicating the systemic nature of casteism.

## **CHAPTER-6**

### **CONCLUSION AND SUGGESTIONS**

In 1945, Dr. Ambedkar eloquently characterised the caste system as 'a legal system maintained at the point of a bayonet.' Following India's attainment of independence in 1947, legislative steps were taken to formally abolish untouchability and criminalise its practice. Additionally, constitutional affirmative action policies were introduced to redress historical injustices faced by the SC, those Dalit castes identified in a Schedule to the Constitution, with respect to political representation, public employment, and higher education. Nevertheless, the lived reality for Dalits in India continues to be marred by the persistence of untouchability, as well as pervasive caste-related social, economic, occupational, and educational disparities, discrimination, and violence. This thesis has diligently endeavored to unravel the intricacies underlying this persisting predicament, despite the existence of constitutional, legislative, and policy measures within the Indian context.

Concerning the first research question, it is evident that India's reliance on criminal legislation to combat caste discrimination has proven to be inherently inadequate. Criminal law, by its very

nature, is ill-suited to address the deeply entrenched, systemic nature of caste-based discrimination or casteist conduct exhibited by individuals or organisations, falling short of the criminal standard of proof. It erroneously suggests that casteist behaviour is a deviation from the norm, characterising it as "abnormal" or "exceptional" rather than recognising it as a pervasive and daily occurrence. Furthermore, the enforcement of these laws is fraught with challenges, with instances of law enforcement officials themselves perpetrating caste-based discrimination. Beyond the confines of criminal legislation, the constitutional provisions present limited protection to individuals facing caste-based private discrimination, with the Constitution primarily addressing instances of private discrimination that exhibit a public character. In this thesis, by employing CCT framework I argue that addressing caste-based discrimination requires a multifaceted approach which includes not just a statute criminalizing caste-based atrocities but should also include laws that regulate private discrimination addressing the deep-rooted caste biases. Furthermore, the effectiveness of criminal legislation is substantially undermined by deficiencies in its enforcement. This underscores the pressing necessity for the implementation of thorough civic education and human rights training programs within law enforcement agencies and the judiciary.

As for the second research question, it is incontrovertible that there is a need for India to implement civil anti-discrimination legislation to comprehensively safeguard individuals from unfair caste-based private discrimination. Such legislation would provide recourse for discriminatory actions falling below the criminal threshold, fostering equality and advancing economic initiatives. Furthermore, a robust civic education program tailored to address deeply ingrained prejudices must be instituted on a large scale to effect meaningful change. In this context, the Anti-Discrimination and Equality Bill (a Private Members' Bill), introduced in 2016, serves as a promising model. This legislation was inspired by comparable frameworks in countries such as Canada, the UK, and

South Africa.<sup>348</sup> However, the Bill got lapsed in the Parliament before any discussion on it could take place. A comprehensive civil anti-discrimination statute founded upon CCT has the potential to effectively provide legal recourse to individuals such as Ramjanam, Nirmala, and the cleaning staff within a broadened framework encompassing a wide range of "protected characteristics."

Beyond legislative endeavours, CCT, through social justice advocacy also underscores the pivotal role of civic education within educational institutions as a potent tool to counteract discrimination. India's current legislative strategy, predominantly centred on the criminalisation of extreme instances of caste-based discrimination and violence, regrettably falls short in addressing severely entrenched, institutionalised forms of discrimination and inequality.

Upon a comparative examination of India and Canada, it becomes evident that India's anti-discrimination framework concerning non-state actors could benefit substantially from the incorporation of certain features to fortify the national anti-discrimination framework. Notably, the Atrocities Act, while establishing Special Courts to address cases of discrimination against SC and ST, is hindered by systemic biases that impede its effective functioning. Within this context, the operational framework of the Human Rights Tribunals in the Canadian provinces presents a noteworthy precedent that merits India's contemplation for potential adoption. However, any such adaptation should involve a more comprehensive elucidation of the concept denoted as the "private sphere" in the context of caste-based discrimination. Furthermore, it is advisable for India to incorporate a precise and explicit definition of "caste discrimination" grounded in the Critical

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<sup>348</sup> LiveLaw Research Team, "Congress MP Shashi Tharoor Introduces Anti-Discrimination And Equality Bill In Lok Sabha [Read The Bill]", (15 March 2017), online: <<https://www.livelaw.in/congress-mp-shashi-tharoor-introduces-anti-discrimination-equality-bill-lok-sabha/>>.

Caste Theory. This strategic inclusion would facilitate a more cohesive and nuanced comprehension of the diverse facets encompassing caste-based discrimination.

In summary, it is essential to acknowledge that the enactment of anti-discrimination legislation serves a crucial purpose by explicitly prohibiting caste-based private discrimination across various domains, including housing, employment, and social interactions. Nonetheless, it is imperative to recognize that the mere existence of such laws may not suffice to instigate systemic transformation within a deeply casteist society. As argued by the CCT scholars, addressing caste discrimination necessitates a multifaceted approach. However, it is noteworthy that legal and policy instruments play a pivotal role in initiating the process of unequivocally articulating the societal intent to disallow such forms of caste-based discrimination. Therefore, it is pertinent to regard laws and policies as significant catalysts for ushering in social change.

## REFERENCES/BIBLIOGRAPHY

*Constitution of India Act*, 1950.

*Protection of Civil Rights Act*, 1955.

*Protection of Civil Rights (Amendment) Act*, 1976.

*Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, 1989.

*Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules*, 1995.

*Untouchability Offences Act*, 1955.

*Untouchability (Offences) Amendment and Miscellaneous Provision Act*, 1976.

*Andrews v Law Society of British Columbia*, [1989] 1 SCR 143.

*Béliveau St Jacques v Fédération des employées et employés de services publics inc*, [1996] 208 SCC .

*Bhangu v Inderjit Dhillon and others*, [2023] BCHRT 24.

*Canada (Attorney General) v PHS Community Services Society*, [2011] SCC 44.

*Dr Subhash Kashinath Mahajan v State of Maharashtra*, [2018] 6 SCC 454.

*Fraser v Canada (Attorney General)*, [2020] SCC 28.

*Indian Medical Association v Union of India*, (2011) 7 SCC 179.

*Indian Young Lawyers Association v State of Kerala*, 2018 SCC Online 1690.

*Indra Sawhney vs Union Of India and Others*, 1993 AIR 477.

*Kang v UBC*, [2015] BCHRT 10.

*Moore v British Columbia (Education)*, [2012] SCC 61.

*PA Inamdar v State of Maharashtra*, (2005) 6 SCC 537.

*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Bombardier Inc (Bombardier Aerospace Training Center)*, [2015] 2 SCR 789.

*Singh v Canada (Citizenship and Immigration)*, [2021] CarswellNat 300.

*TMA Pai Foundation v State of Karnataka*, (2002) 8 SCC 481.

*Vishaka & Ors vs State Of Rajasthan & Ors*, 1997 AIR 3011.

*Zoroastrian Co-operative Housing Society Ltd v District Registrar Co-operative Societies*, 2005 (5) SCC 632.

Ambedkar, B R & Vasant Moon, *Dr. Babasaheb Ambedkar: writings and speeches* (New Delhi: Dr. Ambedkar Foundation, 2014).

Ambedkar, Bhimrao Ramji, *The essential writings of B. R. Ambedkar*, 8. impr ed, Valerian Rodrigues, ed (New Delhi: Oxford University Press, 2010).

Ambedkar, Bhimrao Ramji & Bhimrao Ramji Ambedkar, *Against the madness of Manu: B. R. Ambedkar's writings on Brahmanical patriarchy*, Sharmila Rege, ed (New Delhi: Navayana Publ, 2013).

Atrey, Shreya, *Intersectional Discrimination*, 1st ed (Oxford University Press, 2019).

Baxi, Upendra & Bhikhu C Parekh, eds, *Crisis and change in contemporary India* (New Delhi ; Thousand Oaks: Sage Publications in association with The Book Review Literary Trust, New Delhi, 1995).

Bayly, Susan, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age*, 1st ed (Cambridge University Press, 1999).

Béteille, Andre, *Caste, class, and power: changing patterns of stratification in a Tanjore village* (S.I.: University of California Press, 2022).

Bipan Chandra, *History of modern India*, 1. publ., repr ed (New Delhi: Orient Blackswan, 2009).

Crenshaw, Kimberlé, ed, *Critical race theory: the key writings that formed the movement* (New York: New Press, 1995).

Delgado, Richard & Jean Stefancic, *Critical race theory: an introduction*, 2nd ed ed (New York: New York University Press, 2012).

———, eds, *Critical race theory: the cutting edge*, third edition ed (Philadelphia, Pennsylvania: Temple University Press, 2013).

Deshpande, Ashwini, *The grammar of caste: economic discrimination in contemporary India* (New Delhi: Oxford University Press, 2011).

Doniger, Wendy, *The hindus: an alternative history* (New York: Penguin Books, 2014).

Doob, Christopher B, *Social inequality and social stratification in US society*, 1st ed ed (Boston: Pearson, 2013).

Dumont, Louis, *Homo hierarchicus: the caste system and its implications*, complete rev. english ed ed (Chicago: University of Chicago Press, 1980).



edited by Balmurli Natrajan and Paul Greenough, *Against stigma : studies in caste, race, and justice since Durban* (New Delhi : Orient BlackSwan, 2009., 2009).

Galanter, Marc, *Competing equalities: law and the backward classes in India* (Berkeley: University of California Press, 1984).

Galanter, Marc & Rajeev Dhavan, *Law and society in modern India* (Delhi ; New York: Oxford University Press, 1989).

Guha, Ramachandra & Ramachandra Guha, *Gandhi: the years that changed the world, 1914-1948*, first united states edition ed (New York: Alfred A. Knopf, 2018).

Gupta, Dipankar, *From Varna to Jati: the Indian caste system from the Asiatic to the feudal modes of production*, Working papers / Centre for developing area studies, McGill university 22 (Montreal: McGill university Centre for developing area studies, 1978).

Henry, Frances & Carol Tator, eds, *Racism in the Canadian University: Demanding Social Justice, Inclusion, and Equity* (Toronto: University of Toronto Press, 2018).

Ilaiah, K, *Untouchable god* (Kolkata: Samya, 2013).

Jangam, Chinnaiah, *Dalits and the making of modern India*, first edition ed (New Delhi: Oxford University Press, 2017).

Kannabirān, Kalpana & K G Kannabiran, *Tools of justice: non-discrimination and the Indian constitution: in honour of K.G. Kannabiran* (New Delhi: Routledge, 2012).

Khaitan, Tarunabh, *A Theory of Discrimination Law* (Oxford University Press, 2015).

Lippert-Rasmussen, Kasper, *Born Free and Equal?: A Philosophical Inquiry into the Nature of Discrimination* (Oxford University Press, 2013).

Menski, Werner, *Comparative law in a global context: the legal systems of Asia and Africa* (New York: Cambridge University Press, 2006).

Mills, John Stuart, *On Liberty* (Toronto Metropolitan University, 2022).

Natrajan, Balmurli, Paul R Greenough & University of Iowa, eds, *Against stigma: studies in caste, race, and justice since Durban*, New perspectives in South Asian history 26 (New Delhi: Orient BlackSwan, 2009).

Omvedt, Gail, *Dalits and the democratic revolution: Dr. Ambedkar and the Dalit movement in colonial India* (New Delhi ; Newbury Park: Sage Publications, 1994).

Paik, Shailaja, *The Vulgarity of Caste: Dalits, Sexuality, and Humanity in Modern India* (Stanford: Stanford University Press, 2022).

Rajamani, Savitha, *Critical Caste Theory in Education* (Ph.D., University of Massachusetts Boston, 2020) [unpublished].

Rao, Anupama, *The caste question: Dalits and the politics of modern India* (Berkeley, Calif.: University of California Press, 2009).

Sen, Amartya, *Social capital, local capacity building, and poverty reduction*, Social development papers no. 3 (Manila, Philippines: Office of Environment and Social Development, Asian Development Bank, 2001).

Shah, Ghanshyam et al, *Untouchability in rural India* (New Delhi ; Thousand Oaks, Calif: Sage Publications, 2006).

Sharma, Mukul, *Caste and nature: Dalits and Indian environmental politics*, first edition ed (New Delhi, India: Oxford university press, 2017).

Singer, Milton & Bernard S Cohn, eds, *Structure and Change in Indian Society*, 1st ed (Routledge, 2017).

Teltumbde, Anand, *Dalits: Past, Present and Future*, 2d ed (Routledge India, 2020).

Thapar, Romila, *The Penguin history of early India: from the origins to AD 1300*, 1. publ ed, Penguin academics Non-Fiction, history (New Delhi: Penguin Books India, 2003).

Thorat, Sukhadeo, S Madheswaran & B P Vani, *Scheduled castes in the Indian labour market: employment discrimination and its impact on poverty*, first edition ed (Oxford: Oxford University Press, 2023).

Waughray, Annapurna, *Capturing Caste in Law: The Legal Regulation of Caste Discrimination*, 1st ed (London: Routledge, 2022).

Ajit, D, Han Donker & Ravi Saxena, “Corporate Boards in India: Blocked by Caste?” (2012) 47:32 *Econ Polit Wkly* 39–43, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/23251799>>.

Ambedkar, BR, “Dr. Babasaheb Ambedkar: Writings and Speeches, vols 1–17. Mumbai: Education Department of the Government of Maharashtra” (2014).

Arriola, Elvia R, “LatCrit Theory, International Human Rights, Popular Culture, and the Faces of Despair in INS Raids” (1996) 28:2 *Univ Miami Inter-Am Law Rev* 245–262, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40176417>>.

Baudh, Sumit, “Demarginalizing the intersection of caste, class, and sex” (2021) 20:1 *J Hum Rights* 127–142, online: <<http://www.tandfonline.com/doi/full/10.1080/14754835.2020.1858402>>.

Baxi, Upendra, “Caste Census and Constitutional Justice” (2010) 45:37 *Econ Polit Wkly* 25–29, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/25742065>>.

———, “Caste, Class and Reservations (In Memoriam: I. P. Desai)” (1985) 20:10 *Econ Polit Wkly* 426–428, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/4374159>>.

Bell, Derrick A, “Brown v. Board of Education and the Interest-Convergence Dilemma” (1980) 93:3 *Harv Law Rev* 518–533.

Béteille, Andre, “Constitutional Morality” (2008) 43:40 *Econ Polit Wkly* 35–42, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40278025>>.

Bhaskar, Anurag, “‘Ambedkar’s Constitution’: A Radical Phenomenon in Anti-Caste Discourse?” (2021) 2:1 *Caste* 109–131.

Bhatia, Gautam, “Horizontal Discrimination and Article 15(2) of the Indian Constitution: A Transformative Approach” (2016) 11:1 *Asian J Comp Law* 87–109, online: <[https://www.cambridge.org/core/product/identifier/S2194607816000053/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S2194607816000053/type/journal_article)>.

Bhatt, Chetan, “Dharmo rakshati rakshitah : Hindutva movements in the UK” (2000) 23:3 *Ethn Racial Stud* 559–593.

Bilchitz, David, “Why Courts Should not Sanction Unfair Discrimination in the Private Sphere: A Reply” (2012) 28:2 *South Afr J Hum Rights* 296–315, online: <<https://heinonline.org/HOL/P?h=hein.journals/soafjhr28&i=308>>.

Bowden, Olivia, “‘I came here to escape’: Toronto tackles caste-based discrimination in schools”, *The Guardian* (17 March 2023), online: <<https://www.theguardian.com/world/2023/mar/17/toronto-caste-discrimination-schools>>.

Brayboy, Bryan McKinley Jones, “Toward a Tribal Critical Race Theory in Education” (2005) 37:5 *Urban Rev* 425–446, online: <<http://link.springer.com/10.1007/s11256-005-0018-y>>.

Burra, Srinivas, “TWAIL’s others: A caste critique of TWAILers and their field of analysis” (2016) 33:3 *Windsor Yearb Access Justice* 111–128.

Chandrachud, Abhinav, “The Many Meanings of Constitutional Morality” (2020) *SSRN Electron J*, online: <<https://www.ssrn.com/abstract=3521665>>.

Chang, Robert S, “Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space” (1993) 81:5 *Calif Law Rev* 1241, online: <<https://www.jstor.org/stable/3480919?origin=crossref>>.

Charsley, Simon, “‘Untouchable’: What is in a Name?” (1996) 2:1 *J R Anthropol Inst* 1, online: <<https://www.jstor.org/stable/3034630?origin=crossref>>.

Crenshaw, Kimberle, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989) 140 *Univ Chic Leg Forum* 139–167.

Desai, Sonalde & Amaresh Dubery, “Caste in 21st Century India: Competing Narratives” (2011) 46:11 *Econ Polit Wkly* 40–49, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/41151970>>.

Deshpande, Satish, “Caste and Castelessness” *Econ Polit Wkly* (13 April 2013), online: <<https://link-gale-com.ledproxy2.uwindsor.ca/apps/doc/A325286404/AONE?u=wind05901&sid=bookmark-AONE&xid=09cce927>>.

Devi, Rama & Sawmya Ray, “*Mahaul* and *Mazboori* : educational aspirations and realities of Dalit youth in Delhi” (2022) *Int J Qual Stud Educ* 1–20, online: <<https://www.tandfonline.com/doi/full/10.1080/09518398.2022.2061740>>.

Dutil, Stacey, “Dismantling the School-to-Prison Pipeline: A Trauma-Informed, Critical Race Perspective on School Discipline” (2020) 42:3 *Child Sch* 171–178, online: <<https://academic.oup.com/cs/article/42/3/171/5896256>>.

Encalada Grez, Evelyn, “Vulnerabilities of female migrant farm workers from Latin America and the Caribbean in Canada” (2011) *FOCAL Policy Brief*.

Epstein, Richard A, “SHOULD ANTIDISCRIMINATION LAWS LIMIT FREEDOM OF ASSOCIATION? THE DANGEROUS ALLURE OF HUMAN RIGHTS LEGISLATION” (2008) 25:2 *Soc Philos Policy* 123–156, online: <[https://www.cambridge.org/core/product/identifier/S0265052508080217/type/journal\\_article](https://www.cambridge.org/core/product/identifier/S0265052508080217/type/journal_article)>.

———, “The Wrong Rights, or” (2018) 85:2 *Univ Chic Law Rev* 403–424, online: <<https://www-jstor-org.ledproxy2.uwindsor.ca/stable/26455912>>.

Galanter, Marc, “Law and Caste in Modern India” (1963) 3:11 *Asian Surv* 544–559, online: <<https://online.ucpress.edu/as/article/3/11/544/21613/Law-and-Caste-in-Modern-India>>.

Gardbaum, Stephen, “Horizontal Effect” in Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta, eds, *Oxf Handb Indian Const*, 1st ed (Oxford University Press, 2017) 600.

Goodnight, Melissa Rae, “Critical race theory in India: theory translation and the analysis of social identities and discrimination in Indian schooling” (2017) 47:5 *Comp J Comp Int Educ* 665–683, online: <<https://doi.org/10.1080/03057925.2016.1266926>>.

Grodsky, Eric & Devah Pager, “The Structure of Disadvantage: Individual and Occupational Determinants of the Black-White Wage Gap” (2001) 66:4 *Am Sociol Rev* 542, online: <<http://www.jstor.org/stable/3088922?origin=crossref>>.

Guha, Ramachandra, “Gandhi’s Ambedkar” in Aakash Singh & Silika Mohapatra, eds, *Indian Polit Thought Read* (Routledge, 2010).

Guru, Gopal, “Dalits from margin to margin” (2000) 27:2 *India Int Cent Q* 111–116, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/23005493>>.

Hunter, Ian A, “The Development of the Ontario Human Rights Code: A Decade in Retrospect” (1972) 22:4 *Univ Tor Law J* 237, online: <<https://www.jstor.org/stable/825340?origin=crossref>>.

Hutchinson, Allan C & Patrick J Monahan, “Law, Politics, and the Critical Legal Scholars: The Unfolding Drama of American Legal Thought” (1984) 36:1/2 *Stanford Law Rev* 199, online: <<https://www.jstor.org/stable/1228683?origin=crossref>>.

Jacobs, Laverne, “Access to post-secondary Education in Canada for students with disabilities” (2023) 23:1–2 *Int J Discrim Law* 7–28, online: <<http://journals.sagepub.com/doi/10.1177/13582291231174156>>.

Jose, Justin Pallickal, Shanuga Cherayi & Anvar Sadath V, “Does Caste Matter for Social Disability of Dalit Women?: Evidence from Rural Tamilnadu” (2014) 7:1 *Voice Dalit* 105–120, online: <<http://journals.sagepub.com/doi/10.1177/0974354520140107>>.

Kumar, Deepak, “Language Discrimination in Indian Higher Education” in Prabhpreet Singh, ed, *Contouring Exclusion Manif Implic* (Lokmitra Publication, 2019) 149.

Kumar, Santvana & Ekata Bakshi, “The Dominant Post-constitutional Indian Feminist Discourse: A Critique of its Intersectional Reading of Caste and Gender” (2022) 3:1 *CASTE Glob J Soc Exclusion* 49–68, online: <<http://3.143.205.5/ojs/index.php/caste/article/view/364>>.

Kumar, Shubham & Priyanka Preet, “Manual Scavenging: Women Face Double Discrimination as Caste and Gender Inequalities Converge” (2020) 55:26–27 *Econ Polit Wkly*, online: <<https://www.epw.in/engage/article/manual-scavenging-women-face-double-discrimination-caste-gender>>.

Ladson-Billings, Gloria, “Just what is critical race theory and what’s it doing in a nice field like education?” (1998) 11:1 *Int J Qual Stud Educ* 7–24, online: <<http://www.tandfonline.com/doi/abs/10.1080/095183998236863>>.

Lawrence, Sonia, “Equality and Anti-discrimination: The Relationship between Government Goals and Finding Discrimination in Section 15” in Peter Oliver, Patrick Macklem & Nathalie Des Rosiers, eds, *Oxf Handb Can Const*, 1st ed (Oxford University Press, 2017) 815.

Lears, T J Jackson, “The Concept of Cultural Hegemony: Problems and Possibilities” (1985) 90:3 *Am Hist Rev* 567, online: <<https://www.jstor.org/stable/10.2307/1860957?origin=crossref>>.

- Litowitz, Douglas, "Gramsci, Hegemony, and the Law." (2000) 2000:2 *Brigh Young Univ Law Rev* 515, online: <<https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=3273418&site=ehost-live>>.
- Maffettone, Sebastiano, "Liberalism and its critique: Is the therapy worse than the disease?" (2000) 26:3 *Philos Soc Crit* 1–37, online: <<http://journals.sagepub.com/doi/10.1177/019145370002600301>>.
- Matsuda, Mari J, "Looking to the bottom: critical legal studies and reparations" (1987) 22:2 *Harv Civ Rights-Civ Lib Law Rev* 323.
- Maurya, Rakesh Kumar, "In their Own Voices: Experiences of Dalit Students in Higher Education Institutions" (2018) 20:3 *Int J Multicult Educ* 17–38, online: <<https://ijme-journal.org/index.php/ijme/article/view/1627>>.
- McAdams, Richard H, "Epstein on Private Discrimination: Searching for Common Ground" (2021) 50:S2 *J Leg Stud* S293–S312, online: <<https://www.journals.uchicago.edu/doi/10.1086/705548>>.
- McLellan, A Anne & Bruce P Elman, "To Whom Does the Charter Apply - Some Recent Cases on Section 32 Case Comments and Notes" (1985) 24:2 *Alta Law Rev* 361, online: <<https://heinonline.org/HOL/P?h=hein.journals/alblr24&i=371>>.
- Menon, Nivedita, "Is Feminism about 'Women'? A Critical View on Intersectionality from India" (2015) 50:17 *Econ Polit Wkly* 37–44, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24481823>>.
- Mukta, Parita, "The public face of Hindu nationalism" (2000) 23:3 *Ethn Racial Stud* 442–466.
- Nigam, Shalu, "The Privileges of Being a Hindu, Upper Caste and Elite Class, Male in India" (2016) *SSRN Electron J*, online: <<http://www.ssrn.com/abstract=2730525>>.
- O'Conneide, Colm, "Justifying Discrimination Law" (2016) 36:4 *Oxf J Leg Stud* 909–928, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/26363448>>.
- Raj, Thulasi K, "Private discrimination, public service and the constitution" (2022) 6:1 *Indian Law Rev* 17–36, online: <<https://www.tandfonline.com/doi/full/10.1080/24730580.2021.1950338>>.
- Rocher, Ludo, "Hindu Conceptions of Law Religion and the Law" (1977) 29:6 *Hastings Law J* 1283–1306, online: <<https://heinonline.org/HOL/P?h=hein.journals/hastlj29&i=1305>>.
- Sangiuliano, Anthony, "Can There Be a Unified Doctrine of Anti-Discrimination in Canada?" (2022) 18 *J Law Equal* 1, online: <<https://heinonline.org/HOL/P?h=hein.journals/jleq18&i=1>>.

Siddique, Zahra, “Evidence on Caste Based Discrimination” (2011) 18 Labour Econ S146–S159, online: <<https://linkinghub.elsevier.com/retrieve/pii/S0927537111000807>>.

Singh, Aakash, “Gandhi and Ambedkar: Irreconcilable Differences?” (2014) 18:3 Int J Hindu Stud 413–449, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24713655>>.

Singh, Gayatri, Trina Vithayathil & Kanhu Charan Pradhan, “Recasting inequality: residential segregation by caste over time in urban India” (2019) 31:2 Environ Urban 615–634, online: <<http://journals.sagepub.com/doi/10.1177/0956247818812330>>.

Smith, Adrian A, “Racialized in Justice: The Legal and Extra-Legal Struggles of Migrant Workers in Canada” (2015) 31:2 Windsor Yearb Access Justice 15–38.

Srinivas, MN, “A Note on Sanskritization and Westernization” (1956) 15:4 Far East Q 481, online: <<https://www.jstor.org/stable/2941919?origin=crossref>>.

———, “Caste in Modern India” (1957) 16:4 J Asian Stud 529, online: <<http://www.jstor.org/stable/2941637?origin=crossref>>.

Teltumbde, Anand, “Dichotomisation of Caste and Class” (2016) 51:47 Econ Polit Wkly 34–38, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/44165876>>.

Thapa, Raksha et al, “Caste Exclusion and Health Discrimination in South Asia: A Systematic Review” (2021) 33:8 Asia Pac J Public Health 828–838.

Thorat, Sukhadeo et al, “Urban Rental Housing Market: Caste and Religion Matters in Access” (2015) 50:26/27 Econ Polit Wkly 47–53, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/24482557>>.

Thorat, Sukhadeo & Paul Attewell, “The Legacy of Social Exclusion: A Correspondence Study of Job Discrimination in India” (2007) 42:41 Econ Polit Wkly 4141–4145, online: <<http://www.jstor.org.ledproxy2.uwindsor.ca/stable/40276548>>.

Upadhyay, Nishant & Sandeep Bakshi, “Translating queer: Reading caste, decolonizing praxis” in *Routledge Handb Transl Fem Gend* (Routledge, 2020).

Venkatesh, Vasanthi, “Confronting myths: agricultural citizenship and temporary foreign worker programs” (2019) 5:1–2 Int J Migr Bord Stud 82–98.

———, “International Casteist Governance and the Dalit Radical Tradition: Reimagining a Counter-hegemonic Transnational Legal Order” 2022:3 TWAIL Rev 171–203, online: <<https://twailr.com/twail-review/issue-03-2022/vasanthi-venkatesh-international-casteist-governance-and-the-dalit-radical-tradition-reimagining-a-counter-hegemonic-transnational-legal-order/>>.

Wadekar, Disha, “Rejecting Ideal Victimhood” (2021) *Econ Polit Wkly*.

Yengde, Suraj, “Global Castes” (2022) 45:2 *Ethn Racial Stud* 340–360.

“After Rohith Vemula: the Sunday Magazine team discovers the new contours of discrimination”, *The Hindu* (6 February 2016), online: <<https://www.thehindu.com/features/magazine/After-Rohith-Vemula-the-Sunday-Magazine-team-discovers-the-new-contours-of-discrimination/article59820530.ece>>.

“Upper castes in Agra, Mathura to boycott BJP if SC/ST Act amendment not rolled back”, *Times India* (9 September 2018), online: <<https://timesofindia.indiatimes.com/city/agra/upper-castes-in-agra-mathura-to-boycott-bjp-if-sc/st-act-amendment-not-rolled-back/articleshow/65745211.cms>>.

“What is India’s caste system?”, *BBC News* (25 February 2016), online: <<https://www.bbc.com/news/world-asia-india-35650616>>.

Acosta, Julieanne, “Caste-based discrimination in Canada? It’s more likely than you think”, (31 March 2023), online: *The Gauntlet* <<https://thegauntlet.ca/2023/03/31/caste-based-discrimination-in-canada-its-more-likely-than-you-think/>>.

Ambedkar King Study Circle, “FAQ about the BAPS Case”, online: *Ambedkar King Study Circ* <<https://akscusa.org/faq-about-the-baps-case/>>.

Attri, Pardeep, “Annihilation of caste in Indian corporate possible. But firms must say Dalit lives matter”, (19 June 2020), online: *ThePrint* <<https://theprint.in/opinion/annihilate-of-caste-in-indian-corporate-possible-but-firms-must-say-dalit-lives-matter/444244/>>.

Bhanu Mehta, Pratap, “What is constitutional morality”, online: <[https://www.india-seminar.com/2010/615/615\\_pratap\\_bhanu\\_mehta.htm](https://www.india-seminar.com/2010/615/615_pratap_bhanu_mehta.htm)>.

Bhardwaj, Prachi, ““Can’t treat all of them as a liar’: SC while partially setting aside the 2018 SC/ST Act verdict [Full report]”, (1 October 2019), online: *SCC Blog* <<https://www.sconline.com/blog/post/2019/10/01/cant-treat-all-of-them-as-a-liar-sc-while-partially-setting-aside-the-2018-sc-st-act-verdict-full-report/>>.

Bhaskar, Anurag, “Caste And The Statue Of ‘Manu’ In Rajasthan High Court”, (6 May 2020), online: <<https://www.livelaw.in/columns/caste-and-the-statue-of-manu-in-rajasthan-high-court-156315>>.

———, “The modern form of institutionalised casteism”, (15 January 2021), online: *Hindustan Times* <<https://www.hindustantimes.com/opinion/the-modern-form-of-institutionalised-casteism-101610716480748.html>>.



Bisht, Inder, “In India’s villages, upper castes still use social and economic boycotts to shackle Dalits”, (5 March 2020), online: *NewsLaundry* <<https://www.newsLaundry.com/2020/03/05/in-indias-villages-upper-castes-still-use-social-and-economic-boycotts-to-shackle-dalits>>.

Chronicle, Deccan, “Exclusive well constructed in University of Hyderabad”, (22 January 2016), online: *Deccan Chron* <<https://www.deccanChronicle.com/current-affairs/230116/exclusive-well-constructed-in-university-of-hyderabad.html>>.

Government of Canada, Statistics Canada, “Visible minority and population group by generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts”, (26 October 2022), online: <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810032401>>.

Guardian, Graeme Frisque, Rohan Puri Brampton, “Brampton looking to ban caste-based discrimination”, (31 May 2023), online: *Brampton Guard* <[https://www.bramptonguardian.com/news/council/brampton-looking-to-ban-caste-based-discrimination/article\\_b2dd42b1-9fad-50bc-9a30-20f77320551c.html](https://www.bramptonguardian.com/news/council/brampton-looking-to-ban-caste-based-discrimination/article_b2dd42b1-9fad-50bc-9a30-20f77320551c.html)>.

Guha, Archit, “The well belongs to the landlord”, online: <<https://jaggerylit.com/the-well-belongs-to-the-landlord-kuan-thakur-ka/>>.

Heritage, Canadian, “How your rights are protected”, (23 October 2017), online: <<https://www.canada.ca/en/canadian-heritage/services/how-rights-protected.html>>.

Jagannathan, Shilpashree, “Burnaby council votes unanimously to include caste as a protected category”, (26 April 2023), online: *New Can Media* <<https://newcanadianmedia.ca/burnaby-council-votes-unanimously-to-include-caste-as-a-protected-category/>>.

Kothari, Jayana, Almas Shaikh & Aj Agarwal, *The Intersection of Disability and Caste: A Policy Paper*, Policy Paper, by Jayana Kothari, Almas Shaikh & Aj Agarwal, Policy Paper (CLPR, 2020).

News ·, Shlok Talati · for CBC, “Prejudice rooted in an ancient social system has migrated from India to Canada | CBC News”, (16 May 2022), online: *CBC* <<https://www.cbc.ca/news/canada/nova-scotia/caste-india-canada-students-1.6450484>>.

Shukla, Abhinav Narayan Jha, Jinendra Parakh and Abhinav, “Taking ‘life’ out of people: On the degrading practice of manual scavenging”, (8 December 2020), online: *Dly Guard* <<https://thedailyguardian.com/taking-life-out-of-people-on-the-degrading-practice-of-manual-scavenging/>>.

Singh, Akanksha, “India: Why justice eludes many Dalit survivors of sexual violence”, online: <<https://www.aljazeera.com/news/2022/6/8/india-why-justice-eludes-many-dalit-survivors-of-sexual-violence>>.

Standard, Business, “US universities add policies to counter caste-based discrimination”, (9 December 2022), online: <[https://www.business-standard.com/article/international/us-universities-add-policies-to-counter-caste-based-discrimination-122120900176\\_1.html](https://www.business-standard.com/article/international/us-universities-add-policies-to-counter-caste-based-discrimination-122120900176_1.html)>.

Statistics Canada, *Religion by visible minority and generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts* (Government of Canada, 2022).

Team, LiveLaw Research, “Congress MP Shashi Tharoor Introduces Anti-Discrimination And Equality Bill In Lok Sabha [Read The Bill]”, (15 March 2017), online: <<https://www.livelaw.in/congress-mp-shashi-tharoor-introduces-anti-discrimination-equality-bill-lok-sabha/>>.

Wadekar, Nikita Sonavane, Disha, “Dalit Bahujan women need to reclaim Vishaka guidelines — they started Indian #MeToo first”, (25 February 2021), online: *ThePrint* <<https://theprint.in/opinion/dalit-bahujan-women-need-to-reclaim-vishaka-guidelines-they-started-indian-metoo-first/611188/>>.

Zwick, Maitreyi et al, *Caste in the United States: A Survey of Caste Among South Asian Americans*, M., Soundararajan, T., Dar, N., Bheel, R.F., and Balakrishnan, P. (2018) *Caste in the United States. A Survey of Caste among South Asian Americans. Equality Labs, USA.*, by Maitreyi Zwick et al (USA: Equality Labs, 2018).

“A bit of history | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/bit-history>>.

“Bihar: Nearly 45,000 cases under SC/ST Act pending disposal, conviction rate only 8% | India News - The Indian Express”, online: <<https://indianexpress.com/article/india/bihar-sc-st-act-pending-disposal-conviction-rate-7702220/>>.

“Case study: Dalits with disabilities in India ~ Life at the Margins: The Challenges of Multiple Discrimination ~ Minority Stories”, online: <<https://stories.minorityrights.org/lifeatthemargins/chapter/case-study-living-with-the-stigma-of-caste-and-disability-the-challenges-facing-disabled-dalits-in-india/>>.

“Caste - CivilRights | seattle.gov”, online: <<https://www.seattle.gov/civilrights/civil-rights-enforcement/new-laws-and-amendments/caste>>.

“Committee on the Elimination of Racial Discrimination considers the report of Canada”, online: *OHCHR* <<https://www.ohchr.org/en/press-releases/2017/08/committee-elimination-racial-discrimination-considers-report-canada>>.

“Comparing Race to Caste Is an Interesting Idea, But There Are Crucial Differences Between Both”, online: *The Wire* <<https://thewire.in/books/book-review-isabel-wilkerson-caste-racism-america>>.

“Constituent Assembly Debates On 2 December, 1948 Part I”, online: <<https://indiankanoon.org/doc/1389880/>>.

“Dalit Student’s Suicide Points to Well-Known – But Ignored – Caste Discrimination in IITs”, online: *The Wire* <<https://thewire.in/caste/iit-bombay-darshan-solanki-suicide>>.

“Derrick Bell’s Interest Convergence and the Permanence of Racism: A Reflection on Resistance”, online: *Harv Law Rev* <<https://harvardlawreview.org/blog/2020/08/derrick-bells-interest-convergence-and-the-permanence-of-racism-a-reflection-on-resistance/>>.

“Disability and caste bias: A shared struggle | The Indian Express”, online: <<https://indianexpress.com/article/opinion/columns/disability-and-caste-bias-a-shared-struggle-8505522/>>.

*Dr B R Ambedkar’s Constituent Assembly Speech on Dec 17, 1946.*

“Employment | Ontario Human Rights Commission”, online: <[https://www.ohrc.on.ca/en/social\\_areas/employment](https://www.ohrc.on.ca/en/social_areas/employment)>.

“Failure to acknowledge existence of manual scavenging is deplorable”, (23 February 2022), online: *Indian Express* <<https://indianexpress.com/article/opinion/columns/failure-to-acknowledge-existence-of-manual-scavenging-is-deplorable-7786337/>>.

“Goods, services and facilities | Ontario Human Rights Commission”, online: <[https://www.ohrc.on.ca/en/social\\_areas/goods\\_services\\_facilities](https://www.ohrc.on.ca/en/social_areas/goods_services_facilities)>.

“Housing | Ontario Human Rights Commission”, online: <[https://www.ohrc.on.ca/en/social\\_areas/housing](https://www.ohrc.on.ca/en/social_areas/housing)>.

“Housing [4] | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/part-i-%E2%80%93-freedom-discrimination/housing-4>>.

“In a First in Canada, Toronto School Board Votes to Recognise Caste Oppression”, online: *The Wire* <<https://thewire.in/caste/in-a-first-in-canada-toronto-school-board-votes-to-recognise-caste-oppression>>.

“India’s Universities Are Falling Terribly Short on Addressing Caste Discrimination”, online: *The Wire* <<https://thewire.in/caste/india-universities-caste-discrimination>>.

“Manu-smriti | Dharma, Vedic Texts & Ancient India | Britannica”, (18 July 2023), online: <<https://www.britannica.com/topic/Manu-smriti>>.

“Over 75% of High Court Judges Appointed Since 2018 Are from Upper Castes: Centre”, online: *The Wire* <<https://thewire.in/law/over-75-of-high-court-judges-appointed-since-2018-are-from-upper-castes-centre>>.

“Policy on Removing the ‘Canadian experience’ barrier | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier>>.

“Reflect, reimagine, respond: results – Annual Report 2021-2022 | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/reflect-reimagine-respond-results-%E2%80%93-annual-report-2021-2022>>.

“Section 15 of the Canadian Charter of Rights and Freedoms: The Development of the Supreme Court of Canada’s Approach to Equality Rights Under the Charter”, online: <[https://lop.parl.ca/sites/PublicWebsite/default/en\\_CA/ResearchPublications/201383E#](https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201383E#)>.

“Symbolism Crumbles? President Murmu Allegedly Denied Entry At Jagannath Temple Sanctum Sanctorum; Mandir Denies Charges”, online: <https://www.outlookindia.com/> <<https://www.outlookindia.com/national/symbolism-crumbles-down-president-murmu-allegedly-denied-entry-at-jagannath-temple-mandir-denies-charges-news-298195>>.

“The Caste Is Alive And Kicking In Corporate India”, online: *Forbes India* <<https://www.forbesindia.com/article/iim-bangalore/the-caste-is-alive-and-kicking-in-corporate-india/53059/1>>.

“The Man Behind Critical Race Theory | The New Yorker”, online: <<https://www.newyorker.com/magazine/2021/09/20/the-man-behind-critical-race-theory>>.

“Types of Rental Housing Discrimination | Ontario Human Rights Commission”, online: <<https://www.ohrc.on.ca/en/human-rights-and-rental-housing-ontario-background-paper/types-rental-housing-discrimination>>.

“Villupuram caste discrimination: Here’s why Dalit students missed their revision test - The New Indian Express”, online: <<https://www.newindianexpress.com/states/tamil-nadu/2023/apr/11/villupuram-caste-discrimination-heres-why-dalit-students-missed-their-revision-test-2564637.html>>.

“What Critical Race Theory Was — and is — at Harvard Law School | News | The Harvard Crimson”, (25 May 2023), online: <<https://www.thecrimson.com/article/2023/5/25/critical-race-theory-harvard-law/>>.

“Who Is Afraid of Caste Equity in Canada?”, online: *The Wire* <<https://thewire.in/caste/who-is-afraid-of-caste-equity-in-canada>>.

“Women’s group shaken after Jaipur court dismisses Bhanwari Devi rape case and clears accused”,  
online: *India Today* <<https://www.indiatoday.in/magazine/special-report/story/19951215-womens-group-shaken-after-jaipur-court-dismisses-bhanwari-devi-rape-case-and-clears-accused-808044-1995-12-14>>.

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