

What lies behind the inclusion of caste in the UK Equality Act?

*The caste system is one of the most prevalent and powerful markers of Indian culture and society and is associated with Hinduism. In 2013 a clause against caste discrimination was inserted into the Equality Act 2010. Based on his recent research, **Prakash Shah** argues that this legislation is underpinned by dubious research and if implemented would impact severely on the Indian communities in Britain. The image of the caste system is rooted in Christian theological and Orientalist accounts of India and legislation in Britain is part of a wider campaign to interfere in India's internal affairs.*



Image: Flickr, Kaustav Bhattacharya

The UK government **announced** on 2 September 2016 that it would consult on the pending enactment of the clause on caste discrimination in the Equality Act 2010. The announcement deserves only a cautious welcome. It is unclear how the consultation will be conducted and the announcement suggests, not whether, but how, the caste law should be implemented.

Parliament justified the insertion of a provision against caste discrimination in the Equality Act 2010 on the assumption that the caste system exists in the UK's Indian diaspora. While the Act originally gave a power to the Minister whether to implement the provision, an amendment in 2013 made implementation obligatory. That concession, to the churches and other pressure groups, now leaves the government exposed to pressure within parliament and via judicial reviews from the same groups on grounds of delayed implementation. The announced consultation defensively responds to one such judicial review application.

The caste system is one of the most prevalent and powerful markers of Indian culture and society. It is associated with Hinduism and seen as hereditary, hierarchical and oppressive, particularly for those at the bottom of the system. This image is founded on Christian theological polemic that saw Indian religion as false, the secularised version of which has strongly influenced subsequent debates, scholarship and law making on caste. I contend in my recent book ***Against Caste in British Law*** that the UK should not be enacting legislation on such a basis.




I began researching the caste issue in 2013, as part of the *Coalition for Dialogue* and the *Anti Caste Legislation Committee*, which brought together a large number of Indian community organisations against implementation and for the removal of the caste clause. These organisations have never really been part of the consultation process for a law that nevertheless impacts them and their members severely. Some Hindu organisations and prominent persons were told by civil servants back in 2008 that the absence of evidence made a law on caste unnecessary. Led by the former Anglican Bishop, Lord Harries, parliamentarians supporting the churches and other lobby groups surreptitiously introduced the amendments in 2010 and 2013.

The legislation is underpinned by dubious research. Before 2010, obviously partisan **pamphlets were issued** by church-backed NGOs representing the cause of 'low caste' people, known by the political term Dalits, which incidentally is hardly known in Britain. The absence of credible research meant that, for the first time, anti-discrimination legislation went through on the *assumption* that a problem exists. In fact, the pro legislation lobby, including the prominent equality law advocate, Lord Lester QC, actively opposed the requirement of research. The reports commissioned after legislation was in place – the 2010 **report** by the National Institute of Economic and Social Research (NIESR) and **two reports** in 2014 by the **Equality and Human Rights Commission (EHRC)** – display poorly formulated research questions, inadequate methods, and prior commitment to the principle of legislation.

The reports by the EHRC were written by an academic team already favouring the law, as did the EHRC itself. It has continued to pressure the government. It intervened in support of a case brought by a Christian woman against her Buddhist employers – *Tirkey v Chandhok* – where it was found that the Equality Act already extends to caste. The EHRC then went on to lobby the UN Committee on the Elimination of Racial Discrimination arguing that the case that it had chosen to back had left the law unclear. The UN Committee recommended in August 2016 that the UK government issue implementing legislation.

No justification has been provided why a mechanism like the Equality Act is appropriate for caste discrimination. If implemented, the caste provision would impact severely on the associational and economic freedoms of the Indian communities. Their ability to hold weddings, organise events or hire out premises could easily be challenged, and the charity status of many organisations would be compromised. Businesses would be obliged to record employees and customers by caste even if it is to avoid inadvertent offence. The availability of legal challenge is no answer to such concerns. As demonstrably shown in the put-up case of *Tirkey v Chandhok*, prevalent stereotypes regarding who discriminates on caste grounds mean that litigation would be asymmetrically stacked against defendants. Defendants would be compelled to settle cases unless they have the financial muscle and ability to survive adverse publicity to vindicate themselves. Researchers and legislators have not considered any of these problems, raising further suspicions about the true reasons behind the legislation.

Resistance by Indian community organisations has seen them **branded as complicit** in caste discrimination and practitioners of caste apartheid by those backing the law, including academics and the BBC. The National Secular Society has made **defamatory and unsubstantiated allegations** that Hindu businessmen, whom it does not name, are blocking the law. It is true that Hindu and Jain community organisations are unanimous in their opposition to the law, except for ISKCON, which acts more like a crypto-church in the guise of a Hindu *sampradaya*. Sikh organisations have differed in their responses – those against have objected to the allegation that Sikhs discriminate on grounds of ritual purity – while Muslim bodies have remained reticent until now about a law which they incorrectly consider will not impact their constituency.

The very idea of the caste system rests on shaky foundations but is presupposed by proponents of the legislation. As show in a forthcoming *book*, *Western Foundations of the Caste System*, the image of the caste system goes back to Christian theological accounts of India, being developed further in Orientalist accounts during the colonial period, and incorporated in the social sciences today. In the Protestant polemic against Indian religion, caste was linked to the idea of a violent priesthood within Hinduism, as well as to the so-called Aryan invasion theory. This led  to the

notions that the Indian social structure obliges discrimination, making Indians morally corrupt and racist creatures. This association of normative deficiency continues to strongly condition contemporary secular thinking on caste, partly explaining the ease with which images of the caste system pass for knowledge about Indian culture and are considered sufficient grounds for passing a law.

Proselytism in India provides a key explanation for why caste has acquired currency in Britain. It's not only that a former Anglican Bishop introduced caste into parliament in 2010 and advocated its tightening in 2013. The legislation is part of a **wider campaign** conducted through EU institutions and UN human rights organs, aimed at putting pressure on India to extend caste based reservations, currently available to Hindu, Jains, Sikhs and Buddhists, to Christians also. Proponents hope that such interference in India's internal affairs will augment the number of converts, a chief target of **churches and Western governments**. Not for the first time, posturing on human rights comes with hidden agenda.

The British caste debacle is being watched within the Indian communities in the diaspora as in India, where government circles are viewing the issue as a proxy for ulterior ends. In Britain, as the matter drags on it risks damaging the relationship between the – quiet but successful – Indian diaspora and the British government and legal system.

About the author



Prakash Shah is a Reader in Culture and Law at the School of Law, Queen Mary University of London. His book, **Against Caste in British Law: A Critical Perspective on the Caste Discrimination Provision in the Equality Act 2010** was published by Palgrave in October 2015. He is also co-editor of the forthcoming book, **Western Foundations of the Caste System** (Palgrave 2017).

October 11th, 2016 | [Featured](#), [Latest](#) | [12 Comments](#)

