

The Internationalisation of Caste

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2023-06-15T08:00:19

A bottomless [social stratification](#) of inequality exists in the form of caste in Indian society. Caste transposes economic, cultural, political, and educational marginalisation. The egregious forms of discrimination that the individuals belonging to the 'scheduled castes' (i.e. those who lie at the lowest point in this stratification) face, range from servitude, bondage, manual scavenging, occupational fatalities, selective policing, unaccounted rapes, and murders, among others. Indian diaspora has catapulted the escape of casteism from its domestic limits. Widely ignored on the national plane (except for the vote bank politics dominated by caste-based politics), emigrants have transported caste to the international plane. As a result, millions of individuals in [South Asia](#) and [beyond](#) remain affected by caste discrimination.

This blogpost outlines the entrenched caste identity among Indians and its migration to international society. It problematises India's reluctance to address caste as an international legal concern and calls for Indian co-operation and acceptance of international law encompassing caste within its fold. It does so by drawing an analogy of race with caste.

The Hold of Caste

Caste originated as an occupation-specific gradation on the purity scale on the basis of which Indian Hindu society has been socio-culturally sculpted. Having its roots in ancient [Indian mythology](#) (like [Vedas and Smritis](#)) as an occupational and then hereditary categorisation of the society, caste has been perpetuated and now is [retained](#) as a hereditary social rank. The caste system divides the Hindu society into four rigid compartments: *Brahmins* (Priests and teachers), *Kshatriyas* (Warriors and rulers), *Vaishyas* (Traders and merchants) and *Shudras* (Labourers). *Dalits* (Sweepers and Toilet cleaners) were not categorised as they were regarded as '[outcastes](#)'. Caste has nowadays escaped its religion-specificity and [traversed beyond](#) the strict framework of Hinduism. Its retention secures a strong religious and social sanction that protects the hegemony of the upper castes. It is a significant descriptor of disparity and a deceptive social construct that [retains](#) the "oldest system of human oppression, subjugation and degradation".

Caste functions on the rationale of graded purity situated in hierarchical divisions. As a "[quintessential social and individual identifier](#)", caste is an important driver of poverty, inequality and exclusion in India. Caste discrimination legitimises apartheid in matters of [residential segregation](#) (thus creating a [socio-spatial stigma](#)), [job discrimination](#), [employment](#), incarceration, police brutality, access to sanitation, [discriminatory wages](#), and others. Even in matters of choice of a [particular stream of study](#), caste is an important signifier. Insidious casteism is faced even by National Law Universities' [students](#) and by [judges](#) in the courts of 'justice' too.

Indian society has sustained and nurtured the caste identities because of their dividends for the dominant voices as the “rights and privileges of higher castes become the disabilities of the lower caste” ([Thorat](#)).

A Relegated Concern of Caste-Discrimination

In response to the denouncement of the scheduled castes (i.e. those who lie at the lowest point in this stratification), India affords and reserves certain benefits to these castes through Articles [15\(4\)](#) and [16\(4\)](#) of the constitution (hereinafter reservations). The effect of these theoretically protective provisions in the Constitution on mainstreaming the socio-economic status of the scheduled caste has been abysmal. The social [contempt](#) against reservations hollows its Indian Constitutional promise. The privileged ‘forward’ castes accuse this reservation policy of the Constitution as [anti-forward caste](#) that adversely affects their socio-economic rights. An empirical study [refuting](#) this prejudice demonstrates that at the systemic level, reservation has not adversely affected the participation of ‘forward’ castes in percentage terms. This contempt against reservations is often wrongly rationalized as an instrument of inefficiency in [public administration](#).

Barbaric forms of caste discrimination have been normalised in India, from denial of water during a [drought](#), being [beaten to death](#) in public view for marrying an ‘upper’ caste Muslim woman, to other violent atrocities against Dalits. Even a modest assertion by Dalit males, including [sporting a moustache](#), [riding a horse](#), objecting to the [removal of Ambedkar’s poster](#), [eating in front of ‘upper’ caste men](#), and [touching their food plates](#) exasperates the ‘upper’ castes in India. The plight of Dalit women is even [worse](#). Unfortunately, the concerns of the marginalized are [not](#) the political mainstream concerns with electoral ramifications.

Existing laws in India do the bare minimum to address caste discrimination. Legal protection from discrimination is mainly theoretical, while caste discrimination remains blatant and even more so in [implementing](#) anti-caste laws. Popular decisions of the Supreme Court of India, which are praised by ‘forward’ castes, such as [M. Nagaraj and Others v UOI](#) (which rendered the reservation for promotions in public employment a practical impossibility) and [Jarnail Singh v. Lachhmi Narayan Gupta](#) (which introduced a [creamy layer](#) among scheduled castes) are [unfortunate illustrations](#) of the Court’s oblivion to the rationale behind reservations, which remains discriminatory. Shockingly, the Supreme Court has even [diluted](#) the provisions of the [Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act](#) in cases like [Khuman Singh v. State of Madhya Pradesh](#). The Supreme Court in the case of [Dr Subhash Kashinath Mahajan v. The State of Maharashtra](#) has even criticized the ‘abuse of law of arrest in cases under the Atrocities Act’. In fact, most legal provisions for the protection of marginalised sections are alleged of being misused and abused by the marginalised. Even a former Supreme Court judge [accuses](#) rape laws of being misused, while the data on conviction rates [exposes](#) the amateurishness of this claim.

Scheduled castes experience a similar social inclusion (via the Constitution) and ideological exclusion in India and outside that [Muslims experience](#) in post-Cold War popular and political imagery in Europe and America. Both experience a similar

systemic marginalization in social negotiations, political spaces, and economic bargain, and there even exists an [intersectionality](#) between the two. The capability of legal protection in addressing casteism is a comfortable assumption rooted in a bigger assumption of law being a panacea and turns a blind eye to the reality and enormity of it.

The Migration of Caste and International Law

Migration has [effused](#) caste's organic weight and diluted its religion-specificity. Primarily associated with South Asia, casteism has [traversed](#) to [Australia](#), the [United Kingdom](#) (UK) and the [United States](#). Ethnographic empirical work has shown such a re-institutionalization of caste following the [Indians' migration to UK](#) that scholars [have called for](#) the adoption of relevant domestic legislation in the UK so that such caste-specific concerns can be addressed. Despite having turned into a global phenomenon, caste has not been able to reflect on the research radar of international law scholars. The Third World Approach to International Law (hereinafter TWAIL) scholars who employ a critical, anti-hegemonic, anti-hierarchical framework for international law, have not attempted to address caste discrimination either.

India has [relegated](#) caste discrimination in the national discourse and [refuses](#) that the issue falls within the scope of the [Convention on the Elimination of all Forms of Racial Discrimination](#) (hereinafter CERD). The CERD Committee has enquired into caste-based discrimination (under discrimination on the basis of 'descent') and shared its concerns regarding the domestic implementation of CERD for the protection of human rights of the marginalized castes in its concluding observations for [India](#), [Nepal](#), [Pakistan](#), [Bangladesh](#) and the [UK](#). Although most States [concur](#) with the interpretations of the treaty bodies, India is an exception. Precisely, India opposes CERD's interpretation and argues that caste cannot be seen as falling under the term 'descent' of CERD Article 1(1). India's stance reveals its [insecurity](#) regarding an international scrutiny as was the case on some [previous](#) occasions. This distrustful refusal seems to be the result of two primary unconvincing claims. First, the erstwhile Solicitor General of India [asserted](#) that 'caste is not of racial origin and is unique to Indian society', overlooking the General recommendation XXIX on CERD's Article 1 adopted in its [61st session](#). He added that 'caste has been addressed in the Indian Constitution', reiterating the panacea assumption. This refusal also echoes the national ego of laws that evades any possible redressal through the compliance with an international legal framework. Second, in support of the said refusal, Dipankar Gupta, an Indian sociologist, shared simplistic [reasons](#) of lineage and genealogy to not equate caste with race. This detached claim degenerates the interpretative potential of Article 1 of CERD by limiting it to a biological analogy, ignoring the parallel social realities.

Caste as an accident of birth qualifies as a discriminatory form under CERD. Though different phenomenologically, caste resembles race functionally. The theoretical underpinnings of caste discrimination draw its [cognate](#) relationship with racism. The difference in etymology and functionality of the two does not rule out the similarity and sometimes, even congruence, of operation of both. There is [no apparent harm](#) for India to let 'caste' be interpreted within 'descent', letting CERD

Committee's interpretation prevail over a statist politically skewed (mis)interpretation. Nonetheless, these theoretical arguments have slim chances to become the actual solutions, even more so because they have not been flagged enough by the scholars. Ambedkar, a socio-political scholar and Dalit activist, had [warned](#) the Indian Government to take the plight of the depressed castes to the League of Nations. He had drawn glaring [similarities](#) between caste discrimination and the discrimination faced by the African Americans. But his works themselves are relegated and under-read in the [caste dominated](#) academia. In addition, the critical pulse of TWAIL scholarship has [not reflected](#) on caste marginalisation. On [States' radar](#), less prioritized human rights treaties such as [Convention Against Torture](#), and [Convention on Enforced Disappearances](#) have shriveled in comparison with the high prioritized trade and foreign investment treaties. The myopic economic dividends of such treaties for a *few* weigh higher than the human rights of *all* in a neo imperial State.

Concluding Remarks

Recognition of race as a praxis of discrimination and the non-recognition of caste as a similar discriminatory practice is a blatant denial of a genuine equivalence. Discrimination on the basis of race prevents the recognition of people as subjects of international law and the respect of their rights, and there seems to be no reason why caste should not be seen in the same way. India's refusal to acknowledge discrimination on the basis of caste as incompatible with human rights law reflects the myopic statist view of international law which limits international law to a consent-based system. CERD Committee's legally coherent interpretation should not be subdued by a political and incoherent interpretation of 'descent' due to the insecurities and ego of Statist claims.

