

6th International Conference on the Unfinished Legacy of Dr. B. R. Ambedkar

October 20-22, 2023, Brandeis University

Waltham, Massachusetts, USA

Law, Caste, and the Pursuit of Justice



BACKGROUND CONCEPT NOTE

The 6th International Conference welcomes proposals on India and other South Asian countries and their diasporas. This Background Concept Note is a supplement to the Call for Papers that is posted on [the conference website](#). This Concept Note aims to introduce authors and conference participants to theme of Law, Caste, and the Pursuit of Justice.

The conference will also host a National Conversation on the inclusion of caste as a protected category in university non-discrimination policies and welcomes [proposals for Papers and Round Table Discussions](#).

The conference is hosted by [CASTE: A Global Journal on Social Exclusion](#) and is co-sponsored by numerous other institutions, including the Center for Global Development and Sustainability, The Indian Institute for Dalit Studies, the Boston Study Group, and the CEDE. See the conference website for a complete list of co-sponsors.

This 6th International Conference focuses on the role and effectiveness of laws in annihilation of discrimination associated with the institution of caste and untouchability in India and other countries with caste histories. The Indian Constitution upholds equality of status and opportunity and the principle of non-discrimination. As follow up, the Indian government also enacted laws to curb caste discrimination. Based on the experience of the last seventy years, the Conference will discuss the role and effectiveness of these laws in eradication of caste discrimination. It will also offer comparisons to the histories and status of caste discrimination in other societies and will reflect on the comparability of race in America. To provide a background for prospective paper writers and conference participants, this Note outlines some of the issues, particularly with reference to Dr. Ambedkar's perspective.

Caste system as legal institution

The caste system involves division of the population into five social groups, called castes. It not only divide the population into groups, but also isolates and segregates them from each other through restrictions on marriages, inter-dining and social relations. It fixes the economic, social, cultural, and religious rights by birth and makes them hereditary and permanent without freedom for change. The entitlement to rights of each caste is fixed in an unequal manner, making the inequality as a founding principle of a caste system. Those who were "untouchables" were located at the bottom of the caste hierarchy and suffered the most from denial of all rights. The caste system with these features was considered an 'ideal' social organisation and once made legal, it carried penalties for

violation of caste rules both by the state and by the higher-caste communities. In this context, Ambedkar observed:

Though the existence of classes is the de facto condition of every society, nevertheless no society has converted the de facto state of affairs into a de jure connotation of an ideal society and elevated it to the dignity of an ideal and further, it made the ideal legal by invoking the sanction of law. In this sense the caste system is not only an ideological construct (ideology as a set of ideas and beliefs or an attitude to life that guides behaviour, especially one held by a particular group that influences the way people behave towards others), but also legal system."¹

Constitutional safeguards

This being the case, the post-colonial Indian Constitution adopted in 1950 made a radical departure from the past and sought to challenge the unjust law of caste. The Constitution made social justice (as social, economic, and political liberty, equality, and fraternity) the governing principle of society. The Constitution promises equal rights to all citizens. Article 14 assures equality before the law and equal protection of law. Article 15 prohibits discrimination on the grounds of caste, religion, race, sex, or place of birth, by the State and in use of services supplied by private individuals for public use, and/or facilities maintained wholly or partly out of State funds and dedicated to the use of the general public. Article 16 refers to equality of opportunity in matters of public employment, and states that there shall be equality of opportunity for all citizens in matters relating to employment under the State, and no discrimination in employment or office under the State.

Article 17 abolishes untouchability and its practice in any form is forbidden and made punishable in law. Moreover, the Constitution in Article 46, the Directive Principles of State Policy, makes it obligatory for the State to enact laws and frame policies to enable the citizens to use these (fundamental) rights in practice, thus: 'The State is required to protect the Scheduled Caste (ex-untouchables) and Scheduled Tribes (indigenous people) from social injustices and all forms of exploitation.' This includes protection in law from caste discrimination and untouchability.

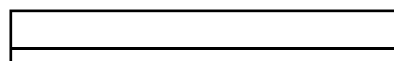
Legal safeguards

To give effect to the provision of non-discrimination, the Indian Government enacted the Untouchability (Offences) Act on May 8, 1955. It was renamed 'Protection of Civil Rights (PCR) Act, 1979. Thirty-four years later, another law namely 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, was enacted in 1989.

The Indian Government also enacted an affirmative action policy to ensure a fair share to the scheduled castes/scheduled tribes in the legislature, public employment and educational institutions. This policy is now selectively extended to Nomadic and de-notified tribes, other backward castes, women, religious minorities, and finally to economically weaker sections.

Caste discrimination reduced but still persists

The situation of ex-untouchables has improved considerably with traditional caste relations weakened in several spheres. However, caste continues to influence social interaction even today. Despite legal safeguards, scheduled castes (SC) continue to face discrimination in accessing civic rights. Between 2001 to 2016, a total of 2,57,961 (257,961) cases of the practice of untouchability



¹ Ambedkar, B. R. (1947). *Who were the Shudras? How they came to be the fourth Varna in the Indo-Aryan society*. Thacker

and atrocities against the SC were registered, which comes to a yearly average of 16,123 incidences of violation per year. Some primary studies provide insights into the persisting discrimination despite laws. In limited spheres the practice of untouchability is less pronounced or absent. Nevertheless, despite access, ex-untouchables are confronted with differential or discriminatory behaviour and restrictions. Thus while it is true that the Constitution and the modern legal framework with special laws safeguarding discriminated groups have tried to confront the institution of caste, it is equally important to note that caste discrimination persists in old and new forms perpetuating itself through the modern legal system.

Causes of persistence

Studies into the cause for the persistence of caste discrimination despite constitutional safeguards and laws found that it is rooted in wilful and purposeful negligence in the implementation of the Civil Rights and Atrocity Acts by the administration involved in delivery of social justice. There are serious lapses in the implementation of the Acts at various level of investigation. These lapses are found not to be accidental but wilful and motivated to protect the people of their social belonging. The Standing Committee of the Ministry of Social Justice and Empowerment reported the following for the prejudicial and discriminatory attitude of the judicial administration:

The officials attempted to dilute the spirit of the (Prevention of Atrocities) Act at every stage – from non-registration of case, failure to investigate according to due process of law, not filing the charge sheet in court within the stipulated time, not giving relief and compensation to the victims, not providing protective and preventive measures etc.²

Much earlier, Ambedkar viewed caste discrimination as structural and built into the ideology. Thus, caste has been seen as a normal behaviour which has come quite naturally to high castes in their day-to-day practice towards people of other castes, a group consciousness of anti-social, contemptuous attitudes. Ambedkar observed:

...an antisocial sprit is found wherever one group has 'interest of its own' which shut it out from full interaction with other group, so that its prevailing purpose is protection of what it has got. This anti-social sprit, this spirit of protecting its own interests is as much a marked feature of different castes in their isolation from one another. The anti- social sprit is the inherent feature of the caste system -which involve discordant prejudice, conflicting sources of urges and antagonistic material interest.³

Despite law and constitutional provision, caste ideology remains alive in the habits, norms, and customs. The past is made to live in the present.

Caste and law in the diaspora

The problem of caste discrimination has acquired a global dimension. Ambedkar had observed that if Indians emigrate to the other countries, they will also carry with them their social organisation, namely the caste system. The problem of caste has emerged first in visible manner in the UK and later in America. Malaysia, among other countries, has reported the problem of caste discrimination.

² The Sixth Report of the Standing Committee on Social Justice and Empowerment: to consider Amendment to the Act Lok Sabha Secretariat 2014/14/ Government of India.

³ Hindu Social Order: Its Essential Features. In Writing and Speeches of Dr Babasaheb Ambedkar, Volume 3. Department of Education, Government of Maharashtra. 1987.

Increasingly, universities in the USA, led by Brandeis, are including caste in their non-discrimination policies. And caste discrimination has entered legislative debates in Seattle, Washington and the State of California. Efforts have been made to incorporate caste into the UN framework on work and descent-based discrimination.

Emerging Issues

Questions abound about the effectiveness of laws as an instrument for the annihilation of caste discrimination. Why does caste discrimination persist in significant magnitude despite laws against it? Why laws, as strong as they are, have only succeeded in limited ways to overcome discrimination and violence depriving ex-untouchables equal citizenship rights? Do the laws against caste discrimination suffer from limitation and therefore in need of reforms? Or is a discriminatory working and attitude of judicial administration the cause of high acquittal and low convictions? Are these problems so deeply rooted in a living ideology and culture of caste, that discrimination will persist and continue to constrain the fullest potential for human achievement and for living lives of dignity.

These are some of the questions which we hope to be addressed in the 6th International Conference on Law, Caste, and the Pursuit of Justice.