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Caste Discrimination in Employment and Enhancing Protections Available under the Equality Act

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Abstract

The UK government has the evidence of minorities of South Asian origin who suffer from victimisation in employment based on caste. The intra racial prejudices within the Asian community have been exposed in recent years by the 'outcastes' or the 'untouchables' (Dalits), who have suffered employment discrimination because their rights have been abused. The evidence that caste hatred is based on socio economic variables in employment can be found in the cases that have come before the courts and there have been findings that there has been victimisation against those who belong to the lowest castes. There is a need to evaluate the provisions of the Equality Act 2010 and the power available under section 69 of the Enterprise Regulatory and Reform Act 2013 to raise caste as a basis for discrimination in the courts. The obstacles in the enforcement of the Equality Act are in the positive duty which is difficult to implement for the employer in recruiting staff and causes difficulties of interpretation. This paper argues that the scope of legislation should be extended to take into consideration ICERD definition of racial discrimination and a wider ambit of protection should be available in employment contracts in which caste is included to provide a remedy when discrimination is in industry.

Keywords: Caste prejudice; Racial Discrimination; Equality Act; Positive Duty.

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1. Introduction

The appearance of caste-based discrimination in the communities of the Indian subcontinent has surfaced in the UK's labour market where people of lower caste have been employed in an occupation. There is an insidious form of discriminatory behaviour that victimises the employees through denying labour rights and by expressing direct and indirect discrimination on the work premises. Its likely manifestation is in employment contracts where the employer is born into a higher caste of the Hindu religion and the employee from the lowest caste. It is necessary to evaluate if the Equality Act 2010 has the framework to redress this problem, and if not, the amendments that may be possible by legislation that conforms to the international definition of racial discrimination.

The Hindu religion is stratified by a caste system the highest rung of which is occupied by the Brahmins and at lowest tier are the Dalits or the "untouchables" who are deemed to be outside the hierarchy of the faith.¹ They are not accorded the same rights extended to other castes in the religious pyramid.² In the UK the discrimination against the lower castes has been exposed by litigation in the courts and this has brought the issue in the spotlight and the cases in the labour discrimination have invoked the Equality Act.³

¹ The substantive and underlying principle of the caste system is Varna Dharma or in essence the division of labour. Marc Galanter argues that "the abolition of slavery at the middle of 19th century extended discriminatory rights to many untouchables" including the untouchables who had access to the courts at least "formally". The legal system was not organised to deal with "graded inequality" the overall British approach towards caste was a "policy of interference". This was effected by the courts by the granting "injunctions to restrain member of particular castes from entering temples even ones that were publicly supported and dedicated to the entire Hindu community". There were damages awarded for "purificatory ceremonies necessitated by the pollution caused by the presence of the lower castes; such pollution was actionable as a trespass on the person of the higher caste worshippers". Marc Galanter, *Untouchability and the Law*, *Economic and Political Weekly*, Vol 4, No 12, 1969, pp 131-133.

² Dr B.R. Ambedkar, one of the framers of the Indian Constitution who was from the Dalit background defined caste as [a] "an enclosed class and endogamy is the only characteristic of caste" (2002) 'Castes in India: Their Mechanism, Genesis and Development', in V. Rodrigues (ed.), *The Essential Writings of B.R. Ambedkar*, New Delhi: Oxford University Press. (1916) 241-62.

³ The Equality Act 2010 section 9(5) states that 'A Minister of the Crown:

(a) must by order amend this section so as to provide for caste to be an aspect of race;
(b) may by order amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.

The Equality Act, Section 9, defines caste as a

hereditary, endogamous (marrying within group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed "untouchable") are known as Dalit.⁴

The Equality Act sets down nine protected characteristics and only race or religious belief contend as possible legal basis for caste discrimination.⁵ This Act does have a provision for a minister who "must by order amend this section so as to provide for caste to be an aspect of race" under the legislation.⁶ The protection against discrimination based on caste in English law has to satisfy a very narrow criteria and the Enterprise and Regulatory Reform Act 2013 section 69 has defined this legislative protection in employment law against caste discrimination by allowing the litigant to raise caste within an existing head or characteristic.

There is an international dimension to the issue of caste discrimination that makes the issue of global impact. The International Convention against Racial Discrimination (CERD) 1966, Article 1 has formulated the legal obligations of states to eliminate caste discrimination and defines

the term 'racial discrimination' that shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing

⁴ The Equality Act 2010: caste discrimination briefing Paper Number 06862, 31 December 2014 www.parliament.uk/briefing-papers/SN06862.pdf.

⁵ The Enterprise and Regulatory Reform Act 2013 converts the existing power in Clause 9(5)(a) of the Equality Act into "a duty to include caste as an aspect of race for the purposes of the Equality Act". Section 97 also provided that a Minister may carry out a review of the effect of the section 9(5) EA 2010 (and orders made under it) and whether it remains appropriate. If a review is carried out, it must be published. The review must not be carried out before the end of a period of five years, beginning with the day the ERRA was passed if a Minister considers it appropriate in the light of the outcome of the review, he may by order repeal or otherwise amend the provision on caste. Any such order must be made by statutory instrument and would be subject to the affirmative resolution procedure. HL Deb 24 April 2013 c1476.

⁶ Section 9 of the Equality Act 2010 sets out the definition of Race to include: (a) colour; (b) nationality; (c) ethnic or national origins. www.legislation.gov.uk/ukpga/2010/15/section/9.

the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁷

The argument of this paper is that caste discrimination should be codified into law in English law and be deemed on the same level as racial discrimination that can lead to claims in unfair dismissal. It defines the obstacles in the Equality Act that arise in establishing a positive duty on employers to enact in practice and its application in industrial relations if caste discrimination was codified into law. There is reference to the current legal framework and how the victimisation by caste in employment could fill the void if it were made a protected characteristic in law. The overarching aim of the thesis is that the caste should be viewed as intersectional discrimination in employment law and that it should be included as falling within racial discrimination. This will serve to litigate on grounds of discrimination even when it is committed within the intra racial discrimination by the South Asian employers against persons of similar origins.

1. The International Definition of Race Discrimination

The discrimination in employment based on caste has to draw from the same principles under the race legislation which is now covered by the Equality Act, so that the liability can be fixed under the heads of antidiscrimination law. There have been cases that have invoked the public sector duty that conforms to equality and these have been dealt with under the jurisdiction of the Employment Appeal Tribunals (EAT). The EAT have considered the dismissal of the employees allegedly based on caste discrimination where the respondent employer has been accused of breaching the protected characteristic of racial discrimination.

In *Naveed v Aslam*⁸ the claimant was a South Asian chef who was of an Arian descent, who worked in a restaurant and upon dismissal from his employment he raised the issue that it was because of his caste that his employment was terminated. His claim was that he had been discriminated under the section 9 (1) the Equality Act based on the

⁷ International Convention on the Elimination of All Forms of Racial Discrimination. Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19. ohchr.org/en/professionalinterest/pages/cerd.aspx.

⁸ (2012) EAT 1603968/2011.

unlawful discrimination that consisted of deduction from his wages during the course of his employment. This was accompanied by the suggestion that the proprietors of the business were also members of the same caste but had elevated themselves in the caste hierarchy and victimised him in the course of employment.

The EAT ruled that the respondents were not liable for the 'caste' based discrimination because

Firstly, no order had been made extending the section 9 of the Act to provide for caste to be a concept of race and, secondly, it was quite impossible for the claimant's caste to fall under the existing definition of ethnic origins because of the Claimants clear acceptance that movement with the Arian caste is possible and that it was the Claimant's status within the same caste as the Arian brothers which he claims led to his treatment.⁹

This implied that the claimant was being treated differently because of his social class not his caste. The judge did not consider that the Claimant and the Respondents may have been of different sub- castes or jatis, and, therefore, of different status within the broader group or caste to which they were both affiliated. However, without the Equality Act and the discretionary 'caste power' which is present in s. 9(5)(a), and its amendment by ERRA 2013 s 97 to become a duty, caste might not have been pleaded as a ground of discrimination in this case. The principle is that the Equality Act has facilitated the litigation that has reached the jurisdiction of the Employment Appeal Tribunals when the issue has been raised of the employer treating the employee less favourably because of their caste.¹⁰

The judgments have impacted on the issue of caste discrimination that includes racial discrimination by reference to the Equality Act Section 9.

⁹ Para 27.

¹⁰ In *Begraj v Heer Manak Solicitors* (2014) ICR 1020 16/12/14 the claimant Vijay, a practice manager, was Dalit who was dismissed in March 2010 and his wife Amardeep, a solicitor, was Jat a higher caste who resigned in January 2011. The couple claimed wrongful dismissal on grounds of caste discrimination and race and religious discrimination. Amardeep also claimed sex discrimination. They claimed that the firm's partners, who were of the same higher Jat caste as Amardeep, objected to their relationship and discouraged them from the inter caste marriage and their claim was that they were treated less favourably compared to both junior or equivalently qualified Jat staff who were not married or did not have a lower-caste partner. This case did not reach a conclusion because the tribunal recused itself on grounds of ostensible bias. Thus, what was deemed a "complex and novel matter" was not heard by the court.

In *Chandok and another v Tirkey*,¹¹ the claimant Ms Tirkey was employed as a domestic servant after being hired in India before the family's transfer to the UK. Her employers were aware that she was an Adivasi Christian, who historically have been outside the Hindu caste system but treated as being of the lowest caste similar in status to the Dalits. After her employment commenced she was forced to live separately in servants quarters and compelled to work in breach of the Working Time Regulations, with only a single day of annual leave in her entire employment of four and a half years.

She claimed compensation to the amount of £175,000 in unpaid wages for the infringement of Section 9 (1) (c) of the EA 2010. Justice Langstaff ruled that the definition of race is not exclusive, but it "includes" ethnic origin and it could have been argued that the "caste" insofar as it was an aspect of "ethnic" origin was already included. The lack of a single definition of caste 'does not mean that a situation to which that label can, in one of its manifestations, be attached cannot and does not fall within the scope of "ethnic origins"'.¹²

His honour reflected on the international dimension of prejudice based on ethnic origins to rule that it was illegal under the protected characteristic of racial discrimination and stated: "Seven Treaties, Conventions and UN reports; nineteen authorities; and eleven other publications in an initial bundle of authorities, together with a further eleven authorities, two publications and three Hansard extracts in a supplementary bundle of authorities".¹³

However, Justice Langstaff ruled that his judgment was fact-specific and not all caste-based claims would come within the definition of 'ethnic origins'.¹⁴ His honour found that "ethnic origins" was a wide and flexible phrase covering questions of descent his judgment was based on "this particular case, in its particular circumstances", and his role was not to "establish more general propositions".¹⁵ Ms Tirkey succeeded in her claims for unfair dismissal, racial harassment and indirect religious discrimination and was awarded a substantial sum at a subsequent remedy hearing. The decision did not indicate, still less establish, that there is an existing legal remedy of caste-based discrimination but it has brought into

¹¹ (2014) EAT/0190/14/KN.

¹² Para 45.

¹³ Para 55.

¹⁴ Para 55.

¹⁵ Para 53-55.

the ambit of Section 9 (1) (c) in certain circumstances for caste to be part of ethnic or national origins.

The judge cited the previous case law in coming to his decision and in particular two cases on indirect racial discrimination that gave "a wide and flexible scope to the meaning of 'ethnic origins'." ¹⁶ In *Mandla v Dowell Lee* ¹⁷ there was an appeal to the House of Lords by a pupil belonging to the Sikh community who had asserted his right to wear a turban to school as part of his racial identity. The decision of their Lordships was based on the interpretation of the Race Relations Act 1976 section 1(1) (b) (i) and (ii) the issue was if the headmaster of a school in refusing to admit the boy unless he removed his turban in order to minimise religious distinctions was guilty of unlawful discrimination. The defence was that under section 3 the boy was a member of a 'racial group . . . who can comply' with the rule did not need to show the rule to be 'justifiable irrespective of [the boy's] ethnic . . . origins'.

Lord Fraser held that "a distinct community had to have a long shared history, of which the group was conscious as distinguishing it from other groups, and the memory of which it kept alive, and second it had to have a cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance."¹⁸

The Sikhs were deemed to be a racial group defined by reference to 'ethnic origins' even though they were not racially distinguishable from other people living in the Punjab. It was not material to the case that the racial and religious minority came under definition of race because it was the overriding characteristic of the ethnic group. This was reviewed again in a later case which also concerned victimisation of a distinct category that included race and religion.

In "*Jewish Free School Case*" - *R(E) v Governing Body of JFS and Another* ¹⁹ a Jewish school boy had been excluded from a school exclusively for the Jewish school children because their ancestral line was not all Jewish on the side of their maternal parentage. The case reached the House of Lords where it was ruled that there had been discrimination "on racial grounds" (defined by section 3 of the Act that included the "ethnic origins"). Lord Phillips held that "the critical question is whether the requirements of Jewish identity as defined by the 1976 Act met the characteristics that

¹⁶ Para 42.

¹⁷ [1983] 2AC 548.

¹⁸ p 1066.

¹⁹ [2010] 2 AC 728, SC.

define those who have them by reference to " colour, race, nationality, or ethnic or national origins?"²⁰

Lord Hope held that the crucial question was not whether the person was a member of a separate ethnic group from those advantaged by the school's admissions policy, but whether he had been treated differently on grounds of ethnicity. His Lordship recognised the right of the Office of the Chief Rabbi (OCR) to define Jewish identity in the way it does as a matter of Jewish religious law but "to say [its] ground was a racial one is to confuse the effect of the treatment with the ground itself".²¹

Judge Lonstaff considered these cases in his ruling leading to the "same principle" of ethnic origins and racial identity as the circumstances in *Tirkey*.²² This ruling brings UK law more proximate to the ICERD's definition of racial discrimination²³ and affirms that it can define a national group such as the lower caste hierarchy.²⁴ This form of victimisation can be brought into the framework of public law by extending the forms of liability that are part of victimisation with aggravated characteristics. The desired step would be to augment the present legislation by addressing the caste discrimination as part of racial prejudice expressly within the provisions of the Equality Act.

2. Equality Act and the Employers' Obligations

The effectiveness of the current legislation to protect against caste discrimination in employment has to be set against provisions of the Equality Act that places a duty on the employer to recruit employees with regard to any protected characteristics. Section 149(1) of the EA 2010 and it requires public bodies, when exercising their functions, to "have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c)

²⁰ Para 27.

²¹ Para 201.

²² Para 52.

²³ ICERD, *Supra* 8.

²⁴ The term 'national origin' was defined in *Ealing Borough Council v Race Relations Board* (1972) 1 All ER 105 as "national only in the sense of race not nationality or citizenship". Lord Simon at 352.

foster good relations between persons who share a relevant protected characteristic and persons who do not share it".²⁵

This Public Sector Equality Duty (PSED) is augmented by powers of the Secretary of State in England, and the Welsh Ministers in Wales, who can impose different specific duties on relevant authorities (those specified in Parts 1 and 2 of Schedule 19 to the Equality Act 2010) by way of separate regulations.²⁶ The Public authorities must prepare and publish (in a manner that is reasonably accessible to the public) one or more specific and measurable objectives they think they should achieve in pursuance of one or more aims of the general equality duty.²⁷

The general duty applies to all public authorities listed in Schedule 19 to the Equality Act 2010,²⁸ and to other organisations when they are carrying out public functions. There are limited exceptions relating to certain functions, such as immigration (in relation to race, religion, age and the advancement of equality) and judicial functions.²⁹ The PSED applies to age, disability, race (this includes colour, nationality, and ethnic or national origins), religion or belief, sexual orientation, pregnancy and maternity, gender and gender reassignment.³⁰

The UK Government has carried out a Consultation and input from a study by the Economic and Social Research Council (ESRC)/ University of Wolverhampton has evaluated the possibility of extending the public sector duty to prevent caste discrimination. They have focussed on the provisions in the Equality Act that present hurdles when applied to caste discrimination.³¹ The joint research project in 2013-15 considered caste and they identified two provisions in particular which might be relevant in excluding protection to caste discrimination. These are Schedule 3 to the Equality Act 2010 as amended by the Equality Act 2010 (Age Exceptions)

²⁵ Public Sector Equality Duty, Equality and Human Rights Commission. <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>.

²⁶ s.153(1) and (2) Equality Act 2010.

²⁷ Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 SI 2017/253; before 31 March 2017, Equality Act 2010 (Specific Duties) Regulations 2011 SI 2011/2260.

²⁸ As amended by Equality Act 2010 (Public Authorities and Consequential and Supplementary Amendments) Order 2011 SI 2011/1060, and by Equality Act 2010 (Specification of Relevant Welsh Order 2011 SI 2011/1063 (W.154).

²⁹ Sch. 18 to Equality Act 2010.

³⁰ Sec 149(7).

³¹ Caste in Great Britain and Equality Act: A Public Consultation: Government Equalities Office, March 2017, <https://www.gov.uk/government/consultations/caste-in-great-britain-and-equality-law-a-public-consultation>.

Order 2010 and the Schedule 5 of the Equality Act 2010 which relates to the public sector equality duty and positive action as problematic if applied to caste.³²

The findings state that a Ministerial Order under Section 9 (1) of EPRA which implements the caste duty can include exceptions for caste, or make particular provisions of the Equality Act apply in relation to caste in some but not in other circumstances.³³ The advantage of the public sector equality duty specifically extended to caste, rather than ethnic origins as at present would be to that public bodies would need specifically to consider the need to eliminate caste discrimination.³⁴

However, one particular risk of caste legislation would be further entrenching caste-identity would arise if personal, caste-related, information was requested from applicants. While the Government is emphatic that there is no reason why employees or service recipients should be required or encouraged to disclose their caste it found in the Review of the Duty many examples of public authorities seeking and using diversity data in ways which seemed excessive and in some cases inappropriate. The exclusion of caste from the scope of the PSE D would discourage authorities from seeking information to enable them to take caste into account in making decisions and would guard against public authorities requesting this information for that purpose.³⁵

The findings noted that in deference to caste there appears to be consensus that the retention of data on caste would not be of benefit.³⁶

The PSED could be disapplied to caste if the courts decide in accordance with EA's Explanatory Notes definition and it would exclude it as a aspect of ethnic origins. Therefore, caste discrimination not related to descent could be covered by the law in enforcing the PSED. The report also deals with specific provisions about taking "positive action" for instance where someone such as an employer "reasonably thinks" that people with a particular characteristic ie, disability have a disadvantage because they are disproportionately under-represented in a job or a training opportunity or other activity.³⁷

In such circumstances, the employer may be able to take positive action to address the under-representation, by assisting people who share that

³² Para 3.21.

³³ Page 15.

³⁴ Ibid.

³⁵ Page 16.

³⁶ Ibid p 16-17.

³⁷ Ibid p 17.

characteristic. The race protection is one of the characteristics covered by positive action, and, the inclusion of caste as an aspect of race would mean that caste would also be covered. However, this might be relevant where an employer with a substantial workforce of South Asian ethnic origin knew or suspected that employees of a particular caste background were being relegated for management development opportunities.³⁸ The ability to take positive action might create similar drawbacks to those stated in the PSED because for an employer to “reasonably think” that there was a problem of the kind mentioned, they would probably need evidence about what caste his or her employees were. This will not if routinely enquired be either helpful or proportionate.³⁹

The UK Government’s response to the Consultation Paper from those within industrial relations and perceived discrimination in employment opportunity.⁴⁰ Their argument reflects on the nature of social status, and the possibility of social mobility, within the caste system. The issue they raise is that the systematic disadvantage suffered by certain castes may not be related to ethnicity but to perceived social status. The Employment Lawyers Association have provided their feedback to the Government Consultation by making the following observation:

Social function as a distinct feature of caste would not easily fall within the definition of ethnic origin whether this is based on occupation or wider economic position – if a respondent were to argue that discrimination is based on someone’s occupation or socio-economic standing (more akin to class than caste) this may evade the scope of ‘ethnic’ origins...⁴¹

This is based on the assumption that there is a risk in considering whether or not to take positive action or whether the public sector equality duty applies, an employer may consider that the best way to establish the necessary data would be to establish an applicant's caste, but the Government does not support people being asked such potentially intrusive and socially divisive questions.⁴²

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Caste in Great Britain and equality law: A Public Consultation analysis report for the Government Equalities Office, July 2018, Nigel Lloyd, NHL Partnership Ltd [https://www.gov.uk/government/consultations/caste-in-great-britain-and-equality-law - a-public-consultation](https://www.gov.uk/government/consultations/caste-in-great-britain-and-equality-law-a-public-consultation).

⁴¹ Caste in Great Britain and equality law, supra 41 Para 2.12.

⁴² Caste in Great Britain and equality law.

The law at present is that the legislation does not set out the steps a public authority should take to meet the requirements of the general equality duty, but states that complying with the duty might mean treating some people more favourably than others, where doing so is allowed by the Equality Act. The principles from case law developed under the previous equality duties will continue to apply, and guidance has been issued.⁴³ In *R (on the application of (1) Rajput (2) Shamji) v Waltham Forest LBC*; *R (on the application of Tiller) v East Sussex CC* the Court of Appeal approved the guidance set out in *R (on the application of Brown) v Secretary of State for Work and Pensions* [2008]⁴⁴ that in complying with the PSED there are six principles, known as the “Brown Principles” as follows:

decision-makers must be made aware of their duty to have due regard to the identified needs; the duty must be fulfilled both before and during consideration of a particular policy, and involves a “conscious approach and state of mind”;⁴⁵ it is not a question of ticking boxes, the duty must be approached in substance, with rigour and with an open mind, and a failure to refer expressly to the duty whilst exercising a public function will not be determinative of whether due regard has been had; the duty is non-delegable; the duty is continuing; it is good practice for an authority to keep a record showing that it has considered the identified needs.⁴⁶

The approach of the UK government has been defined by the Public Consultation where it reached the conclusion that “the best way to provide the necessary protection against unlawful discrimination because of caste is by relying on emerging case-law as developed by courts and tribunals”.⁴⁷ This it feels is a more “proportionate approach given the extremely low numbers of cases involved” and because of the “controversial nature of introducing ‘caste’, as a self-standing element, into British domestic law”.⁴⁸

⁴³ [2011] EWCA Civ 1577.

⁴⁴ [2008] EWHC 3158 (Admin).

⁴⁵ para 91.

⁴⁶ paras 89-96.

⁴⁷ This was implied in a debate in the House of Lords when Baroness Williams of Trafford, the Parliamentary Under-Secretary of State for Communities and Local Government stated that the UK Government was ‘currently unaware of any cases of race discrimination with an alleged caste element coming before the courts since the Langstaff ruling (re: Chandhok & Anor v Turkey) was delivered’. (Caste based discrimination, 11 July 2016 Vol 774, <https://hansard.parliament.uk/Lords/2016-07-11/debates/3EEC4BE4-C98F-4155-82E2-E8485A752C94/Caste-BasedDiscrimination>).

⁴⁸ Conclusions, Public Consultations.

3. Racial Discrimination and Equal Protection

The current state of English law in dealing with caste discrimination is premised on racial discrimination and the lack of a legal umbrella does not reflect the support for legislation to ban caste hatred in the House of Lords.⁴⁹ The government has minimised the impact of caste hatred or the urgent need for enacting legislation by stating that there is insufficient litigation on the matter. However, the inability of the PSED under the Equality Act to provide the basis for caste to be challenged by those who consider being victimised needs further consideration under the international standards and treaties.

The English legal framework has to take note of the stipulations of the International Convention for the Elimination of Racial Discrimination (ICERD) that has defined caste prejudice or hatred based on birth right or "descent" within the broad definition of 'racial discrimination'.⁵⁰ While there is no specific discrimination based on caste the ICERD Committee has recommended the inclusion of a prohibition against caste discrimination and analogous systems of inherited status in domestic legislation.⁵¹ This requires an understanding of the theory of caste hatred as a public order offence against the Dalit population in the UK. In its General Recommendation XXIX the ICERD Committee states that discrimination "against members of communities based on forms of social stratification such as caste and analogous systems which nullify or impair their equal enjoyment of human rights" is void. This extends the definition of race victimisation in the communities to be recognised, "including inability to alter inherited status, socially enforced restrictions on outside marriage, and dehumanising discourses".⁵²

⁴⁹ Caste based discrimination. Hansard, Vol 774: debated on Monday 11 July 2016. <https://hansard.parliament.uk/lords/2016-07-11/debates/3EEC4BE4-C98F-4155-82E2-E8485A752C94/Caste-BasedDiscrimination>

⁵⁰ Article 1 "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx.

⁵¹ Concluding observations (CERD/C/63/CO/11 para. 25) and its General Recommendation 29 (2002) on descent.

⁵² At the Sixty-first session (2002) General recommendation XXIX on article 1, paragraph 1, of the Convention (Descent), The Committee on the Elimination of Racial Discrimination stated "Recalling the terms of the Universal Declaration of Human Rights according to which all human beings are born free and equal in dignity and rights

There has been increasing tendency in the UN frameworks to issue various documents that declare discrimination based on descent illegal. The UN General Assembly has identified caste discrimination as continuing to affect diaspora communities ‘whose original cultures and traditions include aspects of inherited social exclusion’.⁵³ This relates to intermarriage between castes, commensality (i.e. the act or practice of eating/drinking together), access to places of worship, employment conditions, discrimination in access to political participation, and the role of the media.⁵⁴

The UN Special Rapporteur on Contemporary forms of Racism and the UN Sub Commission on the Promotion and Protection of Human Rights have taken note of the existence of discrimination on the basis of caste and termed it as a issue of fundamental rights in the countries where there are members of South Asian communities.⁵⁵ In his annual report to the Human Rights Council in June 2011 the UN Special Rapporteur on Contemporary forms of Racism recommended the UK government enact specific legislation to outlaw direct and indirect discrimination against affected groups in accordance with the general measures contained in ICERD General Recommendation XXIX.⁵⁶

There has been incorporation in other Commonwealth countries of the ICERD framework for outlawing caste discrimination. In Australia the Racial Discrimination Act (RDA) 1975 it has been adopted into domestic legislation. Article 9(1) states:

It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of

and are entitled to the rights and freedoms therein without distinction of any kind, including race, colour, sex, language, religion, social origin, birth or other status ”. <http://www.ohcr.org/EN/HRBodies/CERD/Pages/CERDindex.aspx>.

⁵³ UN Doc.E/CN.4/Sub.2/2004/31para35.

⁵⁴ E/CN.4/Sub.2/2004/31.

⁵⁵ The Commission on Human Rights, taking note of resolution 2004/17 of 12 August 2004 of the Sub-Commission on the Promotion and Protection of Human Rights, decided to take this step, on the basis of the three working papers submitted to the Sub-Commission on this topic (E/CN.4/Sub.2/2001/16, E/CN.4/Sub.2/2003/24 and E/CN.4/Sub.2/2004/31), the comments made during the sessions of the Sub-Commission and national human rights institutions, relevant organs and agencies of the United Nations system and NGOs on the basis of information circulated by the Special Rapporteurs.

⁵⁶ A/HRC/8/25/Add.1.

any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.⁵⁷

Section 10 of the RDA provides the rights to equality granted under ICERD Article 5

which extends by subsection (i) to the Commonwealth or of a State or Territory, for persons of a particular race, colour or national or ethnic origin who do not enjoy a right that is enjoyed by persons of another race, colour or national or ethnic origin, or is "more limited extent than persons of another race, colour or national or ethnic origin, then, notwithstanding anything in that law, persons of the first-mentioned race, colour or national or ethnic origin shall, by force of this section, enjoy that right to the same extent as persons of that other race, colour or national or ethnic origin."⁵⁸

The Canadian Constitution Act 1982 extends its protection to caste discrimination and includes it in Part 1 of the so-called *Canadian Charter of Rights and Freedoms* which "guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".⁵⁹ These are included in section 15 which contains a non-exhaustive list under "Equality Rights" that in subsection (i) corresponds to 'Equality before and under law and equal protection and benefit of law'.⁶⁰

The section defines "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". Section 15 (2) includes a provision in subsection (1) for 'Affirmative action programs' which "does not preclude any law,

⁵⁷ RDA 1975 (as amended) 2013. <https://www.legislation.gov.au/details/C2014C00014>.

⁵⁸ The State of Queensland Anti-Discrimination Act 1991 defines race as including "colour and descent or ancestry [*italics added*], and ethnicity or ethnic origin, and nationality or national origin". <https://www.humanrights.gov.au/federal-discrimination-law-chapter-3-race-discrimination-ac>.

⁵⁹ Justice and Law, Government of Canada. <http://laws-lois.justice.gc.ca/eng/Const/page-15.html>.

⁶⁰ In contrast to the UK, section 15 of the Constitution Act 1982 also known as the Canadian Charter of Rights and Freedoms contains a non-exhaustive list of grounds; see G. Moon, 'From equal treatment to appropriate treatment: what lessons can Canadian equality law on dignity and on reasonable accommodation teach the United Kingdom?' 6 *European Human Rights Law Review* (2006) 695-721, 697.

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".

The province of Ontario, which comprises the National Capital Region the legislature has introduced a Human Rights Code in 2015, Section 11, that expressly states that federal statutes and its own legislation forbids discrimination from "religion or creed based prejudice". It sets out a duty to "accommodate creed beliefs and practices" and "prohibits discrimination that results from requirements, qualifications or factors that may appear neutral but have an adverse effect on people identified". This is interpreted as "constructive" or "adverse effect" discrimination which is protected under the HR Code unless the requirement, qualification or factor is reasonable and *bona fide* in the circumstances, and cannot be accommodated short of undue hardship".⁶¹

There is a legal duty on employers, service providers, unions and housing providers to accommodate people's beliefs and practices not to cause undue hardship. This implies those adversely affected by a standard, rule or requirement of the organisation that is sincerely (honestly) held are protected in law. The "creed" protections are contingent on a person's belief to be "sincerely held" and it does not need for them to show that "their belief is an essential or obligatory element of their creed, or that it is recognised by others of the same creed (including religious officials)".⁶²

However, unlike Australia and Canada, the UK adopts a 'grounds-based' approach to discrimination law, meaning that legislation affords protection from discrimination on specified grounds only. In English law the unlawful discrimination is regulated under the Equality Act that sets out Section 9 protected characteristics under its Schedule. This leads to the demands for the existing categories to be interpreted, so as to include forms of discrimination which are not expressly covered such as caste based discrimination in employment law.

⁶¹ OHRC, 17/9/15 <http://www.ohre.on.ca/en/policy-preventing-discrimination-based-creed>.

⁶² In *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 the principle was established that it need only establish that an asserted creed belief is "in good faith, neither fictitious nor capricious, and that it is not an artifice" and "organisations may also sometimes need to evaluate objective evidence to decide whether a belief is in fact connected to a creed, or that a requirement, rule or practice actually negatively affects a person based on their creed". at para. 52.

4. Intersectional Discrimination and Legal Protection

The non-discrimination law in the UK, presently, suffers from the difficulties where litigants often raise several forms of linear discrimination.⁶³ The finding of an appropriate comparator has posed a major difficulty in cases before the courts in evaluating the direct or indirect discrimination.⁶⁴ This can be brought into the framework of the law by extending the remit of intersectional discrimination by extending the adjudication net into several forms of liability that can be a set of accumulated characteristics.

Bell argues that each protected characteristic needs to be defined separately. This is because the concept of 'ethnic group' suggests a uniformity of experience with all members assumed to share similar characteristics, and yet, "an individual's ethnic origins will be combined with other personal characteristics such as gender, age, physical/mental abilities and sexual orientation".⁶⁵ An example is that a black person can face both racial and gender discrimination which would come under the umbrella term of "multiple discrimination". This can be compartmentalised into several strands to "the extent that different forms of discrimination operate concurrently then they may be described as additive discrimination". These can reflect in the barriers to promotion that cover two different characteristics such as gender and race but that there is a "more complex" concept of intersectional discrimination.⁶⁶

⁶³ The United States offers a multi ground discrimination claims in practice are often separated into different components by the courts. Rosenberg, L, *The limits of Employment Discrimination Law in the US and European Community*. Copenhagen, DJOB Publishing, (1999) p 377, See also Moon, G 'Multiple Discrimination- Problems compounded or solutions found?' London, Justice, (2007) page 6.

⁶⁴ Unlike the European Court of Human Rights (ECtHR) the EU operates on the basis of a 'closed list of discrimination grounds' provided for in the treaties. For instance, TFEU, art 19 enables the EU to 'take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Consolidated version of the Treaty on the Functioning of the European Union 2012, OJC 326/56.

⁶⁵ Martin Bell, *Racism and Equality in the EU*, Oxford University Press, (2008) Page 23

⁶⁶ S Hannett explains that "multiple discrimination" can occur in at least two ways. This is where the grounds of discrimination are additive (or double) in nature, and/or where the discrimination is based on an indivisible combination of two or more social characteristics. This denotes situations where an individual suffers cumulatively from (different) discriminatory practices to which the two or more different groups he or she belongs to are susceptible, with statistics being key in determining such discrimination".

This presupposes that there is a combination of different forms of inequality that results as "a distinct experience which can be attributed to a number of factors as inter sectionality which may rise to specific stereotypes such as the assumption that women wearing a headscarf lack self-confidence or that young Muslim men face a security risk".⁶⁷ This form of intersectional discrimination presents a growing body of evidence which indicates heightened levels of disadvantages for those vulnerable to multiple forms of victimisation.⁶⁸ The contention is based on legislating on intersectionality by adopting a policy-based approach that extends the racist discrimination to caste in the legal framework.

Bell contends that "there are some grounds which are very difficult to disentangle from 'race' and ethnicity and differences in treatment due to nationality, religion and language are often interlinked with discrimination on grounds of ethnic origins".⁶⁹ In applying ground-based discrimination in "many instances direct discrimination on these grounds will constitute indirect discrimination on grounds of ethnic origins". The proximity between issues "such as nationality, religion, language and ethnicity there is a strong argument in favour of a comprehensive response in law and policy". The "EU Directives applying to these forms of discrimination provide a first step in enabling multiple discrimination to be addressed".⁷⁰ The intersectional discrimination is not possible to prevent by means of a closed list but the development of legal principles may bring the current head of racial discrimination to include caste in its umbrella. This approach gives rise to the issue, firstly, which grounds are regulated and how they are to be defined and extended. Although there is no generic reason why legal protection from discrimination is organised on the basis of categories, it is logical that such a model will give rise to demands for the list to be expanded by legislation, or for existing categories to be interpreted broadly as forms of discrimination not accepted by current laws. Solanke has observed that categorisation "is 'not preordained' but 'may have been inevitable given the nature of political campaigns for discrimination law". This means that "in some cases the addition of

Equality at the Intersection: the legislative and judicial failure to tackle multiple discrimination (2003, 23 Oxford Journal of Legal Studies, p,83.

⁶⁷ European Commission, Tackling Multiple denomination -practices, policies and laws. Luxembourg: OOPEC, 2007, Page 17.

⁶⁸ This argument is supported by S Friedman in ' Double trouble: Cumulative discrimination and EU law (2005) 2 European Anti Discrimination Law Review, 13.

⁶⁹ Bell, Ibid p 18.

⁷⁰ Ibid.

categories has been in response to the obligation to implement EU anti-discrimination law" as in the EA. The concept of caste as a statutory protected characteristic is self declaratory as a statutory division of an existing characteristic, the legal protection against caste discrimination is predicated on proving in the courts that caste is present in the existing characteristic within race or religion or belief system.⁷¹

The retention of a closed list means that direct discrimination could not be challenged in the courts by means of a racial category including caste. It could be prevented by a justification defence based on a Public Sector duty or the Positive Action because of the lack of protection in the current legislation. Moon has argued that lack of intersectional protection legislation " would have seriously damaging consequences in the continental European countries from East and West which are reluctant to acknowledge the existence of non discrimination law in the market place in its entirety".⁷² Therefore, the legislative innovation that is required which states that unlawful discrimination includes discrimination based on an intersection of grounds that brings caste within race discrimination.⁷³

The grounds for adopting intersectional discrimination in UK law would lead to the legal interpretation from a wider selection than that currently available in non -discrimination. In dealing with this perspective such an initiative would entail an acknowledgement that directives not providing multiple or intersectional discrimination do not apply in such cases. This would have negative effects on the development of any adequate response to intersectional discrimination by invoking a "teleological interpretation".⁷⁴ The desired step would be to legislate by addressing

⁷¹ I. Solanke, 'Putting Race and Gender Together: A New Approach to Intersectionality', 72(5) *Modern Law Review* (2009) 723-749, 723.

⁷² G Moon, *Multiple Discrimination – Problems Compounded or Solved ...* (2006) <http://www.justice.org.uk/images/pdfs/multiplediscrimination.pdf> at p 163.

⁷³ European Parliament Resolution 2013/2676 RSP (10 October 2013) on caste based discrimination refers to the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and General Recommendation XXIX of the Committee on the Elimination of Racial Discrimination in its preamble. Para 8 states " recognise caste as a distinct form of discrimination rooted in the social and/or religious context, which must be tackled together with other grounds of discrimination, i.e. ethnicity, race, descent, religion, gender and sexuality, in EU efforts to fight all forms of discrimination". <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20TA%20P7-TA-2013-0420%200%20DOC%20XML%20V0//EN>.

⁷⁴ European Union Non Discrimination law and Intersectionality: Investigating the Triangle of Racial, Gender and Disability Discrimination. Ashgate 2011 edited by Dr

disadvantages that would acknowledge the accumulative heads of discrimination including caste in employment relations. It will then become recognized as a category of non discrimination law within race that would also have the potential to develop the concept further in the interpretation of racial discrimination in employment. The prism of intersectional discrimination will enforce the positive duty to override occupational necessity by finding a comparator that has restricted the application of discrimination law in the courts of the UK.

5 Codifying Caste into Law

The Dalit based community organisation, Caste watch UK, has compiled evidence of discrimination such as “cases of elderly patients being refused care because 'upper caste' medical professionals will not touch them, or workers being side lined, or refused promotion, and school children being bullied for reasons of caste”. It has proposed a law against caste discrimination that could be used to penalise these incidents as hate crimes. The primary reason for this is that the protection arises in the private relationships but in the consequences are observed in the public domain such as in “breakdowns in relationships and marriages, for example, where transgressing caste boundaries lead to emotional and sometimes physical abuse”.⁷⁵

The implication is that the discretionary ‘caste power’ in England for the Minister which was included in the Equality Act s. 9(5)(a), and its amendment by ERRA 2013 s 97 became a duty that has enabled caste to be pleaded as a ground of discrimination.⁷⁶ This is an inference that it

Dagmar Schiek and Professor Anna Lawson. Intersectionality in EU law. A Critical Re appraisal. Ashgate (2011) p 259-275 at Page 266.

⁷⁵ Ibid, See also Capturing Caste in Law: The Legal Regulation of Caste and Caste-Based Discrimination Thesis submitted in accordance with the requirements of the University of Liverpool for the degree of Doctor in Philosophy by Annapurna Deborah Waughray April.

2013 https://livrepository.liverpool.ac.uk/12553/1/WaughrayAnn_Apr2013_12553.pdf

⁷⁶ Hepple, B, Equality : The new Legal Framework, (Oxford, Hart, 2011) p 12-26; Hepple notes the EA10 has three distinctive features. First, it is comprehensive, creating a unitary conception of equality and a single enforcement body, the Equality and Human Rights Commission. Second, it ‘harmonises, clarifies and extends the concepts of discrimination (direct and in direct), harassment and victimisation and applies them across nine protected characteristics’, specifically, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Third, it transforms anti-discrimination protection into equality law although does not go as far as establishing a constitutional right to equality”. For more

should be made into a public order offence and that it has all the elements present such as intention and commission to be brought into the framework of criminal law and civil law. Dhanda, Warnapura, Keane argue that

in Britain, caste is positively a form of association and social capital among communities of South Asian origin, but negatively a form of social separation, distinction and ranking. In predominant usage in Britain, caste is used interchangeably for varna, jati, and biradari. The most typical usage, though, is of caste as jati.⁷⁷

Waughray, an advocate for outlawing caste victimisation proposes legislation to declare it as an offence in the UK law based on the Chindok case that she argues contributed significantly and acted as the catalyst for the surfacing of concealed of caste discrimination. It would be necessary to not repeal EA s. 9(5)(a) on the basis of this ruling. Instead, to augment the provision by means of subordinate legislation as framed by the Parliament in April 2013, to prescribe caste as an aspect of racial discrimination that offers a means of legal authority and establishes openly that discrimination on grounds of caste is not acceptable.⁷⁸

on this concept of a structured approach to the use of dignity as the basis for equality law see J. Jowell, 'Is Equality a Constitutional Principle?' (1994) 47 *Current Legal Problems*; J. Stanton-Ife, 'Should Equality Be a Constitutional Principle?' (2000) 11 *KCLJ* 133 opposing Jowell's argument; J. Jones, "Common Constitutional Traditions": Can the Meaning of Human Dignity under German Law Guide the European Court of Justice?' [2004] *PL* 167; E. Grant, 'Dignity and Equality' (2007) 7 *Human Rights Law Review* 299 46 This is a highly contested concept – see for example D. Beylvel, R. Brownsword, 'Human Dignity, Human Rights, and Human Genetics' (1998) 61 *MLR* 661; D. Feldman, 'Human Dignity as a Legal Value' [1999] *PL* 682 and [2000] *PL* 61; C. McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 *EJIL* 655 47; G. Moon, R. Allen, 'Dignity Discourse in Discrimination Law: A Better Route to Equality?' [2006] *EHRLR* 610.

⁷⁷ Meena Dhanda, Annapurna Waughray, David Keane, David Mosse, Roger Green, and , Stephen Whittle, *Caste in Britain: Socio-legal Review, Equality and Human Rights Commission Research Report 91* (2014).

⁷⁸ Annapurna Waughray, *Ensuring protection against caste discrimination in Britain Should the Equality Act 2010 be extended?*, *International Journal of Discrimination and the Law* July 11, 2016) Vol 16, Issue 2-3, 2016, p 177-196) In *Capturing Caste in Law: Caste Discrimination and the Equality Act 2010* Waughray states that "successive governments have argued that caste could already be covered by race as currently defined in the EA by virtue of the descent aspect of ethnic origins; but as has been argued elsewhere, 'in order to construe caste as part of race in domestic law following the JFS route, a three-fold interpretive leap had to be made; caste must be viewed as part of

The implication is that the discretionary 'caste power' for the Minister which was included in the Equality Act s. 9(5)(a), and its amendment by ERA 2013 s 97 became a duty that has enabled caste to be pleaded as a ground of discrimination.⁷⁹ This is an inference that it should be made into a public order offence and that it has all the elements present such as intention and commission to be brought into the framework of criminal law and civil law. Moreover, the courts have already established in *Mandla v Dowell Lee* and the Jewish Free Schools Case that a group can be defined as a racial category in indirect discrimination if its ethnicity has a special characteristic and this subsumes both religious and racial categories. The victimisation based on caste is likely to arise where the differentiation is in work relationships and in employment relations where the Dalit community will be discriminated against. This is because they have traditionally occupied occupations in the lower rungs of the hierarchy that gave them the title of 'untouchables'.⁸⁰

descent, itself part of ethnic origins, which in turn is a sub-set of race". Human Rights Law Review Vol. 14(2) (2014) 359-379.

⁷⁹ Hepple, B, Equality: The new Legal Framework, (Oxford, Hart, 2011) p 12-26; Hepple notes the EA10 has three distinctive features. First, it is comprehensive, creating a unitary conception of equality and a single enforcement body, the Equality and Human Rights Commission. Second, it 'harmonises, clarifies and extends the concepts of discrimination (direct and indirect), harassment and victimisation and applies them across nine protected characteristics', specifically, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. Third, it transforms anti-discrimination protection into equality law although does not go as far as establishing a constitutional right to equality". For more on this concept of a structured approach to the use of dignity as the basis for equality law see J. Jowell, 'Is Equality a Constitutional Principle?' (1994) 47 Current Legal Problems; J. Stanton-Ife, 'Should Equality Be a Constitutional Principle?' (2000) 11 KCLJ 133 opposing Jowell's argument; J. Jones, "Common Constitutional Traditions": Can the Meaning of Human Dignity under German Law Guide the European Court of Justice? [2004] PL 167; E. Grant, 'Dignity and Equality' (2007) 7 Human Rights Law Review 299 46 This is a highly contested concept – see for example D. Beylveled, R. Brownsword, 'Human Dignity, Human Rights, and Human Genetics' (1998) 61 MLR 661; D. Feldman, 'Human Dignity as a Legal Value' [1999] PL 682 and [2000] PL 61; C. McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19 EJIL 655 47; G. Moon, R. Allen, 'Dignity Discourse in Discrimination Law: A Better Route to Equality?' [2006] EHRLR 610.

⁸⁰ Cleaning Human Waste, Manual "Scavenging", Caste and Discrimination in India. Human Rights Watch Report. 28/814, <https://www.hrw.org/report/2014/08/25/cleaning-human-waste/manual-scavenging-caste-and-discrimination-india>.

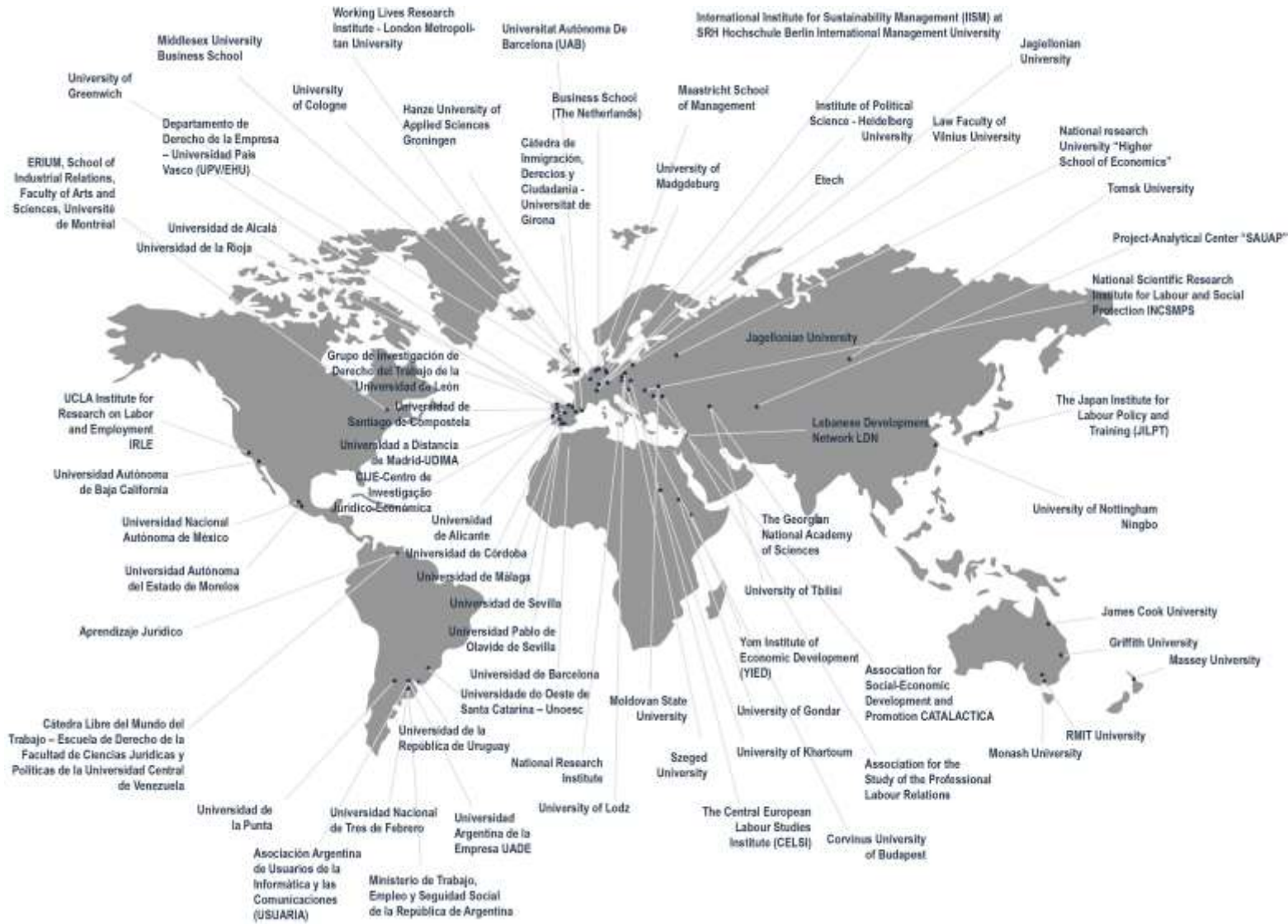
The UK government should not be bound by considerations of its Public Consultation where it reached the conclusion that it will not be proportionate to enact a law that gives renewed emphasis to human dignity by protecting caste in addition to the five categories that include, at present, racial and religious discrimination, disability, homophobia, and old age. Instead, it should abide by the ICERD definition of racial discrimination that includes caste and proscribe it as a form of victimisation. This is by legislation to cover caste as a characteristic, because if racism is prohibited then so should the manifestation of speech or acts related to caste. The protection of victims of caste discrimination should be to ensure that the term caste appears on the face of the legislation as a self-standing, separate element of race in Section 9(5) of the Equality Act in addition to the aspects which are already included, i. e. (a) colour (b) nationality and (c) ethnic or national origins.

6. Conclusion

There is a need for caste discrimination to be terminated in employment contracts as it is a form of intra racial prejudice in South Asian communities that victimises the lower castes in industry when they are employed in the occupations. The current definition in the UK 's Equality Act does not conform to the ICERD definition of racial discrimination. The form of exclusionary and discriminatory behaviour which is prevalent in employment and is manifested in jobs by the wages paid, conditions of employment and human rights violations should be terminated. It is under Section 69 of the EPRA that the Minister can invoke the Equality Act and bring the infringement under racial discrimination but this is a discretionary exercise subject to the evaluation of each case. The law needs to be enacted that encompasses industrial relations and recognises intersectional discrimination which will increase the scope of the courts in the realm of equality legislation by declaring caste discrimination illegal. In other common law based countries where there are large minority communities of Indian origins the law has been enacted to cover discrimination and victimisation based on caste. This is unlike the grounds based discrimination that is currently enforced in the UK and which has limits in addressing discrimination. The existing basis for litigation in cases of discrimination in employment law has to override the burden of the PSED on the employer. This can be redressed if cumulative discrimination is recognised that will include a broad category of discriminatory behaviour which will increase the possibility of litigation based on caste. There should be a remedy available that conforms of the

ICERD definition and the work contracts that victimise the Dalit community should be voided.

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