

Institution: Manchester Metropolitan University
Unit of Assessment: C23 Sociology
Title of case study: Combating Caste Discrimination in the UK: Changing British Equality Law
<p>1. Summary of the impact</p> <p>Annapurna Waughray is the first legal scholar to examine the capacity of British equality law to address discrimination based on caste. In 2009, Waughray identified the limitations of existing discrimination law for capturing caste as a form of discrimination. Her work contends that existing religious discrimination and race discrimination provisions are inadequate to fully cover caste discrimination, and that if caste discrimination is to be legally regulated in Britain, an explicit statutory prohibition should be introduced. Waughray's work has directly informed governmental, parliamentary, academic, practitioner, UN and NGO understandings of the capacity of British equality law to cover caste discrimination.</p>
<p>2. Underpinning research</p> <p>Caste is a system of social organisation based on descent which is associated primarily with South Asia but which also exists in South Asian diaspora communities including those in the UK, while analogous systems of inherited status based on descent exist worldwide. In India - the world's largest caste-affected country - discrimination based on caste affects around 167 million Dalits, also known as 'Scheduled Castes' in Indian legal and administrative terminology, formerly known as 'Untouchables'. It is estimated that there are between 50,00 to 200,000 people of Dalit origin in the UK, possibly more; the exact figure is unknown and is a matter of controversy. Dalits in the UK have complained of the practice of caste discrimination within the South Asian community since the 1960s. However, until recently Dalits constituted a largely invisible 'minority within a minority'. Moreover, there was no expressed statutory prohibition of such discrimination in British law. In the mid-1990s, Dalit activists in India succeeded in bringing caste discrimination to the attention of the United Nations, resulting in its condemnation in 1996 by the UN Committee for the Elimination of Racial Discrimination (CERD) as a violation of the UN International Convention for the Elimination of all Forms of Racial Discrimination (ICERD). In 2002 CERD adopted General Recommendation 29, which affirms that caste discrimination is a form of descent-based racial discrimination. In 2003, and in 2011, CERD specifically recommended that the UK introduce legislative protection against descent based-discrimination, including discrimination based on caste.</p> <p>Waughray has worked as a Senior Lecturer in Law at MMU since 2001. Originally a linguist, she qualified as a Solicitor (England and Wales) in 1994 and practised as a litigation lawyer until 2000. From 1983 to 1989, she worked in the NGO and public sectors in London on issues such as health and women's rights, and with migrant and refugee populations. Since 2002 she has been researching the legal regulation of caste discrimination in India, in the UK and in international human rights law.</p> <p>Prior to Waughray's work, British lawyers had given little thought as to whether caste discrimination was covered by UK discrimination law. Caste and the associated phenomenon of discrimination based on caste were not on the radar of mainstream society or the UK legal community. Waughray challenged the assumption that existing legislation on race and religious discrimination was sufficient to cover caste discrimination in 2009 [1]. Waughray argued that this assumption was premised on a misunderstanding of caste, and that, at best, race and religious discrimination provisions offered only partial and uncertain protection from caste discrimination. If it was accepted that caste discrimination was occurring in the UK in fields covered by British discrimination law, then an explicit statutory prohibition would be essential.</p> <p>Waughray's work has sought to address the above concerns by being the first to address the question of the legal regulation of caste discrimination in the UK. She is also one of the first academic lawyers to address the anomalies in India's legal frameworks for Scheduled Castes and</p>

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minorities [2,3]. Waughray has frequently spoken on the legal regulation of caste discrimination at NGO and academic conferences, and in 2006 and 2007 she advised British NGOs concerned with caste discrimination on their submissions to the government consultations on the Equalities Review and the Discrimination Law Review, which led to the Equality Act 2010. Her advice on the capture of caste by British discrimination law and international human rights law was sought by the government (Labour Minister responsible for the Equality Bill in the Lords) in 2010 during the parliamentary debates on the Equality Bill and contributed directly to the government's decision to include a provision in the Equality Act 2010 (section 9(5(a)) allowing for the addition of caste at a future date to the protected characteristic of race in the Act [3].

Waughray's work highlights the occurrence of caste discrimination both in spheres covered by discrimination law and, importantly, in the unregulated private sphere. She has also highlighted the psychological nature of caste-related attacks on self-worth and the potential for domestic provisions on harassment for addressing this form of discrimination. Waughray's work on the legal relationship between caste discrimination and religious identity/religion in the UK has also been developed in relation to India [4] in the context of which she critiques the legal framework for discrimination against Dalits and the exclusion of Muslim and Christian Dalits from statutory protection from caste discrimination and from India's constitutional affirmative action regime for the Scheduled Castes. Waughray has made sure that her arguments on caste discrimination and the Equality Act 2010 are accessible to a legal practitioner audience [5]. In 2013 Waughray was part of a multi-institutional, inter-disciplinary team of academics commissioned by the Equality and Human Rights Commission to carry out new research on caste in Britain to feed into the planned governmental consultation process on the introduction of a statutory prohibition of caste discrimination under the Equality Act 2010 [6].

3. References to the research

[1] Waughray, A (2009) 'Caste Discrimination: A Twenty-First Century Challenge for UK Discrimination Law?' *Modern Law Review*, 72 (2) 182-219. DOI: 10.1111/j.1468-2230.2009.00740.x

[2] Waughray, A (2010) 'India and the Paradox of Caste Discrimination', *European Yearbook of Minority Issues* (8) 413-452. Article listed in the European Court of Human Rights Bulletin No. 3, 2011 (item 237) at : <http://www.echr.coe.int/library/annexes/Bulletin%202011-3.pdf>.

[3] Waughray, A, Lord Lester of Herne Hill QC, Keane, D. (2013) 'Amending the Equality Act 2010 to include Caste Discrimination'; 7 May (Paper, available at <http://www.odysseustrust.org.uk>).

[4] Waughray, A (2010) 'Caste Discrimination and Minority Rights: The Case of India's Dalits', *International Journal on Minority and Group Rights* (17) 327-3. <http://dx.doi.org/10.1163/157181110X495926>

Article reviewed in the *Human Rights & Human Welfare Topical Research Digest* (Minority Rights, 2011, Untouchability Today: The Rise of Dalit Activism- Annotated Bibliography) as 'providing context that is crucial to understanding contemporary Dalit issues and activism'. See:

<http://www.du.edu/korbellhrhw/researchdigest/minority/Dalit.pdf>

<http://www.equalityhumanrights.com/key-projects/caste>.

[5] Waughray, A (2012) 'Has Caste Discrimination Shed its Cloak of Invisibility?' *New Law Journal* 6 January.

[6] Waughray, A, Whittle, S., Dhana, M., Mosse, D., Green, R. 2013 Equality & Human Rights Commission. 'Exploring Caste in Britain.'

4. Details of the impact

The UK is the first European country to pass legislation on caste discrimination and much of the specialist knowledge, information and argument on the legal regulation of caste discrimination is directly attributable to Waughray's research. In an email to members concerning the UN Human Rights Council's examination of the UK on 24 May 2012, the Director of *Dalit Solidarity Network UK* said about Waughray: "Her expertise across the years has been invaluable" [A]. The UN Committee for the Elimination of Racial Discrimination referred to research output [1] during the oral examination of the UK regarding its 20th periodic report to CERD. Waughray has been called

upon to advise and to contribute to the debate on the legal regulation of caste discrimination in the UK by government, parliamentarians and by NGOs.

The significance of Waughray's contribution to the eradication of caste discrimination worldwide was acknowledged in the Dalit Solidarity Network-UK (DSN-UK) Annual Report 2007-8 [A]. Output [1] has been credited by academics and non-academics alike as radically altering legal thinking on caste discrimination in the UK. It provided the basis for the theoretical and legal arguments in the first government-commissioned study on caste discrimination and harassment in Britain, written by the National Institute for Economic and Social Research (NIESR) (2010). Drawing on Waughray's arguments, the NIESR study concluded that caste discrimination would not be adequately covered by existing anti-discrimination provisions relating to religion or race.

In December 2009, during the passage of the Equality Bill through parliament, Waughray drafted an amendment to the Bill at the request of Jeremy Corbyn MP and Rob Marris MP allowing for caste to be added to the list of protected characteristics in clause 4 of the Bill. This was the first time an attempt had been made to define caste for legislative purposes in the UK. "The subsequent defeat of the amendment was criticised in an article by Dr. Priyamvada Gopal of the University of Cambridge, who challenged the objections to the definition of caste. However the amendment contributed to a climate in which the later amendment permitting the addition of caste to the definition of race became section 9(5)(a) of the Equality Act 2010 was accepted

In February 2010 Waughray was requested by the Minister then responsible for the Equality Bill in the Lords [B], to attend a meeting on caste and the Equality Bill called in order for government to consider whether to include caste in the Equality Act 2010. Waughray's role was to outline why caste was not adequately covered by existing discrimination law and to propose possible legislative solutions, which involved providing an explanation of the difference between – and the legal, policy and political implications of – the usage in legislation of the terms 'caste', 'descent' and 'race'. Waughray was also requested by the Government Equalities Office to assist with the drafting of the Explanatory Notes on Caste to the Equality Act 2010.

In January 2011 and November 2012 Waughray was invited [C] to speak in her capacity as a legal expert on caste discrimination and British discrimination law at two House of Lords conferences attended by NGOs, government and shadow ministers, and other parliamentarians, to put the legal arguments for the exercise of the power in section 9(5)(a) to add caste to the Equality Act 2010. The second of these conferences led directly to an amendment to the Enterprise and Regulatory Reform Bill (ERRB) which mandated the addition of caste to the Equality Act 2010.

On 24 April 2013 the government, after two Lords' defeats, conceded to amend the ERRB by converting into a *duty* the power in section 9(5)(a) of the Equality Act 2010 making caste an aspect of the protected characteristic of race. As a result, the Secretary of State is now required to bring forward secondary legislation to include caste as an aspect of race. In order to inform the regulations the Equality and Human Rights Commission has commissioned research on 'Caste in Britain', which brings together a team of experts (including Waughray) to report inter alia on socio-legal definitions of caste. The Minister responsible for the Equality Act in the Lords [B] commented in an email to Waughray: "Your skills and knowledge will be vital in coming months with negotiations about guidance."

On 30 April 2013, Waughray participated in a meeting to discuss some of the legal implications of the requirement to add caste as an aspect of race in the Equality Act at the House of Lords. At that meeting it was decided to draft a document setting out how caste could be approached within the legislation. This document was co-written by Waughray, Lord Lester and Dr. David Keane of Middlesex University Law School
http://www.odysseustrust.org/caste/Amending_the_Equality_Act_2010.pdf .

Keith Porteous Wood, executive director of the National Secular Society, said he was delighted that the government had committed itself to ensuring that caste would enjoy the same statutory protection as other protected characteristics: "Too many British citizens have suffered caste-based

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discrimination. Our equality legislation will now send out a clear signal that it will no longer be tolerated, and offers hope to the tens of thousands of British Asians whose lives are blighted by such prejudice. This is a victory for the Lords and their emphasis on protecting human rights.” In August 2013, Waughray was commissioned by the Equality and Human Rights Commission (EHRC) as part of a multi-institution, multidisciplinary team of expert academics to conduct independent research on caste in Britain including a review of law and caste. The research will inform the work of the EHRC and will feed into the consultation on caste legislation that the Government Equalities Office is due to undertake in spring 2014. Waughray’s work is listed in the Equality and Human Rights Commission Key Readings on Race [D].

Waughray’s work has had a direct impact on the behaviour and strategies of NGOP and Advocacy groups concerned with caste discrimination in Britain, such as Caste Watch UK [E] and the Anti-Caste Discrimination Alliance (ACDA) [F]. Dalit NGOs have cited Waughray’s work in shadow reports submitted to the UN CERD [G]. Waughray was a key speaker at the Caste Watch UK conference at the Houses of Parliament in 2007 under the theme of Caste and Discrimination Law. The conference addressed the policy implications of caste-based discrimination for British law and was attended and supported by parliamentarians, human rights activists, lawyers, academics and community leaders. Waughray was an advisor to ACDA on their 2009 study *Hidden Apartheid: Caste in the Community*, which influenced government and parliamentarians’ thinking on the need for legal regulation of caste discrimination in British law. She is also named as a key consultant in the National Institute for Social and Economic Research report on caste discrimination [H]. Waughray’s work has also been disseminated more broadly through media invitations, including invitations from the BBC World Service (2009) and BBC Radio 4 Woman’s Hour (January 2010) [I].

5. Sources to corroborate the impact

[A] Full testimonial on file provided by Director, Dalit Solidarity Network UK corroborating Waughray’s longstanding contribution to overcoming caste discrimination through participation in debates and the communication of research in the UK and abroad.

[B] Full testimonial on file provided by Minister responsible for the Equality Bill corroborating Waughray’s contribution to the development of the Equality Act 2010.

[C] Full testimonial on file provided by a Peer from the House of Lords corroborating Waughray’s contribution to the development of the Equality Act 2010.

[D] Equality and Human Rights Commission (EHRC) “Race Reading List” at <http://www.equalityhumanrights.com/publications/our-research/reading-lists/race-reading-list/>

[E] Representative from Caste Watch UK: willing to be contacted by the panel to corroborate the impact of Waughray’s research on NGOs and advocacy groups

[F] Anti Caste Discrimination Alliance: willing to be contacted by the panel to corroborate the impact of Waughray’s research on NGOs and advocacy groups

[G] Caste-based discrimination report submitted to the UN citing Waughray’s research http://www2.ohchr.org/english/bodies/cerd/docs/ngos/IDSN_UK79.pdf

[H] Rolfe, H., & Metcaolfe, H. (2010) National Institute for Social and Economic Research, ‘Caste Discrimination & Harassment in Great Britain’ available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf8.

[I] BBC Radio 4 Woman’s Hour. 5 January 2010. ‘Caste Discrimination in the UK: How widely has caste prejudice been imported to Britain from the Indians sub-continent?’ http://www.bbc.co.uk/radio4/womanshour/04/201001_tue.Shtml