Briefing on Caste Legislation
Prof. Gavin Flood
Professor of Hindu Studies and Comparative Religion, University of Oxford

Contents

General aim ................................................................................................. 1
Background to the report ............................................................................. 1
Challenges to be addressed ........................................................................ 1
   Could legislation lead to a revival of caste consciousness? ............. 1
   Is caste discrimination just about Dalits? ......................................... 2
   The problem of caste identification .................................................. 2
   Balance between equality and diversity ............................................ 2
   Lack of scholarly studies ................................................................. 2
Limitations of the NIESR report ............................................................... 2
Recommendations ....................................................................................... 3
References ..................................................................................................... 3
Appendix: What is caste? ............................................................................ 4
General aim

The aim of this report is to present an informed background to recent caste legislation in relation to the Hindu community of the UK. It highlights problems that could arise from legislation that is passed without sufficient research or input from the communities concerned. It also provides a brief historical overview of caste (see appendix) and examines evidence of discrimination by the National Institute of Economic and Social Research (NIESR).

As a scholarly institution the Oxford Centre for Hindu Studies neither supports or opposes legislation about caste but instead offers clarification of concepts, history, and consequences.

Background to the report

In December 2010 the government-commissioned report by the National Institute of Economic and Social Research (NIESR) entitled ‘Caste discrimination and harassment in Great Britain’ was released. It estimated the UK’s Dalit or lower caste community to be between 50,000 and 200,000 and found that caste awareness was largely focused among people with roots in the Indian sub-continent.

The Government initially rejected proposals to legislate against caste-discrimination and instead implemented an education programme entitled ‘Talk for a Change’ as a more ‘appropriate or effective way’ to tackle this ‘complex and sensitive issue’. In March 2013 the House of Lords agreed an amendment to the Enterprise and Regulatory Reform Bill, which would specifically make caste discrimination unlawful under the Equality Act 2010. The Act prohibited race discrimination, harassment and victimization in the workplace. The definition of ‘race’ within the 2010 Equality Act included colour, nationality, ethnic or national origin but did not specifically refer to caste.

The Lords further debated this issue on 22 April 2013 and it was passed through the House with a reduced majority. The House of Commons voted on the same amendment, and passed the legislation on 23 April 2013. The bill cleared its final journey to become law on Thursday 26 April 2013. This makes the UK the first country outside India to legislate against caste discrimination.

The government was required to include caste as an aspect of race under section 9(5) within two months of enactment of the bill.

Challenges to be addressed

There are a number of problems related to the complex issue of caste in the UK.

Could legislation lead to a revival of caste consciousness?

The Hindu community in the UK is generally recognized as being particularly well-integrated. This integration necessitates loosening of caste ties. It is therefore possible that legislation could contribute to a greater sense of caste differentiation.

The degree of awareness of caste among the Hindu communities itself needs to be ascertained. While some studies such as Mitra Pariyar’s work with the diaspora Nepali community point to an active revival of caste, anecdotal evidence suggests that third-generation Hindus in the UK are minimally aware of their caste background.
Is caste discrimination just about Dalits?

If the issue is simply discrimination against Dalits (the lowest grouping in the caste system, i.e. those without caste), then few would object to legislation against this.

Research needs to be done to discern the extent of caste discrimination.

The problem of caste identification

The traditional demarcation of jati, the Sanskrit term that generally ‘caste’ translates, is clear (see appendix), but the use of the English term ‘caste’ has a broader semantic range and is used imprecisely.

Jati refers to social organization in South Asia and communities originating from there, but if ‘caste’ is taken to mean social position based on heredity, then clearly it does not simply apply to South Asian communities. Indeed, even the primary association of caste with Hindu communities needs to be scrutinized as the NIESR report mostly cites cases of caste discrimination among Sikhs and Muslims. On this evidence caste discrimination is not confined to Hindu communities.

Caste distinctions arguably become eroded in modern life, but where caste does persist among Hindu communities, this might be seen by them in a positive light as fostering group coherence under a system of shared values passed through the generations, fostering community development, networking, and business contact potential. On this understanding caste is a positive hierarchy that might be understood less strictly as jati but more loosely as ‘community.’ Such implications needs to be researched and lower castes might see caste as a negative hierarchy.

Balance between equality and diversity

Clearly all communities need to respect UK approaches to equality. Within the constraints of UK and European law that all communities must abide by, those in civil authority also need to recognize diverse ways in which communities organize their social relationships and conduct their affairs. Any legislation about caste would need to be sensitive about encroaching on social practices, particularly marriage arrangements.

Lack of scholarly studies

There are few studies of caste in the UK from a sociological and anthropological perspective (although caste is a feature of some studies, e.g. Knott 1986). We need further studies on the practice of caste and reliable statistical evidence.

Limitations of the NIESR report

The report that forms the basis for proposed legislation is problematic, for several reasons: The report draws on data beyond the boundaries of Hindu communities and so implicitly brings into question the exclusive association of caste with Hinduism. Most of the examples cited of discrimination are from the Sikh community.

- The report fails to indicate the complexity of caste in relation to modern Hindu communities. The understanding of caste it presents does not take into account the variety of factors required to assess community self-understanding. The report is weak in respect to reliable statistics. For instance, it offers a widely variant population estimate of between 50,000–200,000 Dalits in the UK. If we are to apply David Gellner’s estimation of 1–2% of the Nepalese diaspora being Dalits to the Hindu population in the UK this would give a population of 5000–10,000 Hindu Dalits. This figure is significantly less than the lower range of the report’s estimate.
- There are a number of methodological problems. For instance, the report is based
on research drawn from 36 interviews and would require a much larger sample to be representative of the respective community. The report also acknowledges that some of the evidence is inconclusive.

- It is not clear if the cases of discrimination presented in the report cannot be dealt with under current legislation about religion and race.

**Recommendations**

Without clearer quantitative and qualitative research, there are no accurate definitions, statistics and case studies which are necessary for any meaningful implementation of legislation in contexts such as employment, education and provision of services.

A much broader framework of understanding needs to thus be developed. More extensive studies need to be conducted on the degree of caste discrimination in the UK and a much larger sample of the population must be drawn upon if accurate conclusions are to be formulated. Conducting broader and more comprehensive research could be an opportunity to develop a deeper understanding of Hindu social structure and caste and the current state of Hindu and other South Asian communities in the UK.

**References**


Lipner, Julius *Hindus* (Routledge, 2nd ed. 2012).


Quigley, Declan *The Interpretation of Caste* (Oxford University Press, 1993).

Appendix: What is caste?

Caste is from a Portuguese word ‘casta’ that has been used to translate Sanskrit terms jāti (birth), and varṇa (class). The terms jāti and varṇa have a complex history and are sometimes used synonymously.

Generally the term varṇa refers to the four social divisions of early Vedic society into the priests or Brahmans, the warriors or kings (kṣatriya), the commoners (vaśya) and the serfs (śudra). Below this classification was added the ‘fifth’ class of those outside or below the class system who came to be known as ‘untouchable’ but who are now referred to as Dalits (a term of self-description which means ‘the oppressed’).

In relation to this, the jāti system is connected with hereditary occupations. There are two general features that have traditionally determined caste:

- Firstly a caste is a social group defined by rules of endogamy. That is, generally marriage must be within the same caste or related caste boundaries but outside of the family and lineage (kula/gotra). Thus caste is endogamous with regard to jāti but exogamous with regard to kula or gotra.
- Secondly a caste is traditionally defined by commensality, a rule concerning whom one can and cannot eat with, that traditionally meant one should eat only with other of the same or related caste group.

As the great scholar of caste Louis Dumont shows (Dumont 1980), caste is closely related to a distinction or polarity between ideas of purity and pollution. Thus some social groups, the Brahmans, were considered to be ritually pure and could be polluted by lower, impure groups. Impure social groups would deal with impure social tasks such as cleaning, leather workers, barbers and others who deal with ‘polluting’ bodily effluents. This lead to the idea of ‘untouchability’ which in turn led to the rejection of this term and Indian legislation outlawing it and making religious establishments such as temples open to all, including the Scheduled Classes. It could be that caste is a feature of many societies and not restricted to South Asia (Milner 1994).

Some scholars argue that Hinduism is inextricably bound to caste in some way and that to be a Hindu is to be born into an endogamous group of South Asian society (Staal 1988), while others argue that Hinduism is distinct from caste and that the religious practice and belief can be separated from social structure (Lipner 2012).

Some scholars (Dirks 1993) have argued that caste is, in effect, a construction that has happened as a result of British colonialism and have partly rejected Dumont’s analysis. Others, such as Olivelle (1992), have supported the Dumontian position. Indeed, if we take caste to be the boundary of a social group defined principally by marriage and social task, then clearly as far back as the Laws of Manu (2nd century AD) we have caste differentiation. Yet we also have a history of rejecting caste boundaries within Hindu traditions, especially with respect to religious and soteriological matters.