

Caste Away: The Case for Recognizing Caste as a Protected Ground under the *Human Rights Code* in Ontario

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Caste is a deeply entrenched hierarchical social system that has persisted for millennia, affecting over 260 million people globally. Its rigid structure intersects with other forms of oppression such as gender, religion, and race, makes caste a complex and pervasive form of social stratification that has extended beyond South Asia to diaspora communities across the globe, including Canada. This paper explores caste-based discrimination in Canada's South Asian communities, particularly within the Indian diaspora, to shed light on the persistence of caste hierarchies despite geographic and cultural distance from the Indian subcontinent.

The paper highlights recent efforts by institutions in Ontario, including the Toronto District School Board (TDSB) and the Ontario Human Rights Commission (OHRC), to acknowledge and address caste-based discrimination. Institutional efforts, although significant, are constrained by the fact that caste is not an explicit ground for discrimination in Ontario. As a result, when legal claims are made, caste discrimination tends to be subsumed under other recognized grounds, such as race, ethnicity, or religion. This approach fails to capture the unique and multifaceted nature of caste oppression, as caste intersects with but is not reducible to these other grounds.

Through a socio-historical legal analysis, this paper critiques the current legislative framework and its limitations in addressing caste discrimination in Ontario. The analysis traces the evolution of the province's human rights laws and examines its underlying purposes to demonstrate that the failure to explicitly recognize caste as a protected ground undermines the inclusive and egalitarian objectives of the legal system. The paper argues for the legislative recognition of caste as a distinct category of discrimination under the Ontario Human Rights Code.¹

This recognition would not only affirm the lived experiences of caste-oppressed individuals, but also provide them with effective legal recourse. By recognizing caste as a specific ground of discrimination, human rights laws in Ontario would offer more robust protections, dismantle caste-based barriers, and foster a more inclusive society. The paper concludes by situating the issue within broader discussions of multiculturalism, social justice, and the need for legal systems to adapt to increasingly diverse populations. In doing so, it underscores the importance of addressing caste discrimination as a necessary step toward promoting a more inclusive and just society.

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1. *Human Rights Code*, RSO 1990, c H.19 [Code].

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Introduction

Caste is a fundamental determinant of social exclusion and development that affects over 260 million people worldwide.² Although it is a challenging concept to define and categorize, it persists as a complex structure of hierarchy and stratification intertwined with gender, religion, and socioeconomic factors such as education and occupation.³ Caste is primarily associated with India, where it has existed as a social identifier and system of social relations. However, its influence extends to other South Asian countries (Pakistan, Nepal, Bangladesh and Sri Lanka) and their diasporic communities, notably in the United States and Canada.⁴ The prevalence of chain or family migration in these regions has further enabled caste identities and networks to endure.⁵

Anti-caste activists and writers have emphasized the importance of centring the issue in social, economic, and political discourse to highlight its continued devastating influence in the everyday lives of Dalits⁶ and other marginalized caste communities.⁷ As a system that categorizes and stratifies individuals, caste impacts self-identity and adversely affects self-esteem and mental health.⁸

2. David Mosse, “Caste and development: Contemporary perspectives on a structure of discrimination and advantage” (2018) 110 *World Development* 422 at 423.

3. *Ibid* at 430.

4. Annapurna Waughray, *Capturing Caste in Law: The Legal Regulation of Caste Discrimination* (New York: Routledge, 2022) at 11.

5. See P Pratap Kumar, “Place of Subcaste (*Jati*) Identity in the Discourse on Caste: Examination of Caste in the Diaspora” (2012) 4:2 *South Asian Diaspora* 215.

6. “Dalits”, (previously known as “untouchables”) are at the bottom of the caste hierarchy in the Indian subcontinent.

7. Waughray, *supra* note 4.

8. Vina M Goghari & Mavis Kusi, “An introduction to the basic elements of the caste system of India” (2023) 14 *Front Psychol* 1 at 4.

Therefore, it is essential to understand how caste manifests and functions across South Asian communities and its diaspora, given the global influence of caste and the issue of caste-based discrimination in schools, employment, and other institutions.

Institutions such as the Toronto District School Board (TDSB) and the Ontario Human Rights Commission (OHRC) have taken crucial steps to acknowledge caste-based discrimination, cognizant of its wide-ranging impact on caste-oppressed individuals of South Asian descent in education, employment, and housing. Still, within Ontario's *Human Rights Code* (the *Code*), caste is perceived as discrimination under or intersecting with grounds such as race, ethnic origin, ancestry, and creed.⁹ While caste is indeed intersectional, subsuming caste under other *Code* grounds inadequately captures it as a multifaceted, nuanced system of oppression. This paper argues that recognizing caste as a distinct protected ground would not only substantively challenge caste-based exclusion, but also provide legal recourse to individuals directly experiencing such discrimination.

As caste discrimination has only recently started to gain recognition by the OHRC, there is limited jurisprudence from the Human Rights Tribunal of Ontario and other Canadian courts and human rights tribunals on the issue. Accordingly, this paper will extensively review existing academic literature, legal documents, policy papers, reports on caste, anti-discrimination law, and relevant case studies. Due to the broad scope of caste's history and social dynamics within the region of South Asia, the socio-historical analysis of its emergence and development will be limited to India and Canada in this paper.

The paper is structured in five parts. Part I of the paper dissects caste's historical roots and socio-religious complexities in India, illustrating its pervasive role across social interactions and identities. Subsequently, Part II critiques its normalization in contemporary societal structures, exposing concealed caste privileges within political, economic, and cultural spheres. Part III extends the discourse to Canada's South Asian diaspora, revealing the persistence of caste prejudices and their ramifications for community dynamics. The conclusion then critically examines how Canadian institutions, such as the TDSB and the OHRC, have begun to address caste discrimination. It then analyzes the distinct nature of caste discrimination, advocating for its inclusion as a protected ground in the *Code* to address its multifaceted implications.

I. Understanding Caste

According to scholar Annapurna Waughray, caste is "a multifaceted and complex social phenomenon which must be understood in historical, sociological, cultural, psychological, economic, religious and ideological as well

9. *Code*, *supra* note 1.

as legal terms”.¹⁰ Dr. Bhimrao Ramji Ambedkar¹¹ considered Hinduism and caste as inextricably connected, and caste and untouchability to be India’s “two great social evils”.¹² Caste is not the exclusive feature of South Asian social organization, as it often intersects with kinship, language, region, and religious affiliations. Nevertheless, within a historically compartmentalized social order, caste remains a significant identifier as well as a pivotal force of social stratification, stigmatization, social exclusion, and discrimination.¹³

A. Historical Context of Caste

“Caste,” from the Portuguese word *casta*,¹⁴ was first used by sixteenth-century traders to describe the system of communities based on the birth groups that they encountered in India.¹⁵ Castes are commonly described as closed, endogamous, hereditary-membership status groups, traditionally linked to particular occupations. They are distinguished by separation and ranked within a rigid hierarchical structure “in which status is usually privileged over power or wealth”.¹⁶ In *Indra Sawhney v Union of India*, the Supreme Court of India defined caste as a socially homogenous class and an occupation grouping, membership of which is involuntary and hereditary: “Lowlier the occupation, lowlier the social standing of the class in the graded hierarchy”.¹⁷ Even where the individual does not follow that occupation, “still, the label remains. His identity is not changed”.¹⁸

10. Waughray, *supra* note 4 at 11.

11. Dr. Bhimrao Ramji Ambedkar, famously known as “Babasaheb,” was an economist, lawyer, a jurist, scholar, writer, and Chairman of the Drafting Committee of independent India’s Constitution of 1950. Ambedkar was a Dalit and one of India’s greatest political leaders and campaigners for human rights, the rights of the “untouchables,” and the eradication of caste (see *Ibid* at 15).

12. Bhimrao Ramji Ambedkar, “The Untouchables and the Pax Britannica,” in Vasan Moon, ed, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol 12 (Bombay: The Education Dept., Govt. of Maharashtra, 1993) at 132.

13. Roger Ballard, “The Emergence of Desh Pardesh,” in Roger Ballard, ed, *Desh Pardesh: The South Asian Presence in Britain* (London: Hurst & Co, 1994) at 5–9.

14. *Casta* refers to “purity of blood” (see Sumit Guha, *Beyond Caste: Identity and Power in South Asia, Past and Present* (Leiden: Brill, 2013) at 21).

15. *Ibid*.

16. Hugo Gorringer & Irene Rafanell, “The Embodiment of Caste: Oppression, Protest and Social Change” (2007) 41:1 *Sociology* 97 at 102. See also Surinder S Jodhka, *Oxford India Short Introductions: Caste* (New Delhi: Oxford University Press, 2012).

17. *Indra Sawhney v Union of India*, AIR 1993 SC 477 at para 82.

18. *Ibid*.

While not solely a religious concept, caste's ideological roots lie in ancient Hindu texts such as the *Manusmriti* and the *Rg Veda*.¹⁹ However, British perceptions of Indian histories profoundly influenced the reconstruction of Indian society and cultures.²⁰ According to Nicholas Dirks, it was under the British influence that caste became a "single term capable of expressing, organizing, and above all 'systematizing' India's diverse forms of social identity, community, and organization".²¹ As Susan Bayly noted, "Until well into the colonial period, much of the subcontinent was still populated by people for whom the formal distinctions of caste were of only limited importance as a source of corporate and individual lifestyles".²² This would encompass much of Bengal, the Punjab, and southern India, as well as the far northwest and the central Deccan plain.²³ In pre-colonial India, there were multiple heterogeneous units of social identity which were part of a complex and constantly changing political world. Some of the significant units of identification include temple communities, lineage segments, family units, royal retinues, warrior "subcastes", occupational reference groups, sectarian communities, and even "priestly cabals".²⁴ It therefore required a "striking" act of historical and critical disregard for ethnographic specificity. It also required a systematic denial of the political mechanisms that chose various social unit types as most significant and highly valorized at different times, in order to read and organize social difference and deference—pervasive features of Indian society—only in terms of caste.²⁵

As Dirks highlighted, caste served as the primary framework for documenting the customs of the people and was considered the central source of essential information about Indian society. The colonial state increasingly felt the need to gather, organize, and distribute this information, which would then be utilized for a range of governmental purposes and activities, impacting almost every aspect of executive action.²⁶ Caste language and ideology became

19. *Ibid.*

20. To reconstruct Indian history, the British depended upon the "conservative indigenous literati," the Brahmin Pandits. Chakravarti's work demonstrates how Brahmins are responsible for the "invention" of contemporary Indian culture and tradition, which are both informed not by larger Indian histories but by Brahmin motivations and interests. See Uma Chakravarti, "Whatever Happened to the Vedic Dasi? Orientalism, Nationalism, and a Script for the Past" in Kumkum Sangari & Sudesh Vaid, eds, *Recasting Women: Essays in Indian Colonial History* (New Brunswick, NJ: Rutgers U Press, 1990) at 29.

21. Nicholas B Dirks, *Castes of Mind: Colonialism and the Making of Modern India* (Princeton, NJ: Princeton University Press, 2001) at 5.

22. Susan Bayly, *Caste, Society and Politics in India from the Eighteenth Century to the Modern Age* (Cambridge: Cambridge University Press, 1999) at 3.

23. *Ibid.*

24. Dirks, *supra* note 21 at 13.

25. *Ibid* at 14.

26. *Ibid* at 49.

incorporated into government and administrative structures over time.²⁷ The decennial census, in particular, played a key role in not only providing these facts but also in solidifying caste as the core element of India’s social structure.²⁸ By the time the census began across India in 1871 and 1872, there was a broad consensus among census administrators that caste should be the fundamental category for organizing population counts.²⁹ The British colonial era in India thus significantly redefined and institutionalized caste, solidifying it through administrative measures and legal frameworks.³⁰

B. Overview of the Caste System: Varna and Jati

The following infographic illustrates the various hierarchies within the caste system:

Figure 1: Caste System in India³¹



27. Susan Bayly, “Caste and ‘Race’ in the Colonial Ethnography of India” in Peter Robb, ed, *The Concept of Race in South Asia* (New Delhi: Oxford University Press, 1997) 165 at 168, 215.

28. Dirks, *supra* note 21 at 49.

29. *Ibid.* Risley, the census commissioner of India for the 1901 census, famously documented the rise of caste as a form of social organization for Indian society and the role of Indian anthropology in the formation of the colonial state (see HH Risley, *The People of India*, 2nd ed (London: W. Thacker, 1915).

30. Ursula Sharma, *Caste* (New Delhi: Viva Books, 2002) at 9–10.

31. Sonali Kolhatkar, “Confronting Caste”, *Yes Magazine* (21 November 2022), online: <yesmagazine.org/issue/bodies/2022/11/21/confronting-caste> [tinyurl.com/5yat5aya].

Consequently, the caste system, as reinforced through British colonial rule, divides society into four main hereditary groups, also called *varnas*. The first three groups, Brahmins, Kshatriyas, and Vaishyas, are considered “upper” or “dominant” castes and comprise approximately twenty-five percent of India’s population.³² The fourth group, the Shudras (roughly half the Indian population), consists of the “lower castes”, recognized in Indian constitutional and legal terminology as “other backward classes”.³³ It is important to emphasize, though, that the concept of *varna*—which conceivably organizes the social identities and relations of all Indians throughout the subcontinent—was only developed under the peculiar conditions of British colonial rule. Hierarchy, that is, “rank or ordered difference”, may have been a constant throughout Indian history; but hierarchy in the sense used in historical understandings of caste became a systematic value only under the “colonial modern”.³⁴

The Dalits are at the bottom rung of the social hierarchy, excluded from the *varna* system. Discrimination, exploitation, subordination, and oppression affect over 201,000,000 Dalits in India alone, where they account for over sixteen percent of the population.³⁵ First used by Jotirao Phule, a nineteenth-century anti-caste activist and campaigner against caste oppression, “Dalit” is a term of self-identification meaning “crushed” or “broken” in Marathi.³⁶ It replaced historical labels such as “*achoots*”, “*Harijans*”, or “untouchables”, now widely considered condescending and derogatory.³⁷ While Dalit encapsulates the particular stigmatization, exploitation, and the economic, social, cultural, political, and psychological repression fundamental to caste, it also embodies the courage and resilience to inequality and oppression: “To call oneself Dalit . . . is to convert a negative description into a confrontational identity”.³⁸

32. Sharma, *supra* note 30 at 13.

33. *Ibid.*

34. Dirks, *supra* note 21 at 14.

35. Sharma, *supra* note 30 at 11.

36. Marathi is a regional language of western India, commonly spoken in the state of Maharashtra (see Eleanor Zelliot, “Dalit – New Cultural Context for an Old Marathi Word” in Eleanor Zelliot, ed, *From Untouchable to Dalit: Essays on the Ambedkar Movement* (New Delhi: Manohar Publishers & Distributors, 1998) 267 at 271).

37. Simon Charsley, “‘Untouchable’: What Is in a Name?” (1996) 2:1 *J Royal Anthropological Inst* 1 at 8.

38. Dalit became a popular term in India in the 1970s as a militant, assertive identity popularized by the Dalit Panther Party—a radical leftist political organization inspired by the US Black Panthers and the Dalit literary movement in Maharashtra. It is essential to acknowledge that caste terminology is highly politicized and contested even amongst different caste communities (see Arundhati Roy, *The Doctor and the Saint: Caste, Race and Annihilation of Caste* (Haymarket Books: Chicago, 2017) at 5; Shailaja Paik, “Mahar-Dalit-Buddhist: The History and Politics of Naming in Maharashtra” (2011) 45:2 *Contributions to Indian Sociology* 217 at 218, 228).

In this paper, similar to the approach of writers such as Waughray and Roy, the term Dalit is used except where the historical and religious context requires the use of “Untouchable”.³⁹ However, one must remain cognizant of the fact that Dalits are not a “mono-identity” and such a perception of them being so imposes an additional burden on Dalits with diverse lived experiences.⁴⁰

Caste subsumes two concepts; the Hindu concept of *varna* and the South Asian regional concept of *jati*.⁴¹ The *varna* system ideologically classifies Hindu society. However, social dynamics are more accurately reflected by *jatis*—local or regional endogamous kinship groups that structure everyday life. These groups, numbering over 4,000, are local in scope and create a nuanced social hierarchy that does not always align with the broader *varna* categories.⁴² Within each *varna*, there are several *jatis* forming a complex hierarchy of communities—in essence, hierarchies within a hierarchy. Furthermore, Dalits, who are excluded from the *varna* framework, do not constitute a homogenous category but are themselves internally and hierarchically divided into different *jatis*.⁴³

Unlike *varna*, the concept of *jati* extends across South Asian cultures and is not limited to a single religion.⁴⁴ Caste-based identities and discrimination are evident among South Asian followers of Christianity, Islam, and Sikhism, despite the absence of a doctrinal foundation for caste. For instance, among Sikhs, the distinction between peasant farmers and urban wealthy groups has long been recognized through an awareness of which Sikhs come from the peasant Jat caste and which belong to other *jatis* linked to literate service occupations.⁴⁵ In South India, Christians often take pride in Brahman ancestry, and, until recently, many North Indian Muslims identified with the caste ideals of the aristocratic Rajput. Additionally, many powerful North Indian traders who practice the strictly anti-Brahmanical Jain faith, like their Hindu neighbours, emphasize the importance of marrying within specific Vaishya

39. However, Dalit is not the official terminology. In post-independence India, the constitutional and legal term of the administration is “Scheduled Caste” (S.C.), which signifies those castes listed in a Schedule to the Constitution. The status of Scheduled Caste is established through a caste certification issued by authorities and entitles the holder to the benefit of administrative affirmative action policies (known as reservations) as well as other legal and administrative protections (see *Constitution of India*, 1950, art 341; Surinder S Jodhka & Ghanshyam Shah, “Comparative Contexts of Discrimination: Caste and Untouchability in South Asia” (2010) 45:48 *Econ & Political Weekly* 99 at 100).

40. Suraj Yengde, *Caste Matters* (New Delhi: Viking India, 2019) at 46.

41. Waughray, *supra* note 4 at 17

42. See “jati,” *Britannica* (last modified 18 July 2023), online: <[britannica.com/topic/jati-Hindu-caste](https://www.britannica.com/topic/jati-Hindu-caste)>. *Jati* indicates “a form of existence determined by birth;” it “describes any group of things that have generic characteristics in common”.

43. Waughray, *supra* note 4 at 17.

44. *Ibid.*

45. Bayly, *supra* note 22 at 18–19.

merchant *jatis*, while claiming descent from princely Rajput converts.⁴⁶ Above all, for members of nearly all so-called conversion faiths, the fluid but powerful influence of caste remains significant in daily life, with those believed to be descendants of untouchable castes often excluded from social connections with others in their supposedly casteless religions.⁴⁷

C. Purity and Pollution in Caste

Inherent within the caste system, the concepts of purity and pollution have also significantly shaped societal roles and dominant cultural perceptions. Historically, the Untouchables, or Dalits, performed menial jobs such as cleaning toilets and disposing of the dead—roles deemed impure under Hindu traditions. These traditions considered contact with dead animals or humans as polluting, thus casting those engaged in these necessary societal functions into a stigmatized status.⁴⁸ Meanwhile, dominant castes, particularly Brahmins, considered themselves “pure”, owing to their more intellectual occupations such as teaching and administration.⁴⁹ This perceived purity extended beyond occupational roles to lifestyle choices, including dietary habits, dress patterns, and language.⁵⁰ Dalits were also systematically excluded from public spaces and amenities reserved for dominant castes, such as roads, wells, temples, and schools.⁵¹ Such extreme manifestations of caste-based discrimination highlight the pervasive impact of purity and pollution concepts, reinforced by colonial policies, on the social fabric of Indian society.

However, the association between caste and occupation has never been so rigid or fixed that individuals could not supposedly leave their ancestral occupation or benefit from occupational mobility across caste boundaries.⁵² In India, post-independence reservation policies have enabled certain Dalits to enter public sector employment, and the country’s post-1991 economic

46. *Ibid.*

47. *Ibid.* See also John CB Webster, “Who Is a Dalit?” in SM Michael, ed, *Dalits in Modern India: Vision and Values*, 2nd ed (New Delhi: Sage, 2007) 76; Paramjit S Judge, “Punjabis in England: The Ad-Dharmi Experience” (2002) 37:31 *Econ & Political Weekly* 3244; Kiyotaka Sato, “Divisions Among Sikh Communities in Britain and the Role of the Caste System: A Case Study of Four Gurdwaras in Multi-Ethnic Leicester” (2012) 19:1 *J Punjab Studies* 1 at 17.

48. Arvind M Shah, “Purity, Impurity, Untouchability: Then and Now” (2007) 56:3 *Sociological Bulletin* 99 at 101.

49. *Ibid* at 103.

50. *Ibid* at 106–7.

51. Certain castes, such as the Mahars, were subject to humiliating practices like tying brooms to their waists to sweep away their “polluted” footprints (see Roy, *supra* note 38 at 8).

52. Waughray, *supra* note 4 at 18–19.

liberalization created some private-sector opportunities for some Dalits.⁵³ Nevertheless, caste has played a prominent part in dictating work and professions for Dalits. Historically, slave labour, forced labour, and bonded labour have been integral to the Indian economy, with Dalits being the primary victims of these practices. They continue to face substantial barriers in the modern Indian economy. Overt caste-based discrimination has ostensibly been replaced by more subtle forms, often masked under the guise of “merit”. Interviewees are invariably questioned about their “family background”, a frequent euphemism for caste.⁵⁴ Consequently, Dalits frequently find themselves excluded from higher-status jobs, which are still predominantly occupied by individuals from dominant castes.⁵⁵ Moreover, certain occupations, traditionally considered ritually impure and socially stigmatized, remain overwhelmingly the domain of Dalits.⁵⁶ These include manual scavenging; cleaning sewers; handling, removing, and disposing of dead animals; and leatherworking. The stigma and health risks associated with these professions are significant and they continue to be performed almost exclusively by Dalits, underscoring the persistent social and occupational stratification along caste lines.

D. Caste as a Social Construct

The intricacy of the caste system explains why Ambedkar described it as “graded inequality”.⁵⁷ There are highest, higher, high, lower, and lowest grades in this caste ladder of inequality.⁵⁸ Even the privileges are graded, with every

53. The Constitution of India establishes special measures of affirmation action—known as “reservations”—for historically disadvantaged and underrepresented groups, including: the Scheduled Castes (SCs); Scheduled Tribes, or STs (Adivasis); and Other Backward Classes (OBCs). It allows the government to establish a percentage of reserved quotas or seats in areas of higher education, employment, political institutions, etc. (see *Constitution of India*, *supra* note 39, arts 340–2; Kailash Jeenger, “Reservation is About Adequate Representation, Not Poverty Eradication” (18 May 2020), online: <thewire.in/law/supreme-court-bench-reservation> [perma.cc/8FKC-CLDG]).

54. Surinder Jodhka & Katherine Newman, “In the Name of Globalisation: Meritocracy, Productivity and the Hidden Language of Caste” (2007) 42:41 *Econ & Political Weekly* 4125 at 4127–28; Thomas Weisskopf, “Impact of Reservations on Admissions to Higher Education in India” (2004) 39:39 *Econ & Political Weekly* 4339 at 4344.

55. Waughray, *supra* note 4 at 18–19.

56. *Ibid.*

57. Bhimrao Ramji Ambedkar, “The Hindu Social Order: Its Essential Principles” in Vasant Moon, ed, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol 1 (Bombay: The Education Dept., Govt. of Maharashtra, 1993) at 107.

58. Anup Hiwrale, “Caste: Understanding the Nuances from Ambedkar’s Expositions” (2020) 6:1 *J Soc Inclusion Studies* 78 at 85.

group receiving certain privileges alongside the disadvantages of their status.⁵⁹ The high group wishes to overthrow the higher groups above them, but they will not collectively organize with the lowest out of fear of losing access to their social, cultural, and economic privileges.⁶⁰ Besides the lowest-ranked group, every group above them is committed to maintaining the social order. Thus, caste is the ultimate means of control in which the concept of purity and the perpetration of social and physical violence are not just outsourced but embedded within every individuals consciousness.⁶¹ As Roy writes, it is similar to “an elaborate enforcement network in which everybody polices everybody else”.⁶²

Moreover, in his seminal essay, “The Annihilation of Caste”, Dr. Ambedkar explains that caste is more than a quasi-physical quality but a “state of the mind”.⁶³ Accordingly, markers identifying a person’s caste are not physical— “[they are] etched into the social fabric by codes of conduct governing modes of address, attire physical positioning”, and types of social interaction.⁶⁴ Non-physical caste markers can include names, residence (actual or ancestral), place of origin, occupation, religion, and education, while physical markers involve appearance, body language, speech, and bodily expression.⁶⁵ Though they may not carry the same cultural resonance in Western countries like Canada and the US, such markers are nevertheless used to ascertain an individual’s caste status.⁶⁶

II. Caste as Social Hierarchy in Canada

Caste’s ancient origins have not relegated it to the past. Instead, it has seamlessly adapted to the changing landscapes of democracy, capitalism, globalization, and modernization. This adaptability is crucial in understanding

59. Bhimrao Ramji Ambedkar, “The Hindu and his Belief in Caste” in Vasant Moon, ed, *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol 5 (Bombay: The Education Dept., Govt. of Maharashtra, 1993) 100 at 101–2.

60. Brahminism is consequently not just practiced by the Brahmin against the Kshatriya or the Vaishya against the Shudra, or the Shudra against the Untouchable, but also by the Untouchable against those they deem below them in the social pyramid (see Roy, *supra* note 38 at 35).

61. *Ibid.*

62. *Ibid.*

63. Bhimrao Ramji Ambedkar, “Annihilation of Caste” in Vasant Moon, ed., *Dr. Babasaheb Ambedkar: Writings and Speeches*, Vol 1 (Bombay: The Education Dept., Govt. of Maharashtra, 1993) 26 at 68.

64. Gorringer & Rafanell, *supra* note 16 at 103.

65. Waughray, *supra* note 4 at 18–19.

66. *Ibid.*

how caste functions in South Asia and the diaspora. The “reality of caste has certainly not disappeared . . . [C]aste is alive and kicking, not merely in the form of substantialized identities but also as a source of privileges and deprivations”.⁶⁷ As Balmurli Natrajan points out, modern perceptions of caste contribute to its normalization in civil society, the economy, and cultural identities, often obscuring its oppressive nature.⁶⁸ This normalization—that is, the “absorption of caste into the bloodstream of everyday life”⁶⁹—is what endows caste and casteism in India with their durability. In public discourse, caste becomes reduced to its most extreme or violent forms, thereby leaving everyday casteism unchallenged and enabling privileged castes to downplay their societal privileges.⁷⁰ Upper caste individuals, through “caste-neutral” policies and public discourses of culture or merit, are able to conceal and perpetuate the inequalities and exploitative practices on which caste rests.⁷¹

The phenomenon of normalization and adaptation of caste extends beyond the South Asian region, significantly impacting its diverse diasporas. Dr. Ambedkar’s assertion in *Castes in India* that “if Hindus migrate to other regions on earth, Indian caste would become a world problem” has proven prescient.⁷² The Indian communities in North America, particularly in Canada, exemplify the preservation of caste hierarchies and identities, albeit in a new cultural context. Indians are not a homogeneous community; however, the imagined, appropriated, and celebrated Indian subjects are upper caste Brahminical Hindu Indians.⁷³ MSS Pandian critiques the conflated construction of Hinduness and Indianness: “What gets encoded here as Indian culture is what is culture to the brahmins/upper castes”.⁷⁴ Similarly, privileged caste Hindus have emerged as a prominent and influential minority within the Canadian landscape, occupying

67. Surinder S Jodhka, *Oxford India Short Introductions: Caste* (New Delhi: Oxford University Press, 2012) at 13–14.

68. Balmurli Natrajan, *The Culturalization of Caste in India: Identity and Inequality in a Multicultural Age* (Abingdon and New York: Routledge, 2012) at 12–13, 15.

69. *Ibid.*

70. Ramesh Bairy, “Beyond Governmentality: Caste-ing the Brahmin” (2012) online: <indiaseminar.com/2012/633/633_ramesh_bairy_t_s.htm> [perma.cc/93UQ-GEY5].

71. Hugo Gorringe, “Dalit Politics: Untouchability, Identity and Assertion” in Atul Kohli & Perna Singh, eds, *Routledge Handbook of Indian Politics* (Abingdon: Routledge, 2013) at 233.

72. B.R. Ambedkar, “Castes in India: Their Mechanism, Genesis and Development” in Manoranjan Mohanty, ed, *Class, Caste, Gender* (New Delhi: Sage Publications, 2004) at 132.

73. Nishant Upadhyay, “We’ll Sail Like Columbus”: *Race, Indigeneity, Settler Colonialism and the Making of South Asia Diasporas in Canada* (PhD Dissertation, York University, 2016) [unpublished] at 116–17.

74. *Ibid.*

prestigious positions of power in corporate, governmental, and political fields.⁷⁵ Their presence within the Canadian demographic landscape and significant contributions to the country have been extensively documented.⁷⁶ As per data from the 2021 Canadian census, South Asians have emerged as the preeminent visible minority cluster in Canada, encompassing 26.7 per cent of the visible minority populace.⁷⁷ This demographic status surpassed other visible minority groups, such as Chinese and Black Canadians.⁷⁸ Most of those who migrate to Canada come from upper castes, as they have had access to education that enables them to go to the US or Canada for better employment opportunities and gain entry to influential institutions in North America.⁷⁹

Caste hegemony is replicated in the diaspora through eating habits, music, clothing, and dance. Caste dynamics persist in diaspora cultures through traditions and practices coded as “Indian”, as activist Thenmozhi Soundarajan notes:

For second-generation NRIs [Non-Resident Indians], flashing caste becomes a part of their cultural street cred with other communities. Some do it intentionally to elevate their identity while others operate from a misunderstanding of their own roots and blindly accept the symbols of their culture. Punjabi rappers throw down lyrics about being proud Jats. Tam-Brahms [Tamil-Brahmins] show off their sacred thread, recreate Thiruvayur . . . and learn Bharatanatyam while using their powerful networks to connect and succeed in the diaspora. Ultimately, we trade and calcify what is seen as proper Indian culture. But, hidden within that idea of

75. Shubham Kumar, *Deconstructing Caste-Based Private Discrimination: Comparative Examination of India and Canada* (LLM Thesis, University of Windsor, 2023) [unpublished] at 108.

76. Shlok Talati, “Prejudice rooted in an ancient social system has migrated from India to Canada” (16 May 2022), online: <[cbc.ca/news/canada/nova-scotia/caste-india-canadastudents-1.6450484](https://www.cbc.ca/news/canada/nova-scotia/caste-india-canadastudents-1.6450484)> [perma.cc/PMP2-MKHS].

77. Statistics Canada, “Visible minority and population group by generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts” (26 October 2022), online: <www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810032401> [perma.cc/8KE2-UM27].

78. *Ibid*; Statistics Canada, “Religion by visible minority and generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts” (26 October 2022), online: <www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=9810034201> [perma.cc/MZ6W-Z4KQ].

79. Anjali Choudhary, “Caste-based discrimination in Canada? It’s more likely than you think” (31 March 2023), online: <thegauntlet.ca/2023/03/31/caste-based-discrimination-in-canada-its-more-likely-than-you-think/> [perma.cc/FRU9-CKGK].

‘proper’ lies the code for what is aspirational and ultimately upper caste.⁸⁰

In the diaspora, caste continues to be an underlying organizational structure within South Asian communities, often misconstrued as “diversity” in multicultural contexts.⁸¹ Nishant Upadhyay noted from scarce mainstream media reporting that approximately 200,000 Dalits live in Canada; most of these communities reside in Toronto, Vancouver, and Montreal.⁸² Within Punjabi communities, for example, Ravidasis, Valmikiis, Ambedkarites, and Buddhists have a significant presence. These communities have their own social, political, and religious organizations and spaces. Outside of the Punjabi communities, there is a significant presence of caste-oppressed Tamils in Toronto. Other South Asian communities would have significant Dalit populations.⁸³ Nevertheless, the prevailing understanding of Indian culture and history is rooted in the culture of upper caste groups. In contrast, those on the outskirts of the Brahminical caste system are rendered invisible in the popular imagination and mainstream diasporic narratives. Although caste manifests everywhere in the diaspora, “there is a damning silence about naming caste . . . [and] in the silence there is violence”.⁸⁴ The silence, Soundarajan writes, is also evident in critical academic discourse, progressive social justice activism, literature, and the arts in general.⁸⁵ Dalits are thus “thrice-discriminated against: as nationally Indian, as racialized, and as Dalit amongst savarna diasporas”.⁸⁶

The persistence of caste identities has led to instances of caste-based discrimination in Canada.⁸⁷ While caste discrimination may not be as overt as it is in South Asia, it manifests itself through social exclusion as well as professional and cultural networks, subtly perpetuating inequalities. Caste in North America first came to public attention through the technology industry. For instance, in 2020, Cisco was accused of discrimination based on caste when a former Dalit employee of the company claimed that his supervisors denied

80. Thenmozhi Soundarajan, “The Black Indians” *Outlook India* (10 August 2012), online: <outlookindia.com/making-a-difference/the-black-indians-news-281938> [perma.cc/4EJX-PRAM].

81. Upadhyay, *supra* note 73 at 150.

82. *Ibid* at 155.

83. *Ibid* at 155–56.

84. Soundarajan, *supra* note 79.

85. *Ibid*.

86. Upadhyay, *supra* note 73 at 150.

87. Anne Murphy & Suraj Yengde, “How Caste Discrimination Impacts Communities in Canada” (25 March 2024), online: <theconversation.com/how-caste-discrimination-impacts-communities-in-canada-224603> [perma.cc/W7RX-58K6].

him promotion opportunities and excluded him from meetings.⁸⁸ While the lawsuit is still pending at the California State Court, it marked a watershed moment in recognizing caste discrimination in the US.⁸⁹ Equality Labs, a Dalit civil rights organization, conducted the first survey on caste discrimination in the US, surveying more than 1,500 respondents. The researchers uncovered that 1/4 Dalits surveyed reported experiencing physical and verbal assault, 1/3 faced educational discrimination, and 2/3 faced workplace discrimination.⁹⁰ Such data clearly illustrates that caste discrimination is not restricted to India or even to South Asia; it affects the diaspora in North America and likely beyond.

Similarly, in Canada, by virtue of their caste-based privilege, people from upper castes have access to elite educational institutions and social networks, granting them the dexterity required to thrive in the prevailing socio-political frameworks outside of India.⁹¹ As David Mosse argues, caste status serves as a vital form of social and cultural capital, whether through social networks or “opportunity hoarding”, advantages which remain unrecognized and which Dalits do not share.⁹² A notable example is the Samast Brahman Society of Canada, a private Facebook group with 4,100 Brahmin members. The group advertises its aim is “to unite all Brahmins under one roof while they can serve in all other Brahmin organizations”.⁹³ Caste-based networks are vital in helping newcomers settle, find employment, and provide a sense of familiarity and support in an unfamiliar environment.⁹⁴ Within these spheres of influence, privileged members of upper castes engage in subtle acts of discrimination,

88. J Edward Moreno & Paige Smith, “Rare Caste Bias Case Advances, Raising Calls for Federal Action”, Bloomberg (10 August 2022), online: <news.bloomberglaw.com/daily-labor-report/rare-caste-bias-case-advances-raising-calls-for-federal-action> [perma.cc/K6H7-BZK5].

89. Soundarajan, *supra* note 80.

90. See Maari Zwick-Maitreyi et al., *Caste in the United States: A survey of caste among South Asian Americans* (Oakland: Equality Labs, 2018).

91. Chinnaiah Jangam, “Who Is Afraid of Caste Equity in Canada?” *The Wire* (13 March 2023), online: <thewire.in/caste/who-is-afraid-of-caste-equity-in-canada> [perma.cc/4ZQN-HBH6].

92. David Mosse, “The Modernity of Caste and the Market Economy” (2020) 54:4 *Modern Asian Studies* 1225 at 1225.

93. Talati, *supra* note 76.

94. Kumar, *supra* note 75 at 109.

microaggressions, and degrading behaviours in social and professional contexts—all without recognizing their caste-based advantages.⁹⁵

The deeply entrenched nature of the caste system is illustrated by the nonchalant use of caste-based terms by Canadians of South Asian descent, without regard to the harm they are perpetuating. For example, Gurpreet Singh, a student at Durham College in Ontario, detailed the casteism he faced in his college. Singh, who belongs to the Dalit community, was routinely asked for his full name by his peers to identify his caste and was subjected to derogatory caste-based slurs.⁹⁶ Singh initially changed his original name, Badhan, to conceal his caste identity and limit his exposure to exclusion and discrimination. However, his caste continues to significantly affect how he is perceived and treated in Canada.⁹⁷ Dalit children in schools are also not immune to the devastating impact of caste-based insults and disparaging treatment.⁹⁸ Furthermore, caste intersects with other forms of discrimination, such as gender and sexual orientation, compounding the marginalization of women and LGBTQBQ+ individuals within Dalit communities.

As Chinnaiah Jangam, an associate professor at Carleton University and an advocate for Dalit rights, writes, “A student or an employee coming from these backgrounds will not feel comfortable to express their own identity and . . . being themselves” if they continue to experience casteism in Canada.⁹⁹ This reluctance stems from the widespread fear of caste-associated stigma and the potential consequences they may encounter, such as retaliation and ostracization from colleagues, employers, and neighbours who belong to upper castes.¹⁰⁰ In 2020, Dr. Anne Murphy and Dr. Suraj Yendge initiated the “Caste in Canada” project in partnership with Dalit civil society leaders in British Columbia. The researchers interviewed nineteen people from diverse backgrounds impacted by

95. In South Asian diasporas, migration from oppressed castes is commonly considered less prevalent due to a perceived lack of merit as compared to upper castes. However, individuals from oppressed castes, benefitting from Indian reservation policies in education, have also migrated as skilled workers. Notably, ‘unskilled’ individuals from these castes have also migrated through various means. Nonetheless, the issue of caste often remains unaddressed, leading to a misconception that these diasporas are devoid of caste distinctions (see Upadhyay, *supra* note 73 at 172).

96. Talati, *supra* note 76.

97. Choudhary, *supra* note 79.

98. Olivia Bowden, “‘I Came Here To Escape’: Toronto Tackles Caste-Based Discrimination in Schools” *The Guardian* (17 March 2023), online: <theguardian.com/world/2023/mar/17/toronto-caste-discrimination-schools> [perma.cc/3NJS-GNMZ].

99. Talati, *supra* note 76.

100. Jangam, *supra* note 91.

caste. A recurrent theme in the interviews was the issue of visibility.¹⁰¹ Many Dalits who have experienced caste-related trauma and fear the psychological distress of experiencing similar oppressive practices as in India conceal or alter certain aspects of themselves to obscure their caste.¹⁰² Even those who grew up in Canada, such as Meera Estrada, a Dalit Hindu journalist based in Toronto, feel ashamed of their caste identity: “I just knew that we were not part of the narrative, and if we were, it was in a mocking way or meant to ridicule”.¹⁰³ In the context of the lack of legal acknowledgement and avenues for justice, caste-oppressed individuals feel restrained in openly reporting or speaking up about their experiences.

According to Dr. Yengde, because the Dalit experience is stigmatized and devalued due to their position at the lowest level of the social hierarchy, they are marked as “different”.¹⁰⁴ As a result, many Dalits strive to distance themselves from this identity. This is why many choose to convert to other religions or change their names to escape the gaze of the oppressor.¹⁰⁵ However, even in attempting to escape the label of the “Other”, the Dalit remains trapped in a cycle of rejection.¹⁰⁶ In response to their degradation, Dalits often seek to completely transform themselves by creating a new identity: one that rejects any connection to their ancestral and historical ties to the “despised” Dalit identity.¹⁰⁷

Although studies that examine the impact of caste status on mental and emotional health are limited, existing studies conducted in India have generally

101. Anne Murphy & Suraj Yengde, “Caste in Canada: The Unheard Stories of Dalit Canadians (2020-23)” (last visited April 7, 2024), online: <blogs.ubc.ca/annemurphy/research/caste-in-canada/> [perma.cc/4NDQ-L64S].

102. There are numerous stories of Dalits changing their last names, abstaining from eating beef at work and avoiding questions about where their families are based in India. In *Coming Out as Dalit*, writer Yashica Dutt describes her experience performing Brahmin identity when her family immigrated to the U.S. The resulting damage from constantly imitating Brahmins by assuming certain habits, tastes, language and mannerisms was that Dutt often felt “like an imposter” and plagued with self-doubt (see Priya P Kamath, “Outcast(e): The Case for Recognizing Caste Under U.S. Anti-Discrimination Law” (20 September 2021), online: <ssrn.com/abstract=4026180> [perma.cc/8JJ5-UUH7]; Amrit Dhillon, “Coming out as Dalit: how one Indian author finally embraced her identity” *The Guardian* (February 19, 2020), online: <theguardian.com/global-development/2020/feb/19/coming-out-as-dalit-how-one-indian-author-finally-embraced-her-identity> [perma.cc/34JJ-PCBZ]).

103. Vijay Puli, Editorial “Can Toronto help Canada end casteism in the classroom?” *Al Jazeera* (10 March 2023) online: <www.aljazeera.com/opinions/2023/3/10/can-toronto-help-canada-end-casteism-in-the-classroom> [perma.cc/SM94-2ETK].

104. Yengde, *supra* note 40 at 267.

105. *Ibid.*

106. *Ibid.*

107. *Ibid.*

highlighted that individuals from caste-oppressed communities are classified as having poorer mental health (e.g., self-reported feelings of anxiety and depression) as compared to individuals from upper castes.¹⁰⁸ Discrimination has long been identified as a significant risk factor for mental illness. Studies suggest that caste-based stigma, social exclusion, violence, and differential treatment are contributing factors to poor mental health, as well as suicides, in Dalits.¹⁰⁹ Hence, such negative social representation, stigma, and caste-based harassment would inflict similar mental, emotional, and psychological harm on Dalits living in Canada.

III. Institutional Recognition of Caste Discrimination

While the diaspora features a significant number of upper-caste Brahminical groups and organizations, the past few decades have also seen a growing presence of Dalit, Ambedkarite, Ravidasi, Buddhist, and other anti-caste organizations. Several diasporic Dalit groups have been actively advocating against caste oppression in various international forums, lending a critical voice to the worldwide struggles against casteism and racism.¹¹⁰ For example, the South Asian Dalit Adivasi Network (SADAN) is a non-profit organization working for the Dalit, Adivasi, and oppressed caste ethnic descent communities of South Asia in Canada. The main objective of the organization is to address the various forms of caste-based discrimination that historically caste-oppressed diasporic communities continue to experience with limited access to justice.¹¹¹ Other organizations include Chetna (Awareness) Association of Canada,¹¹² and Ambedkarite International Mission Society.¹¹³

As a result of such growing awareness about caste-based discrimination, a few jurisdictions within Canada are pushing for an official and express recognition and ban on discrimination based on caste. In a significant move towards

108. See Aashish Gupta & Diane Coffey, “Caste, religion, and mental health in India” (2020) 39:6 Population Research & Pol’y Rev 1119.

109. Vignapana Komanapalli & Deepa Rao, “The mental health impact of caste and structural inequalities in higher education in India” (2021) 58:3 Transcult Psychiatry 392.

110. Upadhyay, *supra* note 73 at 155.

111. Gurusimran K Bakshi, “SADAN Hails Canada’s Human Rights Commission for Recognising Caste-Based Discrimination” *The Leaflet* (4 November 2023), online: <theleaflet.in/sadan-hails-canadas-human-rights-commission-for-recognising-caste-based-discrimination/#:-:text=%E2%80%9CWe%20are%20thankful%20to%20the,discrimination%2C%E2%80%9D%20the%20statement%20reads> [perma.cc/4GTE-K6KU] .

112. Chetna Association of Canada, “About Us” (last visited April 7, 2024), online: <chetna.ca/about-EN> [perma.cc/6KPJ-VELS].

113. Ambedkarite International Mission Society, “About Us” (last visited April 7, 2024), online: <aimscanada.org> [perma.cc/H4ZV-995M].

recognizing and addressing caste discrimination, the Brampton City Council and the TDSB took decisive steps in 2023. Brampton City Council collaborated with the OHRC to include caste discrimination in its anti-discrimination policies. At the same time, the TDSB recognized caste oppression as a critical issue in schools, reflecting an increasing institutional awareness and response to caste-based discrimination in Canada.¹¹⁴ The resolution prompted the TDSB to appeal to the OHRC to develop a structured framework to address caste-based oppression within public education.¹¹⁵ Consequently, in October 2023, the OHRC released a policy officially recognizing caste as a basis of discrimination under the *Code*.¹¹⁶

It is crucial to underscore the historic nature of this initiative within the Canadian context, as it acknowledges caste oppression on an equal footing with racism, sexism, and other forms of discrimination. Defining caste as a system of “social stratification or hierarchy that determines a person or group’s social class or standing”, the OHRC recognized that casteism “affects all aspects of life and can result in social and economic exclusion and inequality for persons said to be of a ‘lower’ caste”.¹¹⁷ It also acknowledges that such discrimination, influenced by power dynamics of gender and ethnicity within communities, can occur even between members of the same group”.¹¹⁸ The OHRC emphasized that caste discrimination affects all social areas covered by the *Code*, from housing to employment, schools, and universities. Thus, these institutions have a legal obligation to “make sure their environments are free from discrimination and harassment, bullying or a poisoned environment based on caste and the related grounds”.¹¹⁹ SADAN, which has publicly lauded the OHRC policy as a significant step towards justice for the Dalit community in Ontario, has stated that “this will finally lead to institutions implementing investigative procedures,

114. Graeme Frisque & Rohan Puri, “Brampton looking to ban caste-based discrimination” (31 May 2023), online: <bramptonguardian.com/news/council/brampton-looking-to-ban-castebased-discrimination/article_b2dd42b1-9fad-50bc-9a30-20f77320551c.html> [perma.cc/ZNZ8-WQ27].

115. “In a First in Canada, Toronto School Board Votes to Recognise Caste Oppression”, *The Wire* (9 March 2023), online: <thewire.in/caste/in-a-first-in-canada-toronto-school-board-votes-to-recognise-caste-oppression> [perma.cc/B3W3-DW7L].

116. Ontario Human Rights Commission, “OHRC’s Policy position on caste-based discrimination” (26 October 2023), online: <ohrc.on.ca/en/news_centre/ohrc%E2%80%99s-policy-position-caste-based-discrimination#:~:text=The%20OHRC%20takes%20the%20position,other%20grounds%2C%20under%20Ontario’s%20Code> [perma.cc/9MEY-6BCL] [OHRC].

117. *Ibid.*

118. *Ibid.*

119. *Ibid.*

complaint mechanisms, training and public awareness to protect our children and everyone from all caste-oppressed communities”.¹²⁰

Despite policy recognition, however, there is a lack of specific legislation on caste as a protected ground of discrimination. Indeed, the concept of caste does not appear in the provisions of any human rights legislation in the various provinces.¹²¹ Notably, the OHRC acknowledges that caste is not an explicit ground under the *Code* unless recognized by the legislature, but maintains that it can be addressed through existing grounds.¹²² It adopts the position that caste-based discrimination is an “intersectional system of discrimination that can be covered under any combination of ancestry, creed, colour, race, ethnic origin, place of origin, family status, or possibly other grounds, under Ontario’s *Code*”.¹²³ As the following subsection will demonstrate, the absence of explicit reference to caste within human rights legislation poses significant challenges for individuals who seek to file applications for legal remedies to caste-based discrimination.

A. Caste as a Protected Ground of Discrimination

Discrimination is often nuanced and complex to determine, but this is particularly true in the case of caste-based discrimination. Caste, which was not a part of the international human rights discourse until the late 1990s, has been recognized as a violation of international human rights law by the UN Committee on the Elimination of Racial Discrimination (CERD/C) as a form of descent-based racial discrimination as defined in the International Convention for the Elimination of All Forms of Racial Discrimination (CERD); as well as by the former UN Sub-Commission for the Promotion and Protection of Human Rights (Sub-Commission)¹²⁴ as a sub-category of discrimination based on work and descent.¹²⁵

While there is limited scholarly literature advocating for the inclusion of caste as a ground of discrimination in the *Code*, the work of Annapurna

120. Bakshi, *supra* note 111.

121. Kumar, *supra* note 75 at 129.

122. OHRC, *supra* note 116.

123. *Ibid.*

124. Now the Human Rights Council Advisory Committee.

125. *Concluding observations on India’s ninth to fourteenth reports*, CERD/C, UN Doc CERD/C/304/Add.13 (1996); *Report of the Committee on the Elimination of Racial Discrimination*, UNGA, 75th sess, UN Doc A/57/18 (2002) at 111–112 [Report of the CERD]; *Resolution 2000/4 Discrimination based on work and descent*, UNESC, 52nd sess, CERD/C, UN Doc E/CN.4/Sub.2/2000/46 (2000) Res 2000/4 at 25. See also Bob Clifford, “Dalit Rights are Human Rights’: Caste Discrimination, International Activism and the Construction of a New Human Rights Issue”, (2007) 29:1 *Human Rights Quarterly* 167 at 182; David Keane, *Caste-Based Discrimination in International Human Rights Law* (Aldershot: Ashgate, 2007).

Waghray offers valuable insight into understanding caste discrimination. While her analysis primarily focuses on the recognition of caste discrimination in India, the UK, and Europe, her arguments nevertheless highlight the need for a nuanced understanding of caste that acknowledges its unique socio-religious and historical context, which is crucial for the development of effective legal protections against caste-based discrimination.¹²⁶ Although decided prior to the release of the OHRC's policy on caste discrimination, the case of *Bhangu v Inderjit Dhillon (Bhangu)*¹²⁷ before the British Columbia Human Rights Tribunal (BCHRT) illustrates the complex nature of caste-based claims in Canada and underscores the challenges such cases pose for adjudicators.¹²⁸

In *Bhangu*, the applicant (Bhangu) filed a complaint with the BCHRT, alleging that the respondents engaged in discriminatory conduct within the social area of employment based on the grounds of ancestry, place of origin, religion, and race. Bhangu alleged that the respondents addressed him with a derogatory term, explicitly using the word "chamar"¹²⁹ (referred to as a "slur" by the BCHRT) while leaving a staff Christmas party.¹³⁰ Following its deliberation, the BCHRT acknowledged the presence of caste-based discrimination and awarded damages to the aggrieved applicant. The BCHRT held that this discrimination was based on Bhangu's ancestry, place of origin, and race evinced from the use of the derogatory caste-based slur by the respondents.¹³¹

Given the historical significance of the Dalit caste, the BCHRT rightfully acknowledged the inherent importance of Bhangu's protected characteristics. The decision illustrates the evolving intersectional approach towards caste discrimination, emphasizing its complex interaction with crucial identity elements—namely, origins, ancestral lineage, racial identity, and religious beliefs.¹³² Furthermore, the BCHRT's examination of the nexus between the incidents occurring at the staff party and the area of employment underscores the necessity of a holistic understanding of workplace discrimination.¹³³ The decision exemplifies the broader implications of the professional environment, comprising both interpersonal dynamics and physical spaces. This interpretation reflects a perceptive acknowledgement of the multifaceted manifestations of caste-based prejudice, even within ostensibly informal contexts.¹³⁴

126. Waghray, *supra* note 4 at 3–4.

127. *Bhangu v Inderjit Dhillon and others*, [2023] BCHRT 24 at para 2 [*Bhangu*].

128. *Ibid.*

129. Chamar is a Dalit sub-caste. They are treated as untouchables and have continued to face subjugation and social exclusion for years (see Kumar, *supra* note 75 at 130).

130. *Bhangu*, *supra* note 127 at para 1.

131. *Ibid* at paras 88–89.

132. Kumar, *supra* note 75 at 131.

133. *Ibid.*

134. *Ibid* at 132.

Nevertheless, the Tribunal's discrimination analysis exhibits a flaw in Western conceptions of caste—specifically, the construction of caste within the confines of race and other race-related grounds:

I find that Mr. Bhangu's race involves him being a person from the Slur caste. I treat the term race as a social construct within which a person or group labels another person or group based on their physiological appearance, their social, cultural, and political make-up, their legal status in society, and other personal attributes. When one person or group assigns a racial identity to another person or group, it is an arbitrary process. Race-related labels do not account for genetic or physical variations naturally occurring within biological groups, or for the cultural, social, political, legal status and other identity shifts that occur as persons move about the world or as time passes and societies evolve. Mr. Bhangu provided evidence regarding the social, political, and legal status aspects of others labelling him as a member of the Slur caste group. Mr. Bhangu provided evidence that as a child, his friend's parents kicked him out of a playground and told him that Slur people could not use that playground. Other children chased and beat him up for being a Slur caste member. His friend's parents gave him a glass to drink out of and said in front of him that they would throw the glass out later because he was from the Slur caste, and he had drunk out of it. Last, people kicked him out of temple areas for being from the Slur caste.¹³⁵

The extent to which race and other race-related grounds (colour, ethnic origin, ancestry, place of origin) can subsume caste is a complex and longstanding subject of debate.¹³⁶ HH Risley, the Census Commissioner of India in 1901, first established the colonial idea of race as the foundation of caste and the caste system.¹³⁷ To protect their racial stock and purity of blood from the darker indigenous populations, the "superior" light-skinned Aryans used caste as an evolutionary weapon, according to Risley.¹³⁸ In other words, castes were races, and the difference between upper and lower castes was a distinction between peoples of supposedly "superior and inferior" racial endowment.¹³⁹ However, such biologically grounded theories of race have since been widely discredited.

135. *Bhangu*, *supra* note 127 at para 16.

136. See Oliver C Cox, "Race and Caste: A Distinction" (1945) 50:5 *Am J Sociology* 360.

137. Waughray, *supra* note 4 at 35.

138. *Ibid.*

139. Susan Bayly, *supra* note 27 at 169.

Both the OHRC and the CERD/C affirm that race is a social construct, not a biological reality. In *General Recommendation No. 29*, the CERD clarified that race and race-related grounds must be interpreted broadly and sociologically—not biologically—to encompass socially constructed hierarchies such as caste.¹⁴⁰ The OHRC’s policy on racism and racial discrimination also recognizes that race includes notions of biological superiority, but rejects those ideas themselves as false, instead focusing on how perceived racial differences shape social hierarchies and experiences of discrimination.¹⁴¹

Similarly, Dr. Ambedkar dismissed the theory that castes are equivalent to distinct racial groups, either in biological or social terms. He noted that the “caste system came into being long after the different races of India had commingled in blood and culture”.¹⁴² Caste “does not demarcate racial division”, but instead represented “a social division of people of the same race”.¹⁴³ Thus, while caste may be racialized in certain contexts, and can intersect with race-related grounds under the *Code*, it cannot be reduced to race alone. A proper understanding of caste discrimination requires an intersectional lens that accounts for how socially constructed hierarchies of purity and pollution function within and beyond racial categories.

Nevertheless, race and caste are both social constructs “designed to uphold systems of domination, exclusion, injustice, inequality, and discrimination”.¹⁴⁴ Like race, the caste system distributes differential privileges and punishments depending on inherited social status. Even when individuals leave their caste-defined occupation or achieve class mobility, they continue to face stigma, harassment, and discrimination rooted in their caste identity.¹⁴⁵ In *Caste: The Origins of our Discontents*, Isabel Wilkerson draws several parallels between caste and race, including their perceived divine sanction, the heritability of status, and their violent enforcement through endogamy and lynchings.¹⁴⁶

This convergence is reflected in the *Bhangu* decision and the OHRC’s policy position, which recognizes that incorporating caste within race-related grounds

140. *Report of the CERD*, *supra* note 125 at 111.

141. Ontario Human Rights Commission, “Policy and guidelines on racism and racial discrimination” (approved 9 June 2005), online (pdf): <ohrc.on.ca/sites/default/files/attachments/Policy_and_guidelines_on_racism_and_racial_discrimination.pdf> [perma.cc/X8AW-C2RN] [OHRC, “Racism and racial discrimination”].

142. Ambedkar, *supra* note 63 at 48.

143. *Ibid* at 49.

144. Frédéric Mégret & Moushita Dutta, “Transnational discrimination: the case of casteism and the Indian diaspora” (2022) 13:4 *Transnational Leg Theory* 391 at 419.

145. *Ibid*.

146. See Isabel Wilkerson, *Caste: The Origins of Our Discontents* (New York: Random House, 2020); Kenneth Mack, “Running deeper than race: America’s caste system” (31 July 2020), online: <[washingtonpost.com/outlook/running-deeper-than-race-americas-caste-system/2020/07/30/501af19ac7a5-11ea-a99f-3bbdfb1af38_story.html](https://www.washingtonpost.com/outlook/running-deeper-than-race-americas-caste-system/2020/07/30/501af19ac7a5-11ea-a99f-3bbdfb1af38_story.html)>.

can offer a meaningful remedy where an explicit ground for caste discrimination is lacking.¹⁴⁷ As Mégret observes, since caste discrimination predominantly affects individuals of South Asian origin, it can be framed as a form of racial or ethnic discrimination.¹⁴⁸ Importantly, human rights jurisprudence does not require that all members of a protected group be equally affected for discrimination to be found; it is sufficient that the harm disproportionately affects some members.¹⁴⁹ However, this interpretive flexibility within the *Code* should not erase the distinctiveness of caste-based harm. On the contrary, it exemplifies the extent to which caste is embedded within—and intersects with—broader racial and ethnic hierarchies. Recognizing caste within existing categories may be a pragmatic legal policy, but it also calls for a nuanced understanding of how forms of subordination can be both particular and structurally racialized.¹⁵⁰

In the abovementioned quoted paragraph, the BCHRT's approach of treating caste as a manifestation of racial identity carries the risk of undermining the specificity of caste discrimination against members of particular racialized groups. Race and caste are not entirely distinct, but intersectional. However, the conflation neglects the extent to which casteism affects a "minority within a minority" in host countries.¹⁵¹ Caste operates through its own logic—reinforced by practices like untouchability, hereditary occupation, and ritual exclusion—that are not adequately captured by existing categories. It would thus be a stretch to claim that dominant caste Indians (who share the same race and ethnicity as Dalits) are discriminating against Dalits based on race.¹⁵² While all Dalits may be South Asians, not all South Asians are Dalits—it is the latter that is the most decisive factor in determining caste discrimination.¹⁵³ It must be noted that such a reasoning is not inherently fatal to a human rights application under the Ontario *Code*. Nevertheless, the failure to explicitly name caste in human rights law perpetuates its social invisibility and reinforces the silence that has historically surrounded caste-based violence and exclusion in diaspora contexts. Recognizing caste as a standalone ground of discrimination would affirm its unique and ongoing harms, create clarity for adjudicators, and align with a substantive equality framework that responds to the actual experiences of marginalized communities.

Similarly, other race-related grounds, such as ancestry and ethnic origin, inadequately capture the complex nature of caste. Ethnic origin, in particular, is not defined in the *Code* but commonly relates to large groups of people identified based on shared national, racial, religious, tribal, linguistic or cultural

147. Mégret, *supra* note 144 at 420.

148. *Ibid.*

149. See *Brooks v Canada Safeway Ltd*, 1989 CanLII 96 (SCC), [1989] 1 SCR 1219 [*Brooks*].

150. Mégret, *supra* note 144 at 419–20.

151. *Ibid.* at 421.

152. *Ibid.*

153. *Ibid.*

origin, or background.¹⁵⁴ While caste may contain elements that overlap with definitions of ethnic origin, it remains fundamentally distinct in its operation as a system of inherited social stratification. Classifying caste under ethnic origin may also inadvertently essentialize caste identity. It risks treating caste groups as stable, culturally distinct populations, thereby reinforcing the very boundaries and hierarchies that anti-caste activism seeks to dismantle. While it is important to acknowledge the lived realities of caste, interpreting it as a marker of ethnic identity may ultimately reify its existence, making it seem permanent or culturally sanctioned. In contrast, recognizing caste as a distinct ground of discrimination allows for its identification and redress without legitimizing the social stratification it imposes.¹⁵⁵ As the OHRC policy on race powerfully asserts, although race is socially constructed, racism is real and must be addressed through robust legal protections.¹⁵⁶ A similar approach should be adopted for caste: although caste is a socially constructed hierarchy, “casteism”—the discrimination, exclusion, and dehumanization arising from caste—is a concrete and destructive phenomenon that demands explicit recognition. Therefore, recognizing caste as a distinct ground aims to challenge and dismantle it, just as race is named in anti-discrimination law not to entrench racial categories, but to combat racism.¹⁵⁷

Moreover, by linking castes to other grounds of discrimination, rather than recognizing it as a distinct ground, the *Code* would be neglecting the intricate power dynamics, historical intricacies, and systemic oppression inherent to caste-based discrimination.¹⁵⁸ Although this approach might appear to domesticate caste by incorporating it within pre-existing understandings of what constitutes discrimination; it simultaneously exoticizes or “others” caste as a phenomenon that needs to be translated and does not otherwise conform to categories of the host country.¹⁵⁹ As casteism has migrated and adapted alongside the Indian diaspora in Canada, it has become embedded in diasporic social structures. Yet, the barriers in reporting experiences of caste discrimination are compounded when individuals are forced to frame those experiences solely through the host state’s legal categories—categories that may not fully capture the unique nature of caste-based harm.¹⁶⁰ Caste is deeply intertwined with religious practices, traditional norms, and social hierarchies: concepts that the existing Ontario *Code* grounds of race and its related grounds cannot entirely encapsulate.

154. Human Rights Legal Support Centre, “Definitions” (last visited 6 April 2024), online: <hrlsc.on.ca/definitions/>.

155. Mégret, *supra* note 144 at 421.

156. OHRC, “Racism and racial discrimination”, *supra* note 141 at 11.

157. See Paula Braveman & Tyan P Dominguez, “Abandon ‘Race.’ Focus on Racism” (2021) 9:689462 *Frontiers in Pub Health* 1.

158. Kumar, *supra* note 75 at 132.

159. Mégret, *supra* note 144 at 421.

160. *Ibid.*

In addition to race and its related grounds, creed is another ground that the OHRC points to as encompassing caste. The conflation of caste with religion in legal discourse stems from its scriptural ties to Hinduism, the mistaken belief that caste is solely a Hindu issue, and the colonial framing of caste as a religious matter beyond state intervention.¹⁶¹ However, caste discrimination is only fully captured by the ground of creed if the applicant's ascribed caste status can be considered integral to or part of their religion or belief.¹⁶² The OHRC's 2015 *Policy on Preventing Discrimination Based on Creed* outlines a test developed through case law to assess what constitutes a creed. For a belief system to qualify, it must (1) be sincerely, freely, and deeply held; (2) be integrally linked to a person's identity, self-definition, and fulfilment; (3) address questions of ultimate meaning, human purpose, and ethics; (4) be connected to an organization or community that shares a system of belief; and (5) provide a comprehensive system of belief that governs one's conduct and practices.¹⁶³

While caste may be shaped by religious doctrine, it does not constitute a belief system in and of itself. Rather, caste is an involuntary and ascribed socio-cultural status—one that is often imposed from birth and upheld through systemic social exclusion. Crucially, caste discrimination targets individuals not because of what they believe or practice, but because of how they are perceived by others in relation to a rigid and hierarchical social order. For instance, the label of “lower caste Hindu” reflects an imposed socio-religious identity, rather than a self-defined creed.¹⁶⁴ Indeed, Dalits have historically been excluded from full participation in Hindu religious life, including being denied entry to temples and other public spaces of worship.¹⁶⁵ Thus, the realities of caste call into question the notion that caste identity can be meaningfully subsumed under the ground of creed.

Historically, and especially for Dalits, religion has served as a means of evading caste oppression, either through conversion to a religion other than Hinduism (e.g., Islam, Christianity and Buddhism), or through adherence to anti-caste religious movements (e.g. Valmiki, Ravidassias, and Ambedkarite Buddhists).¹⁶⁶ For many members of these communities, religious identity is often inextricably linked with caste status, suggesting that the ground of creed may encompass caste-based discrimination where belief systems and practices

161. Rupa Viswanath, *The Pariah Problem: Caste, Religion and the Social in Modern India* (New York: Columbia University Press, 2014) at 6–7.

162. Waughray, *supra* note 4 at 192.

163. Ontario Human Rights Commission, “Policy on preventing discrimination based on creed” (approved 17 September 2015), online (pdf): <ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20based%20on%20creed_accessible_0.pdf> [perma.cc/Y4PN-Q5XG] [OHRC, “Creed”].

164. Waughray, *supra* note 4 at 192.

165. *Ibid.*

166. *Ibid* at 193.

are organized around a rejection of caste hierarchy. Anti-caste belief systems such as Ambedkarite Buddhism or Ravidassias plausibly satisfy the test for creed discussed above, given their structured worldviews, community practices, and practices centered around equality and social justice.¹⁶⁷ A human rights tribunal may thus recognize such groups as either distinct sects within broader religions (e.g., Hinduism or Sikhism) or as independent creeds under human rights law.¹⁶⁸

Nevertheless, relying on creed as a ground may obscure, rather than expose, the underlying caste-based nature of the discrimination. Waughray provides a particularly poignant example: “Someone who discriminated against an Ambedkarite Buddhist may not discriminate against a Sri Lankan Buddhist, the underlying reason for the discrimination being caste, not Buddhism”.¹⁶⁹ This example illustrates how creed may fail to capture the operative basis of the differential treatment—namely, caste status rather than religious belief. The Supreme Court of Canada’s reasoning in *Brooks v Canada Safeway Ltd.*,¹⁷⁰ reinforces the importance of recognizing discrimination even when it is not uniformly applied: “It is rare that a discriminatory action is so bluntly expressed as to treat all members of the relevant group identically . . . To deny a finding of discrimination . . . is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive”.¹⁷¹ This insight is particularly salient in caste-related cases where prejudice may manifest subtly, inconsistently, or targeted at subgroups within a broader religious or ethnic community.

While an Ambedkarite Buddhist may be able to establish a claim under creed—albeit one that imperfectly reflects the multifaceted nature of caste—Dalits and other caste-oppressed individuals who do not identify with a distinct religious group may find creed inapplicable to their lived realities. In such cases, applicants are often required to invoke multiple intersecting grounds, such as creed, race, ethnic origin, and ancestry, to approximate their experience. Although intersectionality remains essential for determining discrimination under the *Code*, its necessity in this context also reveals the limitations of existing legal grounds to fully capture caste discrimination.

Furthermore, as Krishnamurthy highlights, adding caste as a protected ground would prevent it from being wrongly equated with solely socioeconomic

167. OHRC, “Creed”, *supra* note 162; Mihir Shah, “Political Radicalism of Ambedkar’s Spirituality” (1 March 2019), online: <theindiaforum.in/article/political-radicalism-ambedkars-spirituality> [perma.cc/RG5Z-MDKW].

168. Waughray, *supra* note 4 at 193.

169. *Ibid.*

170. *Brooks v. Canada Safeway Ltd.*, [1989] 1 SCR 1219, 59 DLR (4th) 321 (SCC).

171. *Janzen v Platy Enterprises Ltd*, 1989 CanLII 97 (SCC) at 1288–89.

status.¹⁷² Because of their historical exclusion from gainful employment, education, housing, and overarching restrictions on social mobility, Dalits do indeed face significant socioeconomic barriers and disadvantages relative to upper caste individuals. But falsely equating caste to only socioeconomic status, a ground not protected under the *Code*, would mean that caste-based discrimination is not prohibited.¹⁷³ However, caste status embodies much more than socioeconomic status. Even if one can change their socioeconomic status, that will often not impact their caste status—it is inherited and extremely rigid.¹⁷⁴ Caste is an immutable characteristic, just as those conventionally protected under anti-discrimination law.

Accordingly, recognizing caste as a protected ground would address its tenuous connections to existing *Code* grounds, provide legal validation to caste-oppressed communities, and affirm recognition of their unique societal disadvantages.¹⁷⁵ As Professor Bruce Ryder writes, “[w]hen the legislature recognizes a new ground, it is acknowledging a history of pervasive and persistent relations of social subordination, and committing to illuminating and rectifying them”.¹⁷⁶ Inclusion also serves as a “clear signal” to state and non-state actors that they have obligations towards “removing barriers to full and equal participation in social life”, and must resist imposing new barriers.¹⁷⁷ For example, as *Bhangu* highlighted in the British Columbia context, employers in Ontario would be better informed by the express requirement of the *Code* to equally consider Dalit applicants for employment and to protect Dalit employees from discriminatory practices and harassment at the workplace.¹⁷⁸

In addition, in the US, scholars have made the case that the distinct inclusion of caste as a ground would encourage Dalits who have faced discrimination to come forward, since they would be empowered to do so with the certainty of having a legally redressable claim.¹⁷⁹ They would not have to face the burden or face the uncertainty of making protracted arguments to prove the link

172. Guha Krishnamurthi, “The Constitutionality of Prohibiting Caste Discrimination” (13 July 2023), online: <lawreview.uchicago.edu/constitutionality-prohibiting-caste-discrimination> [perma.cc/UFT2-UTF3].

173. *Ibid.*

174. *Ibid.*

175. Sangh Rakshita & Sofia Ranchordas, “California’s Attempt to Outlaw Caste-Based Discrimination” (20 November 2023), online: <theregreview.org/2023/11/20/rakshita-ranchordas-californias-attempt-to-outlaw-caste-based-discrimination/> [perma.cc/RP8X-SJUE].

176. Bruce Ryder, “Discrimination on the Basis of Gender Identity and Gender Expression” (Paper delivered at the Annual Update on Human Rights: Keeping on Top of Key Developments, Ontario Bar Association, Toronto, 7 June 2013) [unpublished] at 4.

177. *Ibid.* at 5.

178. *Ibid.*

179. Kamath, *supra* note 102.

between caste and other existing grounds. Such recognition will also limit the risk, as highlighted in *Bhangu*, of discretionary interpretations by tribunals that elide substantive analyses of caste bias to reduce it to comparisons of existing grounds.¹⁸⁰ Applicants would not have to wholly depend on the discretionary interpretation of a human rights tribunal and their understanding of caste to read it as a part of existing grounds.¹⁸¹ It would also compel and empower human rights tribunals and courts to expand the meaning and content of the scope of caste as a ground and the prohibitions on discrimination.¹⁸² The existing grounds of discrimination in Canada were developed from a specific perspective that focuses on race, gender, and other constructs that are well-recognized in the West. In a globalized and multicultural society, where the Asian diaspora is emerging as a predominant force, this Western perspective is no longer sufficient to protect everyone. Anti-discrimination law may thus need to look beyond the West to fully understand some additional nuances of discrimination.¹⁸³

B. Challenges of Caste as a Protected Ground

While Canadian institutions are increasingly seeking to tackle caste discrimination, legal redress for those who experience it remains challenging. Since anti-discrimination law in Canada, specifically the *Code*, is grounds-based, legislature and the judiciary are typically reluctant to admit claims based on new grounds as it would lead to what Owen Fiss called the “proliferation of the protectorate”—i.e., the creation of further classes of protected groups “governed only by the mathematical principles of permutation and combination”.¹⁸⁴ According to scholars like Fiss, the list of protected grounds cannot expand indefinitely, though political opinion and socioeconomic status may also warrant serious consideration for inclusion.¹⁸⁵ However, as the paper has demonstrated, it is evident that caste does not neatly fit into the existing grounds of discrimination, and the latter does not adequately capture caste. The OHRC policy underscores the prevalence and significance of caste in that it can no longer be considered a marginal issue or excluded from anti-discrimination discourse. However, it is only a half measure towards recognizing the impact of caste oppression on Dalits in Ontario. Only under certain conditions can religious discrimination capture caste discrimination, and only by successfully

180. Rakshita & Ranchordas, *supra* note 175.

181. *Ibid.*

182. Ryder, *supra* note 175 at 5.

183. Rakshita & Ranchordas, *supra* note 175.

184. Owen M Fiss, “The Fate of an Idea Whose Time Has Come: Anti-discrimination Law in the Second Decade After *Brown v. Board of Education*” (1974) 41:4 U Chicago L Rev 742 at 742–773, 748.

185. Waughray, *supra* note 4 at 213.

and definitively bringing caste within race, ancestry, or ethnic origins can caste discrimination be caught by the ground of race.¹⁸⁶ Thus, the OHRC policy advocating for reading in caste will not suffice to protect individuals outside of such grounds, despite clearly having experienced caste discrimination.

Moreover, one may argue that the emerging, but still underdeveloped, Canadian legal discourse on caste further complicates its recognition as a new protected ground.¹⁸⁷ *Bhangu* underscores the gaps in the Tribunal's perception of caste outside of race. However, according to Priyamvada Goyal, the argument against caste on the basis that it is difficult to define and "somehow more fluid than other categories" is specious: "Race is not a biologically fixed category either, but likewise a historically constructed and shaped construct", and still it is "rightly seen as a category to be protected from discrimination".¹⁸⁸ Therefore, the argument against including caste based on its intricacies fails to acknowledge the real-world impact of underlying structural oppression and discrimination on caste-oppressed groups. Despite its nuanced and multifaceted nature, Goyal's perspective emphasizes the importance of recognizing and addressing caste-based discrimination within legal frameworks.

Political and ideological resistance from some Indian communities also presents a significant barrier to recognizing caste as a protected ground. Before the TDSB passed its resolution recognizing caste discrimination, organizations such as the Canadian Organization for Hindu Heritage Education publicly protested against the resolution. Ragini Sharma, president of the organization, characterized such policies as "absolutely ridiculous and mean-spirited" because they target "non-white communities as bigoted on the basis of no evidence".¹⁸⁹ She labelled caste discrimination policies as "pure racism: If you're not white, you're bigoted".¹⁹⁰ The Coalition of Hindus of North America, asserted that it is "unfair for the entire community to be put under the lens of scrutiny [. . .] Instead of bringing [students] together as Canadians, this is going to cause a lot of division".¹⁹¹ If caste were added as a protected ground, dominant caste Indians fear that it would be used to "uniquely target South Asians, Indians, and Hindus

186. *Ibid* at 196.

187. *Ibid* at 212.

188. Priyamvada Gopal, "Dominating the diaspora" (1 April 2010), online: <himalmag.com/dominating-the-diaspora/> [perma.cc/FW6E-FRP8].

189. Isabel Teotonio, "TDSB wants to ban caste-based discrimination. Here's why people are divided" (9 March 2023), online: <thestar.com/news/gta/tdsb-wants-to-ban-caste-based-discrimination-here-s-why-people-are-divided/article_9fd61503-817c-5765-8107-b7125f39a726.html>.

190. *Ibid*.

191. *Ibid*.

for ethno-religious profiling, monitoring, and policing”.¹⁹² These organizations essentially argue that acknowledging caste as a form of discrimination denigrates Indians and leads them to feel “humiliated” about their culture and traditions.¹⁹³ However, it is critical to distinguish between identifying structural harms and attributing blame to individuals or communities. Human rights protections under the *Code* do not operate by presuming guilt, but rather by providing recourse to those who experience systemic discrimination. Just as protections against gender discrimination do not assume all men are sexist, acknowledging caste-based harm does not imply that all South Asians, Indians, or Hindus perpetuate casteism.¹⁹⁴ Instead, these protections recognize that caste discrimination can and does occur—sometimes unconsciously—and that victims deserve remedies when it does. Failing to acknowledge this for fear of appearing stereotypical only entrenches silence and stigma around an issue that has real consequences for caste-oppressed individuals. The goal is not to shame communities, but to ensure dignity, accountability, and inclusivity within them.¹⁹⁵

Opponents of caste also tend to argue against the prevalence of caste in Canada, citing that caste-based discrimination does not exist and does not significantly affect the South Asian diaspora.¹⁹⁶ However, this argument ignores a growing body of evidence from community organizations, human rights advocates, and lived experiences that point to the persistence of caste-based exclusion and harm. As discussed earlier, organizations like the Dalit-Bahujan organization Equality Labs have documented that caste-oppressed people in the US face alarming discrimination and harassment with 1/4 experiencing physical and verbal assault; 1/3 experiencing education discrimination; and 2/3 experiencing workplace discrimination.¹⁹⁷ In Canada, members of SADAN have similarly reported how many Dalit children in Toronto schools have been subjected to caste slurs, endure stereotypes about caste-oppressed people as criminals, and face traumatizing experiences. Trina Kumar, who grew up and went to school in Toronto, recounted a particularly disturbing school incident of a dominant caste boy auctioning her off for sex solely based on her dark skin and caste.¹⁹⁸ These harms are often underreported due to stigma and fear of

192. Rohit Chopra & Ajantha Subramaniam, “Caste Discrimination Exists in the U.S., Too – But a Movement to Outlaw It Is Growing” (11 February 2022), online: <time.com/6146141/caste-discrimination-us-opposition-grows/> [perma.cc/GTR2-PVQ8].

193. Teotonio, *supra* note 189.

194. Chopra & Subramaniam, *supra* note 192.

195. *Ibid.*

196. Teotonio, *supra* note 189.

197. See Zwick-Maitreyi et al, *supra* note 90.

198. Geetha S Pillai, “Bullying Rampant in Toronto Schools: Caste Oppressed People Share Their Stories” (11 March 2023), online: <en.themooknayak.com/dalit-news/bullying-rampant-in-toronto-schools-caste-oppressed-people-share-their-stories> [perma.cc/3ZWD-8SXX].

retaliation, much like early reports of racial or gender-based discrimination were historically dismissed. In this context, the claim that “there is no discrimination” functions similarly to “colourblind” approaches to race—it is a perspective typically held by those insulated from these harms.¹⁹⁹ The assertion that caste discrimination is non-existent or inconsequential is essentially an expression of privilege. It allows those who are not directly affected by caste discrimination to ignore its existence and perpetuate the status quo. This privilege stems from the fact that those who do not experience caste discrimination firsthand are often shielded from its effects and may not fully grasp its pervasive impact on individuals and communities. By denying the existence of caste discrimination, opponents inadvertently perpetuate systems of oppression and hinder efforts to address inequality within these communities. Therefore, recognizing caste as a ground for discrimination is essential, as ignoring it not only erases the lived experiences of those facing caste discrimination, but also reinforces systemic inequalities that uphold the privileges of a few while marginalizing others based on their caste identity.

Conclusion

The debate over including caste as a protected ground of discrimination encapsulates the broader complexities of addressing entrenched sociocultural inequalities. The unique and intricate fabric of caste discrimination eludes the traditional Western framework of race, religion, and ethnicity. Caste as a form of discrimination is indeed distinctive, embedded in ancestral ties and historical occupation, and intertwined with the sociocultural tapestry of native languages and religious practices.²⁰⁰ The pervasive stigma clings to the caste-oppressed, regardless of their socioeconomic advancements, underscoring the severe, immutable disadvantages they continue to confront.²⁰¹ This complexity extends beyond mere socioeconomic disparities, inflicting deep-seated psychological trauma and cultural isolation.

The Canadian context has seen a growing recognition of caste-based discrimination, which has been, to a degree, mirrored in a surge of institutional policies on the issue. However, without a legislative framework that comprehensively encapsulates the unique nature of caste oppression, there remains an untenable gap in protection and justice for those affected. It is clear that while international communities, including Canada, make strides in diversity and inclusion, the direct impact of caste discrimination necessitates a more targeted, explicit approach to anti-discrimination law.

199. Chopra & Subramaniam, *supra* note 192.

200. Krishnamurthi, *supra* note 172.

201. Rakshita & Ranchordas, *supra* note 175.

This paper underscores the pressing need for the legal system to evolve and encompass caste as a distinct ground of discrimination under the Code to forge an inclusive future. Such recognition would validate the experiences of caste-oppressed individuals and provide a robust legal recourse capable of dismantling the multifaceted barriers they face. This recognition is not an end but a beginning—a catalyst for further education, dialogue, and policy-making that acknowledges and addresses the unique challenges caste-oppressed communities endure. The path to justice is not through silence but through the amplification of marginalized voices and the recalibration of our societal lenses to see and act upon the subtle yet profound realities of caste-based discrimination.