

## SCHEDULED CASTES VS. CASTE HINDUS: ABOUT A COLONIAL DISTINCTION AND ITS LEGAL IMPACT

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*India's legal system gives a decisive role to membership of a specific set of caste groups. Groups included in the schedule attached to the Constitution (Scheduled Castes) Order of 1950 are the beneficiaries of special protections and provisions. This legislation appears to discriminate on grounds of caste. However, the Supreme Court permits such special treatment under the condition that the classification is reasonable: for one, it must be founded on intelligible differentiae which distinguish the persons grouped together from others left out of the group. Which intelligible differentiae then distinguish the groups that belong to the Scheduled Castes? This essay argues that this question was never answered in any satisfactory manner. The Constituent Assembly simply accepted the colonial division of the Indian population into 'Caste Hindus' and 'Depressed Classes'. Yet, the colonial administration had also failed to find empirical tests that allowed it to identify the 'Depressed Classes' as a distinct set of castes. The notion of 'untouchability' did not help here, because it functioned as a label used to name a collection of practices. It was unclear how to identify the victims at the receiving end of 'untouchability', since these practices could be found both among groups classified as Depressed Classes and among those considered Caste Hindus. The conclusion is puzzling: in 1936, the British Monarch ordered how the people of India should be divided into Scheduled Castes and others. Since 1947, Indian political and intellectual elites have enforced this decree in their country through caste legislation.*

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## I. INTRODUCTION

One of the most peculiar dimensions of the Indian legal system lies in its legislation related to caste. The Constitution gives equal rights to all citizens and prohibits discrimination on grounds of caste, religion, race, sex or place of birth. However, it also foresees a series of special provisions, which appear to discriminate precisely on such grounds. Article 15 prohibits discrimination on the ground of caste, but adds that nothing in this article “shall prevent the State from making any special provision ... for the Scheduled Castes and the Scheduled Tribes”. Article 16 states “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”. No citizen should on grounds only of caste be discriminated against in matters related to state employment. However, it then adds that nothing in the Article shall prevent the State from making special provisions in public service for reservations in favour of the Scheduled Castes (SCs). Part XVI of the Constitution stipulates “special provisions relating to certain classes”. These provide for the reservation of seats for SCs in the national parliament and the state-level legislative assemblies. One of its Articles also allows for provisions in favour of these groups that lower the qualifying marks and evaluation standards in any examination.<sup>1</sup>

Since the framing of the Constitution, more caste-related laws have been enacted. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act of 1989 (‘the Atrocities Act’) is perhaps the most important piece of legislation. It lists out a series of offences that generally constitute violations of criminal law, such as forcing people to drink or eat any inedible or obnoxious substance; forcibly removing clothes from a person and parading them naked or with painted face or body; wrongfully occupying or cultivating land owned by another person; instituting false, malicious, vexatious legal proceedings; corrupting or fouling the water of a spring or other source used by people. This Act

<sup>1</sup> CONSTITUTION OF INDIA, Art. 335. It deals with “Claims of Scheduled Castes and Scheduled Tribes to services and posts” and states: “The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State: Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”

gives these crimes a special status as “offences of atrocities”, which allows for more severe punishments than the same crimes would receive under the general penal code.<sup>2</sup> It also includes unusual articles: a recent amendment says that one is guilty of a crime when one, “by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or Tribes”. The Atrocities Act establishes special courts and proceedings for dealing with such “atrocities”. Now, what gives these violations their special status as “atrocities”? It is the fact that the perpetrator is *not* a member of a Scheduled Caste or Tribe, while the victim *is*.

Clearly, the legal system of contemporary India gives a decisive role to membership of a specific set of caste groups. Groups included in the schedule attached to the Constitution (Scheduled Castes) Order of 1950 are the beneficiaries of special provisions and protections. For obvious reasons, it has been crucial to identify which groups in Indian society belong to this set of castes.<sup>3</sup> Since membership of this set implies access to major benefits and quota, this exercise could not be taken lightly. Hence, one would expect that this issue was of supreme import at the time when Indian legislative bodies formulated these legal articles and composed the list of SCs: Which characteristics were to distinguish the groups that belonged to this privileged set? If the selection was not to happen in a haphazard way, how could one recognize the groups that deserved reservations and other exceptional legal provisions and protections?

### A. What is at Stake?

In most of today's nation-states, some citizens have the right to special benefits bestowed by law. For instance, those above a certain age are entitled to retirement benefits and people with disabilities have the right to disability benefits. In some countries, the state gives scholarships to children from low-income families and provides a guaranteed income to people living below the poverty line. In this sense, there is nothing peculiar about legislation that provides benefits limited to specific classes of individuals. However, for such laws to function, they must stipulate criteria that determine which citizens have the right to the benefits in question. Inevitably, these criteria draw on empirical characteristics shared by the relevant class of people. For instance, one class may consist of all citizens above sixty-five years of age; another contains all families with an annual income lower than twenty five thousand euros; or a third class encompasses all citizens that are fifty percent disabled.

<sup>2</sup> Chapter II, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, No. 33 of 1989, India Code, <http://indiacode.nic.in>. It provides such a list titled “Offences of Atrocities.”

<sup>3</sup> For extensive discussion on the question of identifying the beneficiaries of this legislation, see Part Two of MARC GALANTER, *COMPETING EQUALITIES: LAW AND THE BACKWARD CLASSES IN INDIA* (The University of California Press, 1984).

Such classification exercises may require complex procedures to determine whether an individual lives up to the criteria in question. Still, the viability of these laws depends on their ability to relate the benefits in question to the characteristics that a citizen needs to have in order to be entitled to them. It is this relationship that guarantees that such laws do not violate the equal rights of all citizens by arbitrarily providing benefits to some and not to others. Thus, there is an onus to show that those who are entitled to the benefits are unequal to other citizens in some relevant aspect(s), which justifies this unequal treatment.

In India, Article 14 of the Constitution guarantees, “The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.” While this bans ‘class legislation’, it does allow for reasonable classification for the purposes of legislation and permits treating certain classes of persons differently when circumstances demand this. However, the Supreme Court of India has repeated several times, such classifications must live up to two conditions: “(i) the classification must be founded on an intelligible differentia which distinguish [sic] persons or things that are grouped together from others left out of the group and (ii) such differentia must have a rational relation to the object sought to be achieved by the statute in question.”<sup>4</sup> The classification may be founded on various bases, but there must always be a nexus between the basis and the object of the legislation.

The laws that provide special provisions for certain castes also face this test of reasonable classification. Which intelligible differentiae or empirical characteristics, shared by the members of these castes, support their exceptional legal status? Indeed, they are all members of SCs, but this merely shifts the question: Is the classification of SCs based on an intelligible differentia that distinguishes the persons grouped together from others excluded from the group?

This question is of urgency in contemporary India. During the past seventy years, a multitude of caste organisations have demanded access to caste-based benefits, “solemnly setting forth their desire to be considered backward and included in the Schedules for special treatment”. “Inclusion in the lists is regarded more as a coveted prize than as a reflection of backwardness”.<sup>5</sup> Some groups even engaged in violence with the aim of being classified as SCs. Occasional amendments to the Constitution (Scheduled Castes) Order have added new groups to the list, whereas others were removed or excluded.<sup>6</sup> When we consider the *prima facie* grounds for this classification, the significance of the issue becomes clearer:

<sup>4</sup> *Mohd. Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731; *Das J. in State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75; *Javed v. State of Haryana*, (2003) 8 SCC 369.

<sup>5</sup> Department of Social Security, The Report of the Advisory Committee on the Revision of the Lists of Scheduled Castes and Scheduled Tribes, 1965, at 7-9 (emphasis added).

<sup>6</sup> The most recent instance is The Constitution (Scheduled Castes) Order (Amendment) Bill, 2016, which added more than twenty communities to the state-wise lists of SCs.

The concept “Scheduled Castes” is relevant only in a context of statutory provisions, government programs and politics. Outside this context there are no “scheduled” castes. Rather, there is a diverse population, numbering 64.5 million at the last census, born into numerous communities, each with its own identity, traditions and problems...They were “scheduled” by the government and can be legitimately treated as a single category only when dealing with aspects of this relationship with the government.<sup>7</sup>

If this is the case, the difficulty is obvious: On what empirical grounds has the government ‘scheduled’ more than one thousand two hundred communities and transformed them into a single category of Scheduled Castes? What is the intelligible differentia that allowed it to distinguish castes that deserve special benefits from those that do not?

Generally, judges, policy makers, and academics address this question by referring to the alleged structure of the caste system and the historic injustice it has caused.<sup>8</sup> They describe the fourfold caste or *varna* hierarchy that organizes Hindu society and mention the existence of a class of Untouchables outside the caste system or at the bottom of the hierarchy. According to this account, the list of SCs should encompass the formerly Untouchable Castes, who suffered from severe social disabilities because they were considered polluting by higher castes. In other words, the feature that is to distinguish these castes and support their special status is that of *untouchability* and the ill-treatment and backwardness related to it.<sup>9</sup> This also functions as the official government criterion. In 1965, the Lokur Committee, established by the government to revise the SC lists, adopted “the test of extreme social, educational and economic backwardness of castes, *arising out of traditional practice of untouchability*” (emphasis supplied).<sup>10</sup> More recently, the Ministry of Social Justice and Empowerment has confirmed this formula.<sup>11</sup>

<sup>7</sup> Lelah Dushkin, *Scheduled Caste Policy in India: History, Problems, Prospects*, 7(9) ASIAN SURV. 626 (1967); See Simon Charsley, ‘Untouchable’: What is in a Name?, 2(1) J. OF THE ROYAL ANTHROPOLOGICAL INSTITUTE 1, 17 (1996).

<sup>8</sup> For academic works, see Craig Jeffrey et al., *Dalit Revolution? New Politicians in Uttar Pradesh, India*, 67(4) J. ASIAN STUD. 1365, 1368 (2008); DAVID KEANE, CASTE-BASED DISCRIMINATION IN INTERNATIONAL HUMAN RIGHTS LAW, 1 (Routledge, 2007); OLIVER MENDELSON AND MARIKA VICZANY, THE UNTOUCHABLES: SUBORDINATION, POVERTY AND THE STATE IN MODERN INDIA, 1, 5, and 6 (Cambridge University Press, 1998). For legal judgments, see *Murugan v. State of T.N.*, 2012 SCC OnLine Mad 1097 : (2012) 2 CTC 561; *Lata Singh v. State of U.P.*, (2006) 5 SCC 475; *Ram Krishna Balothia v. Union of India*, 1994 SCC OnLine MP 59 : AIR 1994 MP 143; *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : AIR 1993 SC 1126.

<sup>9</sup> See the legal judgments listed in note 8.

<sup>10</sup> Department of Social Security Report, *supra* note 5, at 5-6 (emphasis added).

<sup>11</sup> Ministry of Social Justice and Empowerment, Twenty-Eighth Report of the Standing Committee on Social Justice and Empowerment (2011-2012): The Constitution (Scheduled Castes) Orders (Amendment) Bill at §1.3 (Lok Sabha Secretariat, 2012).

Significantly, it is not social or economic backwardness that is the decisive factor but the fact that it arises out of untouchability. For decades, commentators have pointed out the confusion in this notion of untouchability. They argue that it is unclear and lacks a clear theoretical basis, that it has been left undefined in the relevant laws, and that it may be impossible to give a satisfactory definition of the term.<sup>12</sup> A judge can draw upon untouchability as the central notion to assess a caste-related case, but then add that it is “not capable of precise definition”.<sup>13</sup> It appears to be very different, then, from the type of characteristic that usually serves to classify citizens entitled to special legal benefits. Age, income, or disability are relatively straightforward as classificatory criteria. Some conventions, meanings of legal terms, and calculation tools may need to be determined; fraud is always possible. But administrators generally have reliable ways of establishing the age, income, and disability of a citizen. In the case of caste laws in India, the situation is different. Untouchability is not a characteristic of this type; its presence among a group of individuals cannot be determined in any straightforward empirical manner.

Did the legislative bodies of India possess sound conceptual and empirical tools to determine which castes belong to the category of Scheduled Castes? Did they formulate such intelligible differentiae? If the answer is negative, the distinction between Scheduled Castes and the so-called ‘Caste Hindus’<sup>14</sup> would become tenuous, even though it plays so significant a role in India’s legal system. Regardless of one’s position on the justifiability of caste-based reservations, this would undermine the foundation for the legal privileging of certain castes above others. It would not count as a reasonable classification and ground for providing legal benefits.

This essay will examine how legislative bodies in India resolved the issue of distinguishing between Scheduled Castes and Caste Hindus as two distinct groups or categories in Indian society. Looking into the work of the Constituent Assembly, we will discover that this body never addressed the issue, in spite of its decisive role in formulating caste legislation. Several members pointed out fundamental problems; yet, the constitutional schedule largely reproduced the British legislation. Had colonial officials then discovered that Indian society was divided into these two groups? They formulated several tests to recognize ‘the Depressed Classes’, but these ran into insurmountable problems the moment they were implemented. However, the British papered over these problems and went

<sup>12</sup> Mikael Aktor, *Rules of Untouchability in Ancient and Medieval Law Books: Householders, Competence, and Inauspiciousness*, 6(3) INT’L J. HINDU STUD. 243 (2002); Dushkin, *supra* note 7, at 627; A.M. Shah, *Purity, Impurity, Untouchability: Then and Now*, 56(3) SOC. BULL. 355 (2007); *Hadibandhu Behera v. Banamali Sahu*, 1960 SCC OnLine Ori 53 : AIR 1961 Ori 33, 35; see the debates in the Constituent Assembly cited below.

<sup>13</sup> Justice Ramaswamy in *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : AIR 1993 SC 1126.

<sup>14</sup> In the classical account of the caste system, the term ‘Caste Hindus’ is used to refer to Hindus belonging to one of the four *varnas*: *Brahmins*, *Kshatriyas*, *Vaishyas*, and *Shudras*.

on to constitute this legal category. It was as though the existence of a set of castes that deserved special benefits—in contrast to the Caste Hindus who did not—was self-evident. What made this so obvious, both to colonial officials and to postcolonial policy-makers?

## II. CASTE HINDUS AND DEPRESSED CLASSES

In today's India, it is common parlance to speak of 'Dalits' and 'Caste Hindus' as two distinct sections of the population. This way of speaking is especially popular among academics, activists, journalists, and politicians. Listening to them, one gets the impression that the Dalits are one community, which has been discriminated against for centuries by the Caste Hindus. Even though both consist of a huge number of *jatis* with very different traditions and practices,<sup>15</sup> they are often described as though they make up two distinct communities.<sup>16</sup> 'Dalits', one hears, is the name preferred by the castes formerly called 'Untouchables'. They are 'the broken' or 'the oppressed'.

Of course, many people are broken or oppressed in all kinds of ways, so it cannot just be this state that characterizes this group. In one sense, the criterion is clear: to count as a Dalit, one should be a member of one of the more than one thousand two hundred groups listed in the updated version of the Constitution (Scheduled Castes) Order. This shifts the question: what was the rationale behind this Schedule's classification of castes? How did the legislative body responsible for enacting these laws, the Constituent Assembly, discuss this matter and which problems came up during these debates?

When the Assembly elected its permanent chairman on 11 December 1946, the members congratulated him profusely. One member said he spoke "on behalf of the 60 millions of untouchable classes, the tillers of the soil and hewers of wood, who have been in the lowest rungs of the ladder of political and economical Status of this country."<sup>17</sup> Significantly, this member used a series of different terms as equivalents that referred to the classes he represented: 'Untouchable

<sup>15</sup> The word '*jati*' is generally used in India to refer to the groups in which people are born; there are thousands of these groups and they are identified along different lines, from a shared language to a common past. The volume *The Scheduled Castes* in the Anthropological Survey of India's *People of India* series illustrates the situation. It provides lists and descriptions of hundreds of groups in each of the different states of India, which show their very different practices and characteristics. See K.S. SINGH, *THE SCHEDULED CASTES* (Oxford University Press, 1993).

<sup>16</sup> This way of describing also occurs in legal judgements, where judges describe the facts of a caste-related case as though two communities are involved: the Dalits (or Harijans) vs. the Hindu community. For instance, see Justice Kuldip Singh and Justice K. Ramaswamy in *State of Karnataka v. Appa Balu Ingale*, 1995 Supp (4) SCC 469 : AIR 1993 SC 1126.

<sup>17</sup> V.I. Munuswamy Pillai (Madras: General), 1 CONSTITUENT ASSEMBLY DEBATES (CAD) 43 (Lok Sabha Secretariat, 1999).



Classes', 'Scheduled-Castes', 'Harijans', 'Harijan communities', 'Scheduled Classes', and 'Untouchables'.<sup>18</sup>

Some days later, the term 'Caste Hindu' also made its appearance in the Assembly, when several members expressed their indignation at a debate that had taken place in the House of Lords in London.<sup>19</sup> In this debate, some British Conservatives had dismissed the Constituent Assembly as 'a Caste Hindu' institution, which would threaten India with 'a Hindu Raj' if it continued the work of framing a constitution for the country. Much of this debate revolved around the status of the so-called 'Depressed Classes' as against the 'Caste Hindus'.

The debate in the House of Lords had started when Viscount Simon claimed that the Assembly was but "a body of Hindus" and addressed the following question to the Secretary of State: "do the Government regard what is going on in Delhi at this moment as the Constituent Assembly?" This is not a hypothetical question, he added, since these "people are meeting now, at this minute, all by themselves, and the most recent declarations of Pandit Nehru show how much importance he attaches to the idea that he and his Caste Hindus should constitute the Constituent Assembly which the Government propose". Could "this meeting of Caste Hindus at Delhi" be regarded as the Constituent Assembly at all? Simon's concern was that "the attempt to establish a Government in India, not by co-operation between the major communities, but by reliance on the Hindu majority, threatens India with civil war, with anarchy and bloodshed on an unlimited scale". His next statement shows which communities he was referring to: "To the Caste Hindus we should say that the British Parliament well understands the inspiration that is drawn from the prospect of complete freedom, but that the freedom must be for others, the 90,000,000 Moslems, the 50,000,000 Untouchables, as well as for themselves".<sup>20</sup>

We learn a lot from these words: first, Simon views Caste Hindus, Muslims, and Untouchables as three separate communities that need to cooperate in establishing the Indian Government. Consequently, he sees the Muslims and Untouchables as two *minorities*, distinct from the dominant Hindu majority. In the case of Muslims, it is relatively clear how different groups could be viewed as a religious minority, since they share a religious affiliation of some kind. But how could one say the same for the hundreds of *jatis* that this British Lord unites into a community? What made them into a community as opposed to another community called 'the Caste Hindus'? This distinction between communities was extremely important, according to Simon; not taking it into account in the creation of the new constitution for India could lead to civil war, anarchy and bloodshed on an unlimited scale.

<sup>18</sup> *Id.*

<sup>19</sup> Dr. Syama Prasad Mukherjee (Bengal: General), 1 CAD 98.

<sup>20</sup> 144 Parl Deb HL (5<sup>th</sup> ser.) (1946), col. 926-931.



This was not an idiosyncratic view. The Earl of Scarborough also raised the question of “the position of the Scheduled Castes in the Constituent Assembly.” This “community—or rather this collection of communities—is not well organized,” he pointed out: “It does not command the resources with which it can press its case, and its immemorial plight demands that its voice should be heard.” “My contention is”, the Earl added, “that the manner in which the Scheduled Castes are represented in the Constituent Assembly does not reflect the wishes and the opinions of the Scheduled Castes themselves”. Here, we see a qualification: the Scheduled Castes (no longer called the Untouchables) form a community or rather a collection of communities. Yet, the Earl assumes, this collection of communities not only shares one voice, but also another fundamental property, namely, “its immemorial plight”.<sup>21</sup>

Of course, this “immemorial plight” is a rather mysterious reference. It related to the subsequent discussion, where the focus shifted to the following issue: according to the British Parliament, are the SCs one of the minorities in Indian society that would be protected under the new Constitution? Another Viscount said he had met Ambedkar and reported that this issue was the latter’s major anxiety; he wanted the SCs to be recognized as a minority in Indian society, so that they would get the special status accorded to minorities by colonial law. In response, one member of the House of Lords said, “The Scheduled Castes are technically a minority, but they are a very numerous one; there are some 60,000,000 of them”.<sup>22</sup>

For Lord Pethick-Lawrence, Secretary of State for India and Burma, there was no doubt that the government regarded the SCs as a minority. In fact, according to him, they were “one of the principal peoples” with whom the Minorities Commission would deal.<sup>23</sup> That the SCs counted as a minority deserving certain protections might be a technical decision of the British Government. Nevertheless, it does presuppose that these groups were a minority community in some relevant sense. In fact, the Secretary calls them *one of the peoples* coming under minority protection. So the SCs now constituted *a people*. For all this to be possible, this variety of groups should share some recognizable characteristics that made them into a community or people.

## A. Two Communities of Hindus?

From London back to Delhi then. Some Constituent Assembly members reacted with indignation to these statements and to similar claims made by Winston Churchill, who had among other things said that the Assembly represented “only one major community in India”, referring to the Caste Hindus.

<sup>21</sup> *Id.*, at col. 966-968.

<sup>22</sup> Parl Deb HL, *supra* note 20, at col. 972.

<sup>23</sup> Parl Deb HL, *supra* note 20, at col. 987-988.

However, the Indian discussion did not challenge the British view that the majority Caste Hindus and the minority SCs were two communities in Indian society. Its only concern was that allegations about inadequate representation would prevent the SCs from joining the nationalist forces.

In fact, throughout the Assembly debates, one notes that members speak of the SCs as a community of some sort, as opposed to the Caste Hindus. Many said that they spoke in the name of the community that they represented: that of the Depressed Classes, Harijans, or Untouchables. Some even suggested this division of communities had a racial foundation. S. Nagappa of Madras put it as follows:

We, the Harijans and Adivasis are the real sons of the soil, and we have every right to frame the Constitution of this country. Even the so-called Caste Hindus who are not real Indians, can go, if they want. (Interruptions.) Sir, today we are asking the Britisher to quit. For what reason? Is he not a human being? Has he not a right to live in the country? We ask him to quit because he is a foreigner. So, Sir, we have also a right to ask the Aryan, the migrator to go. We have a right to ask the Mohammedan, the invader, to go out of this country. There is only one consideration. The Caste Hindus of this country do not have any other place to go to. That is the only consideration that they deserve.<sup>24</sup>

In this passage, we note one element that contributed to presenting Caste Hindus and Harijans as two communities. For Nagappa, the scientifically dubious Aryan Invasion Theory showed that Harijans could be distinguished from Caste Hindus on racial grounds; they were a community consisting of original inhabitants of India, while the Caste Hindus were the Aryan invaders, who could be asked by the original inhabitants to go and leave the Indian soil.<sup>25</sup> Others agreed that the Harijans constituted a community but insisted that they were part of a larger Hindu community.<sup>26</sup>

Did the Constituent Assembly members have a coherent way of establishing how Caste Hindus and Depressed Classes are two communities? Generally, untouchability was presented as the characteristic that distinguished the two from each other. But several Assembly members pointed out the obscurity of this notion. Take the exchange April 29, 1947 about the Fundamental Rights

<sup>24</sup> S. Nagappa (Madras: General), 2 CAD 284.

<sup>25</sup> For critical analysis of this debate, see EDWIN BRYANT, *THE QUEST FOR THE ORIGINS OF VEDIC CULTURE: THE INDO-ARYAN MIGRATION DEBATE* (Oxford University Press, 2004); Marianne Keppens and Jakob De Roover, *Orientalism and the Puzzle of the Aryan Invasion Theory*, 2(2) *PRAGMATA: J. HUM. SCI.* 51 (2014).

<sup>26</sup> H.J. Khandekar (C.P. and Berar: General), 2 CAD 298; Srimati Dakshayani Velayudhan (Madras: General), 2 CAD 343, 480.

constitutional article that asserted the abolition of untouchability. A participant said that he did not understand how untouchability could be abolished without abolishing the very caste system: "Untouchability is nothing but the symptom of the disease, namely, the caste system".<sup>27</sup> Of course, a symptom should be recognized in order to provide a correct diagnosis or even to establish a correlation to a particular disease. In the case of untouchability and the caste system, recognizing the symptom and establishing a link to the disease was the central problem.

One Assembly member said the article did not properly define the offense it wanted to abolish: "As it stands, the word 'untouchability' is very vague".<sup>28</sup> Another member pointed out that the claim that "'untouchability' in any form is an offence" required a definition: "One magistrate will consider a particular thing to be untouchability, while another magistrate may hold a different thing to be untouchability, with the result there will be no uniformity on the part of the magistracy in dealing with offences". But the problem went beyond definitions: "Moreover, untouchability means different things in different areas. In Bengal, untouchability means one thing, while in other provinces, it means an entirely different thing".<sup>29</sup> Dr. Banerjee of Bengal explained the problem in some detail:

Mr. President, the word 'untouchability' actually requires clarification. We have been accustomed to this word for the last 25 years, still there is a lot of confusion as to what it connotes. Sometimes it means merely taking a glass of water and sometimes it has been used in the sense of admission of 'Harijans' into temples, sometimes it meant inter-caste dinner, sometimes inter-caste marriage. Mahatma Gandhi who is the main exponent of 'untouchability', has used it in various ways and on different occasions with different meanings. So when we are going to use the word 'untouchability', we should be very clear in our mind as to what we really mean by it. What is the real implication of this word?<sup>30</sup>

This intervention points to an intriguing fact: On the one hand, the word 'untouchability' apparently had been used for only twenty five years, so it must have been a newly introduced term that had no obvious equivalent in Indian languages. On the other hand, after using it for twenty five years, it was still unclear what the word meant and which practices it referred to. Even the English term was used in very different ways in different regions and provinces, it turned out. How could it then count as a characteristic to identify the community called the Depressed Classes or Untouchables?

<sup>27</sup> Mr. Promatha Ranjan Thakur (Bengal: General), 3 CAD 403.

<sup>28</sup> Srijut Rohini Kumar Chaudhari (Assam: General), 3 CAD 413.

<sup>29</sup> Mr. Dhirendranath Datta (Bengal: General), 3 CAD 414.

<sup>30</sup> S.C. Banerjee (Bengal General), 3 CAD 413.

The problem of the obscurity of the term 'Untouchable' kept surfacing. A Muslim representative stated it as follows: "The word 'untouchability' has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in a legal expression. The word 'untouchable' can be applied to so many variety of things that we cannot leave it at that". It was a loose term and it would get a better shape by inserting that "no one on account of his religion or caste be regarded as Untouchable. Untouchability on the ground of religion or caste is what is prohibited".<sup>31</sup> This, of course, leads to the next question: How do we recognize untouchability on the grounds of caste and religion?

This was a vexing issue because the notion of untouchability played a decisive role in deciding which groups were Depressed Classes: they were the castes that were at the receiving end of practices of untouchability. Among the groups included among the Depressed Classes, however, many considered other groups also belonging to this category as inferior and polluting. The different practices that came under the term 'untouchability' were also practiced among and between these castes, which appeared to consider each other as 'Untouchables'.<sup>32</sup> Inevitably, this would also count as "untouchability on the ground of religion or caste". But how could this characteristic then distinguish the 'Untouchables' from the 'Caste Hindus'?

A typical claim suggests that Caste Hindus had originally practiced untouchability towards the Untouchables and the latter only imitated it. This is a red herring, since it presupposes that we can recognize Untouchables and distinguish them from Caste Hindus. There are all kinds of situations where human beings seem to consider each other untouchable: from diseases like leprosy to touching highly respected figures. Basically, the claim is the following: if one human being refrains from touching or approaching another human being, this becomes caste-based untouchability when the former belongs to the Caste Hindus, while the latter belongs to the Untouchable Castes. And how can one recognize these Untouchable Castes? Well, they are the ones that are subject to caste-based untouchability. This route leads us into a vicious circle.

In the end, the general *modus operandi* of the Constituent Assembly was to paper over such problems. No real need was felt to think about whether it made sense at all to view the SCs as a minority community that needed special provisions and protection. By which characteristics could one recognize groups belonging to this 'community'? This was not seen as a serious question, but as something that could be solved by appointing a committee, which would stipulate some definition or 'test' and then add a number of castes to an already existing

<sup>31</sup> Naziruddin Ahmad (West Bengal: Muslim), 7 CAD 665.

<sup>32</sup> MICHAEL MOFFATT, AN UNTOUCHABLE COMMUNITY IN SOUTH INDIA: STRUCTURE AND CONSENSUS, 304 (Princeton University Press, 1979); Shah, *supra* note 12.

schedule. Yet, as we know, this did not solve the problem; over the years, more and more new groups began to claim that they should also count as SCs.

In May 1949, in the end phases of the Assembly's work, Mahavir Tyagi put things in a sharp way: "The term 'Scheduled Castes' is a fiction. Factually there is no such thing as 'Scheduled Castes'". There are a variety of castes with different problem situations, he said: "All their names were collected from the various provinces and put into one category 'Scheduled Castes'. In spite of the category being a fiction it has been there for so many years". He asked: "How is Dr. Ambedkar a member of the Scheduled Castes? Is he illiterate? Is he ill-educated? Is he an untouchable? Is he lacking in anything?" There were many similar cases: "There are thousands of Brahmins and Kshatriyas who are worse off than these friends belonging to the scheduled castes. So by the name of Scheduled Caste, persons who are living a cheerful life, and a selected few of these castes get benefit. This is no real representation. No caste ever gets benefit out of this reservation. It is the individual or the family which gets benefited".<sup>33</sup>

"It's all a fiction," Tyagi repeated.<sup>34</sup> These remarks point to an important fact: 'Scheduled Castes' was a category created by legal decree, not by the Constituent Assembly but *by the state apparatus of the British Raj*. In the Government of India (Scheduled Castes) Order of 1936, which was linked to the Government of India Act of 1935, the King's Excellent Majesty ordered that "the castes, races or tribes, or parts of or groups within castes, races or tribes specified in Parts I to IX of the Schedule to this Order shall, in the Provinces to which those Parts respectively relate, *be deemed to be scheduled castes* so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule".<sup>35</sup> The schedules attached to this order provided lists of groups for every province of British India, which would from then onwards count as Scheduled Castes.

### III. THE COLONIAL CLASSIFICATIONS

Broadly speaking, there are two ways in which the order concerning the scheduled castes could have come into being. Either it reflected the structure of Indian society—that is, the list of castes in the schedules corresponded to an existing community or category of groups in society. Or this order had simply stipulated a division and classified groups of people accordingly. If the first was the case, then the Scheduled Castes Order should be the result of research that showed the existence of such a division of communities in Indian society. If the second is true, then the caste legislation of contemporary India enforces a colonial decree that commanded that the Indian population should be divided along

<sup>33</sup> Shri Mahavir Tyagi (United Provinces: General), 8 CAD 344.

<sup>34</sup> *Id.*

<sup>35</sup> The Government of India (Scheduled Castes) Order, 1936, (emphasis added).

certain lines. Hence, it becomes crucial to find out how British officials came to their distinction and drafted the list of SCs.

Was the colonial classification founded on intelligible differentiae, which distinguished those persons that were grouped together from others left out of the group? If there were difficulties in finding characteristics to distinguish the castes that deserved benefits from those that did not, what made this classification *appear reasonable* to the British government and its officials?

### A. Distinguishing the Depressed

In 1932, the Prime Minister gave the instruction to the Indian Franchise Committee led by Lord Lothian to find out “the extent to which the depressed classes would be likely, through such general extension of the franchise as you may recommend, to secure the right to vote in ordinary electorates”. The Committee’s inquiry into the problem of extending the franchise was also expected to produce “facts which would facilitate the devising of a method of separate representation for the depressed classes”. One of these facts would be to find out the exact number of members of the depressed classes in different provinces and regions and its proportion in relation to the total population. In the chapter of its report that dealt with these instructions, the Committee stated: “The first problem which confronted us was to decide who the depressed classes are”.<sup>36</sup>

In 1916, the report recounted, the Government of India had already addressed a letter to local Governments stating that some definition was required of the term ‘Depressed Classes’. The Indian Legislative Council suggested that the expression ‘Depressed Classes’ should include: (a) criminal and wandering tribes; (b) aboriginal tribes; and (c) Untouchables. In 1917, Sir Henry Sharp, Educational Commissioner with the Government of India, prepared a list of the Depressed Classes, while pointing out some problems in the use of the term:

The depressed classes form the unclean castes whose touch or even shadow is pollution. But a wider significance is often attached to the expression, so that it includes communities which though not absolutely outside the pale of caste, are backward and educationally poor and despised and also certain classes of Muhammadans. Some have interpreted it as simply educationally backward. The task of defining is made difficult by doubt as to where the lines should be drawn and the elastic differences of such classes as dwell on the borderland of

<sup>36</sup> Indian Franchise Committee, Report of the Indian Franchise Committee, Vol. 1, 1932, ¶279, at 112-113. London: His Majesty’s Stationery Office. Presented by the Secretary of State for India to Parliament by Command of His Majesty in May, 1932.

respectability. Sometimes the whole community declares itself to be depressed with a view to reaping special concessions of education or appointment.<sup>37</sup>

Here, we note an important element of the idea of Depressed Classes. It did not mean to include all caste groups that were backward, poor or despised. No, only communities “absolutely outside the pale of caste” who form “the unclean castes whose touch or even shadow is pollution” should truly be considered Depressed Classes. Being inside or outside the caste system was one of the vital criteria to distinguish these castes from each other then: the Untouchables were outside of the pale of caste. In other words, the idea that there had to be a distinct section or category of Depressed Classes appeared to depend on the conviction that there was a class of communities that stood outside of the caste system.

The Lothian Committee referred to earlier committees that had faced the same question. In 1919, the Southborough Franchise Committee “divided the Hindu community into three classes, Brahmins, non-Brahmins and others, and in the category of ‘others’, it included only the Untouchables”.<sup>38</sup> It adopted the test of untouchability to identify the Depressed Classes, while the Statutory Commission defined this criterion as “causes pollution by touch or by approach within a certain distance”.<sup>39</sup> The Indian Central Committee also confined the term ‘Depressed Classes’ to “those who are classed as untouchables”.<sup>40</sup>

The Lothian Committee decided to follow the same route: “If the ‘depressed classes’ are to be recognised as a distinct element of the population for political purposes, it is necessary, so far as possible, to have a more precise classification of them”. It suggested that the term should not include “primitive or aboriginal tribes, nor should it include those Hindus who are only economically poor and in other ways backward but are not regarded as untouchables”. For the purpose of the present inquiry, its chairman had said, the term should be interpreted “as meaning untouchability, that is to say, pollution by touch or approach”. The Committee members agreed that this appears to be the nearest approach to a general formula that can be laid down to define the ‘Depressed Classes’ and using this test they would collect definite population figures of these classes.<sup>41</sup>

The question of identifying the untouchables remained. To draft the lists of Depressed Classes, the Lothian Committee turned to the colonial government’s census reports: “The actual classification of castes by the application of certain social criteria or tests can be undertaken on detailed and scientific lines only during a census of the whole population, and we must therefore turn to

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<sup>37</sup> *Id.*

<sup>38</sup> Indian Franchise Committee Report, *supra* note 36, at 113.

<sup>39</sup> Indian Franchise Committee Report, *supra* note 36, at 113-114.

<sup>40</sup> Indian Franchise Committee Report, *supra* note 36, at 113-114.

<sup>41</sup> Indian Franchise Committee Report, *supra* note 36, at 113-114.



the census reports for guidance in this matter". The Committee took what they called two "generally accepted tests of untouchability" from the 1911 Census Superintendents, who had been instructed to "enumerate castes and tribes classed as Hindus who do not conform to certain standards, or are subject to certain disabilities". These tests said that people living up to the following criteria should be considered Untouchables: "are denied access to the interior of ordinary Hindu temples" and "cause pollution, (a) by touch, (b) within a certain distance".<sup>42</sup>

Turning to the census results was a dubious move, since their classification of 'Depressed Classes' had met with a variety of difficulties. The 1921 Census Commissioner prepared a list of Depressed Classes, but this appeared to be rather arbitrary, since he had not laid down any definition or criteria for the guidance of provincial superintendents. More helpful was a note written by J.H. Hutton, the Commissioner of the 1931 census, who had described his procedure. For this census, the Government of India had expressed its desire for information "conducive to a better knowledge of the backward and depressed classes and of the problem involved in their present and future welfare". Therefore, the Commissioner had given the following instructions to the various Superintendents of Census Operations in India:

For this purpose it will be necessary to have a list of castes to be included in depressed classes and all provinces are asked to frame a list applicable to the province. *There are very great difficulties in framing a list of this kind and there are insuperable difficulties in framing a list of depressed classes which will be applicable to India as a whole ...* I have explained depressed castes as castes, contact with whom entails purification on the part of high caste Hindus. It is not intended that the term should have any reference to occupation as such but to those castes which by reason of their traditional position in Hindu society are denied access to temples for instance, or have to use separate wells or are not allowed to sit inside a school house but have to remain outside or which suffer similar social disabilities.

Then followed a remark that would turn up again and again, namely that these disabilities "vary in different parts of India". Still, the Commissioner was optimistic: "At the same time the castes which belong to this class are generally known and can in most parts of India be listed for a definite area, though perhaps the lists for India as a whole will not coincide".<sup>43</sup>

Hutton's procedure begged the question. If Depressed Castes are castes, contact with whom entails purification *on the part of high-caste Hindus*, then he

<sup>42</sup> Indian Franchise Committee Report, *supra* note 36, at 114.

<sup>43</sup> Indian Franchise Committee Report, *supra* note 36, at 114-115.

should already be able to distinguish between high-caste and Depressed Hindus. His certainty that there had to be such a distinct class was based on the structure he attributed the caste system: some groups of Hindus, he argued, were inside this system, whereas others were exterior to this system. Thus, he contrasted “the exterior castes” to “interior Hindus”. In his work *Caste in India*, he took the time to explain the rationale behind this term:

Outcaste correctly interpreted seems to mean no more than one who is outside the caste system and is therefore not admitted to Hindu society, but since in practice the exterior castes also contained those who had been cast out from the Hindu social body for some breach of caste rules, ‘outcaste’ and ‘outcast’ were in some cases synonyms, and the derogatory implications of obliquity attaching to the latter term have unjustly coloured the former, a taint which is not conveyed by the substitution of the word ‘exterior’, which may connote exclusion but not extrusion. The term *a-varna*, ‘without *varna*’ or outside the four *varnas* ..., is sometimes used and aptly expresses the same idea.<sup>44</sup>

Though this idea of ‘exterior castes’ seemed obvious to Hutton, it began to generate familiar difficulties once it was introduced into the census operations. In fact, his notes mention many of the problems that would haunt future discussions about the SCs.

Any test suggested by Hutton to decide what is an exterior caste required modifications during its implementation. The social status of exterior castes was unclear. Several times, Hutton discussed the fact that they were by no means desperately poor. A series of castes and tribes that lived up to his tests had to be excluded “on the ground that they suffer no tangible disability as a result of their inferiority in the Hindu system”. Many of the castes considered polluting by ‘interior Hindus’ also had strong caste organizations and included numerous individuals of substance and education.<sup>45</sup> Because of political interference, some tried to raise their own social status “by making themselves out to be something other than they were recognized to be by their neighbours”, while they “were not unconscious of the fact that it might be advantageous to them to represent as many castes as possible as being depressed in order to swell their numbers and importance”.<sup>46</sup>

On top of this, it was often difficult to distinguish the exterior castes from interior Hindus in terms of how the latter treated the former, since exterior castes treated each other in the same way. As the Census Superintendent of Assam put

<sup>44</sup> J.H. HUTTON, *CASTE IN INDIA: ITS NATURE, FUNCTION, AND ORIGINS*, 191-192 (Oxford University Press, 1946).

<sup>45</sup> *Id.*, at 195-196.

<sup>46</sup> HUTTON, *supra* note 44, at 209.

it: "The exterior castes themselves are...guilty of similar treatment to each other, and an exterior caste which considers itself to be on a higher social level than another exterior caste adopts exactly the same attitude as the higher castes do towards the exterior castes".<sup>47</sup> Finally, there was the question as to whether the exterior castes "can really be called Hindu at all". Hutton's answer said that the degree of Hinduism varied considerably. Some were very decidedly Hindu, others very doubtfully so. Yet, "it must be held that these castes generally are Hindu by religion even if they are not Hindu socially, hence the expression 'exterior caste' is suitably applied to *castes who follow the Hindu religion, but are not admitted to Hindu society*" (emphasis supplied).<sup>48</sup>

Whenever colonial officials had to prepare the lists of the depressed classes or exterior castes, similar problems surfaced. While reviewing the different regions of India, the Lothian Committee said that there was consensus in some regions on "the distinction between the depressed and other classes of the Hindu community", but admitted that there were huge difficulties in other regions. In the United Provinces, for instance, there was tremendous disagreement as to which groups should be considered 'Depressed'.<sup>49</sup> Different officials applied different criteria and the resulting lists were also very different. Two things remained clear throughout all this confusion: (a) the British were convinced that there must be distinct class of untouchable castes external to the caste system; (b) they faced major obstacles in identifying this class and saying who was in or out.

## B. The Test: Untouchability or Odium?

Could we then conclude that the real problem was that of creating a pan-Indian classification of Depressed Classes or Untouchables, whereas this was feasible for specific regions in India? Did the distinction and its 'test' of 'untouchability' make sense in some but not in other parts of the country?

This move trivializes the difficulties faced by the Committees and census officials when they tried to determine which groups belong to the Depressed Classes on the basis of the 'test' of untouchability. The idea they had started out with was that Indian society knew of a distinct group of Untouchables characterized by the fact that they were at the receiving end of the practice of 'untouchability'. During these exercises, however, it became clear that the term 'untouchability' did not refer to any recognizable characteristic(s) that characterized some distinct set of groups and their members.

On the one hand, the term 'untouchability' was used to refer to a variegated series of practices and situations. Sometimes, it was used to refer to situations

<sup>47</sup> HUTTON, *supra* note 44, at 216.

<sup>48</sup> HUTTON, *supra* note 44, at 203.

<sup>49</sup> Indian Franchise Committee Report, *supra* note 36, at 116-118.

where members of some group were not allowed into a temple. At other times, it pointed to the fact that some groups refused to take water from the hands of persons belonging to other groups or to the custom of providing separate cups for people from different groups. It could also refer to situations where members of one group would take a bath after having physical contact with members of another group or where people would clean their house after a member of a particular group had entered it. It could also indicate the fact that a group lived in separate quarters at the borders of a village. The list was never exhaustive and other practices could be added to it. During the censuses and in the committee reports, it turned out that some such practices existed in certain parts of India but not in other parts. In other words, the word 'untouchability' appeared to be a label that covered a set of actions or practices, whereas it remained unclear which common trait those practices shared.

On the other hand, the British believed that the actions and practices referred to as 'untouchability' expressed the fact that certain caste groups were considered impure and polluting by the rest of the Hindu population. Empirically, however, it was not clear which groups were the victims at the receiving end of such practices. The members of different groups classified as 'Untouchables' or 'Depressed Classes' also engaged in actions and practices that were designated as 'untouchability'; and they did so towards each other. Several of these groups seemed to consider each other impure and polluting. How then could these groups be distinguished as a separate class because they were the victims or objects of untouchability?

The situation became even more complicated, once one considers the fact that practices labelled as 'untouchability' are also visible in the interaction among so-called 'high-caste Hindus'. One of the criteria to identify untouchable castes was that Brahmins would not accept water from these castes. However, it turned out that some Brahmin groups and even 'lower' castes refused to take water or food from certain Brahmins. For instance, Lingayats and Peasant castes in Karnataka refused food and water from the hands of specific Brahmin groups. Similarly, some would clean their house after a member of a Brahmin group had entered it. In other words, high-caste groups could also be victims of 'untouchability'.<sup>50</sup>

It remained unclear then to which phenomena the term 'untouchability' referred. Inevitably, this confusion undermined the 'test' of untouchability, which was supposed to function as the intelligible differentia for the colonial classification of Depressed Classes. Undoubtedly, this classification seemed easier to make in some regions of India than in others. Going by the statements made

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<sup>50</sup> See M.N. SRINIVAS, *THE REMEMBERED VILLAGE*, 170 (University of California Press, 1976).

by the officials, however, even the agreement on the question of identifying the depressed classes in the 'easier' regions was tenuous.

Consider a 'Minute on the "Depressed Classes"' dated March 12, 1932 and written by Mr. M.B. Mullick, a Member of the Bengal Provincial Franchise Committee. After a discussion of the high-caste Hindus, he raised the next question: "*Depressed classes*"—*Who they are*. "There has been no attempt made so far," he said, "to define the term 'depressed class'." "I am also obliged to concede that *it is not quite possible* to give a cut and dry definition of the term." "*There cannot be a correct definition*", Mullick concluded. Still, one could refer to the classification of "Caste-Hindus" to see that "looking at the events as have happened certain indications can surely be given of the castes who would come under the 'depressed classes'". Then followed the typical indications: it concerned castes from whose hands the Caste Hindus could not accept water or whose presence in the kitchen would be considered polluting; castes not allowed into any public temple or into dining rooms or hotels run by the Caste Hindus, etc.

The terms 'untouchability' and 'unapproachability', Mullick said, had often been used to refer to these indications. But the use of these terms had caused some confusion "as being the only defining factors of the depressed classes". It is not the same consideration, he insisted, that would make a particular caste a 'Depressed Class' in all the different parts of India; the factors differ in different provinces.<sup>51</sup> What then was the common indication that made these castes into depressed classes? Mullick again stated:

But the common indication remains, namely, that it is the external expression of an internal feeling of odium by which certain sections of the community are precluded from having anything in common with others in social matters and as a result of which, they are also debarred from the enjoyment of their political rights.<sup>52</sup>

This common indication of "an internal feeling of odium" is expressed in a variety of practices, different in different parts of India, which "all lead to show that these castes are refused enjoyment of their political rights". In spite of his problem of distinguishing 'Depressed Classes' according to any characteristic(s) by which they can be recognized, Mullick then went on to say which castes should be counted in for Bengal.

Claiming that the common indication lies in "an internal feeling of odium" that expresses itself externally opens a can of worms. This is not a very clear indication. How could one ever assess which internal feelings lie at the root of

<sup>51</sup> Indian Franchise Committee Report, *supra* note 36, at 252.

<sup>52</sup> Indian Franchise Committee Report, *supra* note 36, at 252-253.

external behaviour? The refusal or reluctance to touch or approach certain people may correlate with a variety of feelings, but it is unclear when it becomes the expression of “an internal feeling of odium”. Moreover, some members of the depressed classes expressed such internal feelings of odium towards members of other groups within the depressed classes. How could being the *object* of this internal feeling then function as the common indicator that characterizes the depressed classes? Besides, in the colonial India of the 1930s, many if not most groups of people were subject to such “internal feelings of odium” and to the refusal of political rights by the British rulers. Clearly, not all of these groups were classified as ‘Depressed Classes’.

Still, Mullick was not the only commentator who took this route. B.R. Ambedkar, who had been identified as the spokesman of the Untouchables by the British, also wrote a note on the difficulty of identifying the Depressed Classes. He agreed to confine this term to Untouchables only, but intended to be even stricter: “In fact, I have myself sought to exclude from the Untouchables all those in whom there cannot be the same consciousness of kind as is shared by those who suffer from the social discrimination that is inherent in the system of untouchability and who are, therefore, likely to exploit the Untouchables for their own purposes”.<sup>53</sup> How could one find out which people shared the consciousness that results from suffering the social discrimination inherent to the system of untouchability? And what did this ‘system’ consist of?

Ambedkar had no objections to using the test suggested by the Lothian Committee “for the ascertainment of the untouchable classes”. However, “different persons seek to apply them in different ways or put different constructions on them”. Therefore, he felt the necessity to explain his point of view: he argued against those who urged that the same tests for ascertaining the Untouchable Classes should be applied uniformly all over India. This would hardly be appropriate, since India is not a single homogeneous country but has various provinces marked by extreme diversity of conditions. “Owing to absence of communication each province has evolved along its own lines with its own peculiar manners and modes of social life”. Of course, this raises the question as to how one could then insist that Indian society shared the common structure of the caste system and its “system of untouchability” that Ambedkar kept referring to. Well, he said, “the degree of uniformity with which most of the tests of untouchability are found to apply all over India is indeed remarkable”. What then could be the problem? One should simply use these uniform tests of untouchability and dismiss all others. Apparently, this would not work, for “to insist on absolute uniformity in a system like that of untouchability, which, after all, is a matter of social behaviour and which must therefore vary with the circumstances of each province and also of each individual is simply to trifle with the problem”.<sup>54</sup> It is unclear who had ever

<sup>53</sup> B.R. Ambedkar, *Note on the Depressed Classes*, in Indian Franchise Committee, Report of the Indian Franchise Committee, Vol. 1, 1932, at 210.

<sup>54</sup> Ambedkar, *supra* note 53, at 210-11.

insisted on “absolute uniformity” and what this would mean. But let us agree that one should drop this demand of uniformity. Surely, the problem remained; if one could recognize a “system of untouchability” across India, as Ambedkar claimed he could, then one should also be able to identify at least some characteristics or structure of this system across India. But it is precisely this that seemed so difficult.

Ambedkar emphasized the futility of insisting upon the application of uniform tests of untouchability all over India, since one and the same notion undergirded the relevant practices and actions:

*It is a fundamental mistake to suppose that differences in tests of untouchability indicate differences in the conditions of the untouchables. On a correct analysis of the mental attitude they indicate it will be found that whether the test is causing pollution by touch or refusal to use the common well, the notion underlying both is one and the same. Both are outward registers of the same inward feeling of defilement, odium, aversion and contempt (emphasis supplied).<sup>55</sup>*

According to Ambedkar, all the practices classified as ‘untouchability’ shared the common characteristic of being *outward registers of the same inward feeling of defilement, odium, aversion and contempt*. The Untouchables did not have to be identified by “uniform tests of untouchability” but by the common condition they shared all over India: “If our aim is to demarcate the class of people who suffer from social odium then it matters very little which test we apply. For, as I have pointed out, each of these tests is indicative of the same social attitude on the part of the touchables towards the untouchables”.<sup>56</sup>

Now, inward feelings of odium, aversion and contempt exist among all kinds of people towards all kinds of other people. Therefore, merely being the object of such inward feelings or ‘suffering from social odium’ cannot characterize the condition of the Untouchables. It must be the fact that these inward feelings of odium exist among ‘the Touchables’ and are expressed outwardly in their behaviour towards ‘the Untouchables’ that is decisive. But then we need to consider the following: the difficulty was to identify the Depressed Classes by applying the test of untouchability. This implies it was unclear which groups were Untouchables and which were not. Even Ambedkar’s entire note concerned this problem of “ascertaining the untouchable classes”. How then could he already know who are the Touchables and the Untouchables? One might say that this was ‘obvious’ in many parts of India. However, if it is so obvious how to recognize the Untouchables, then some pattern or characteristic shared by these groups

<sup>55</sup> Ambedkar, *supra* note 53, at 210. (emphasis in the original).

<sup>56</sup> Ambedkar, *supra* note 53, at 211-212.



must allow one to do so. If that is the case, it becomes difficult to understand why identifying them was so problematic in other cases.

Ambedkar's note became even more confounding, when he made the distinction between applying the test of "causing pollution by touch" for ascertaining the Untouchable Classes in its *literal sense* and in its *notional sense*:

In the literal sense untouchables are only those persons whose touch not only causes pollution and is therefore avoided or if not avoided is washed off by purification. In the notional sense an untouchable is a person who is deemed to belong to a class which is commonly held to cause pollution by touch although contact with such a person may for local circumstances not be avoided or may not necessitate ceremonial purification.<sup>57</sup>

The test should not be applied in its literal but in its notional sense, Ambedkar argued. The same confusion surfaces here: while the task was that of ascertaining the Depressed or Untouchable Classes, he now writes as though that problem had already been solved and it was merely a matter of identifying certain individuals as Untouchables. Even when people were not treated as Untouchables—that is, even if they suffer from none of the practices labelled as 'untouchability'—they should still be considered Untouchables, because any one belonging to an Untouchable Class will always continue to be regarded as impure. So now, untouchability has a literal and a notional sense; if untouchability is not visible, this does not mean it is absent, for "*untouchability in its notional sense persists even where untouchability in its literal sense has ceased to obtain*". This is why I insist that the test of untouchability must be applied in its notional sense".<sup>58</sup> How does Ambedkar know that untouchability is present, even though it is not visible? Well, "the system of caste and the system of untouchability form really the steel frame of Hindu society". They are based on religious dogma and the ordinary Hindu will never abandon the rules of untouchability but maximally relax them where he cannot observe them: "For abandonment of untouchability to him involves a total abandonment of the basic religious tenets of Hinduism as understood by him and the mass of Hindus".<sup>59</sup> Thus, Ambedkar's comments on "ascertaining the untouchables" reflected an entire story about Hinduism and the caste system. He knew that 'untouchability' would be present wherever there were Hindus; he knew that there were Touchable and Untouchable Hindus all over India; the question simply was how to count the Untouchables. Here, no uniform test of 'untouchability' should be applied, since all the practices labelled as 'untouchability' were expressions of the same odium and contempt.

<sup>57</sup> Ambedkar, *supra* note 53, at 211-212.

<sup>58</sup> Ambedkar, *supra* note 53, at 211-212.

<sup>59</sup> Ambedkar, *supra* note 53, at 211-212.

All of this shows how obscure the notion of untouchability was. It is mistaken to argue that the fundamental problem of identifying the Depressed Classes was limited only to certain regions in India. Indeed, the inadequacy of the test of 'untouchability' became particularly obvious in these regions. In other regions, it had been assumed to be clear and adequate, since some groups had already been referred to as 'Untouchable Castes' for decades before the 1930s. That a classificatory scheme created by the colonial census worked better in some regions than in others may well be the case. However, this does not show that the population living in these regions was indeed divided in this way; it only shows that they could be classified that way.

### C. Creating a Class

Strikingly, the demand for criteria or tests surfaced whenever colonial institutions had to practically decide which groups in which region of India should count as Depressed Classes or Scheduled Castes. The existence of such a distinct set of castes appeared to be self-evident and not something that needed to be established before framing the relevant lists and laws. More accurately, the British colonial bodies held two stances at the same time: on the one hand, they considered the 'Depressed Classes' as a category used only for administrative or political purposes. Therefore, one needed some indicator to include or exclude groups of people from this class. In that case, this was a practical issue that should allow the colonial state to deal with certain sets of the population. It was a classification like many others that served some administrative purpose or the other: minors, the self-employed, or, say, all citizens with a secondary education degree. On the other hand, the British shared the presupposition that there must be a distinct class of Untouchables among the Hindus, who had been victims of injustice and oppression for centuries. And here, there seemed to be a certainty that such a class existed, which did not require any empirical evidence or further proof.

In its recommendation concerning the question of separate electorates for the Depressed Classes, the Lothian Committee gave expression to both stances in one sentence: "Though there is wide difference of opinion in some provinces regarding the castes which should be classified as depressed, there is no dispute that the depressed classes constitute a substantial portion of the population of India as a whole". They made it amply clear that they did not mean by this that the largest part of the population was very poor: "As 'untouchability' is a social or religious and not an economic test a considerable number of the depressed classes will find their way on to the electoral roll, for in some provinces numbers of them are both prosperous and well educated".<sup>60</sup> The Depressed Classes coincided with the 'Untouchables', a group defined by the social or religious test of 'untouchability'.

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<sup>60</sup> Ambedkar, *supra* note 53, at 124.

Everything hinged on the claims about the existence of a group called ‘the Untouchables’ and the characteristic of untouchability that defined them. Which knowledge allowed the British to postulate the existence of such a group, category, or community in Indian society? In the 1930s, the division of the Hindus into ‘Touchables’ and ‘Untouchables’ was presented as though it was an age-old social division sanctioned by the Hindu religion and reinforced by its orthodox followers. The same goes for the idea that untouchability was the common factor that explained certain kinds of behaviour in Indian society and distinguished one set of castes from another set.

Along with the British, Indian political leaders also wrote and talked in this way. The most important debate on the issue of caste and untouchability in these decades was that between Ambedkar and Gandhi. Generally, this is viewed as a clash between a social reformer and Untouchable leader, who wanted to annihilate the Hindu caste system, and a Hindu apologist who defended Hinduism and *varna* but rejected untouchability as an unfortunate blot. If we look beyond this disagreement, however, we find agreement in some basic ideas. One of these, presented as a self-evident fact by Ambedkar and Gandhi, was that the caste system divided the Hindus into two distinct classes: ‘Caste Hindus’ and ‘Untouchables’ in the words of the former; ‘Savarnas’ and ‘Harijans’, in the terminology preferred by the latter.

According to Ambedkar, Hinduism as a religion was responsible for this caste discrimination, since it regarded the caste system as a divinely sanctioned institution.<sup>61</sup> According to Gandhi, the *varna* system had its virtues, but treating certain people as Untouchables was a corruption that now needed to be removed. This had to happen through the conversion or transformation of the Savarna Hindus, he said, who should voluntarily give up the practice of untouchability and thus rescue Hinduism.<sup>62</sup> Together, these two leaders played a central role in spreading this way of talking about—and looking at—Indian society. Their speeches and writings propagated the idea that there was a distinct group of ‘Harijans’ or ‘Untouchables’ across India; they disseminated this vocabulary of ‘untouchability’ throughout Indian public debate in these decades.

Was the distinction between Caste Hindus and Untouchables really an age-old division within Hindu society? No, it was not. Simon Charsley has shown that the notions of ‘the Untouchables’ and ‘Untouchability’ had been created by the British administration in the early twentieth century. When Sir Herbert Risley became Commissioner for the 1901 Census in India, he sent “to every Census Commissioner, in each province, presidency, princely state, and so forth,

<sup>61</sup> B.R. AMBEDKAR, *ANNIHILATION OF CASTE* (Verso Books, 2014).

<sup>62</sup> M.K. Gandhi, *Backward and Untouchable Classes*, 145 (2) *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE* 181-182 (1929); see Sarah Claerhout, *Gandhi, Conversion and the Equality of Religions: More Experiments With Truth*, 61(1) *NUMEN: INTERNATIONAL REVIEW FOR THE HISTORY OF RELIGIONS* 53 (2014).

a standard scheme, inviting them to set up committees of 'native gentlemen' to consider its local applicability and to propose modifications as required". As a part of his standard scheme, he included four Sanskrit-named 'Shudra' categories, of which the last was 'Asprishya Shudra', glossed as "castes whose touch is so impure as to pollute even Ganges water".<sup>63</sup>

Risley's scheme failed. The committees and commissioners came up with a wide variety of schemes or just sent him alphabetical lists. The category of "not-to-be touched Shudra" did not prove to be useful. His major criterion of Brahmins' willingness to take water was irrelevant in many regions. Yet, he took two reports from Rajasthan as a basis to create a unified classification including a "Class VII: Castes untouchable". As Charsley puts it: "From this unpropitious start, representing as it did more of a rebuff than a successful initiative, the career of a key term in modern India was launched".<sup>64</sup> The idea also existed among the British that the Indian caste system consisted of the four *varnas* and a fifth section, but this alternative scheme also failed as a tool to classify the *jatis* in the southern parts of India. Thus, twentieth-century official discourse used *varna* as a scheme of classification "but with contention as to whether it was to be in the four or four-plus-one form". In the first decades of the twentieth century, this scheme was then elaborated with "the Untouchables" as the name that referred either to the fifth group or to a sub-section of the Shudras.<sup>65</sup>

We need not go further into the career of the terms 'Untouchables' and 'untouchability' to see what happened: these were classificatory terms introduced by colonial officials and presented as though they constituted adequate descriptive terms to characterize Indian society.<sup>66</sup> The issue is not simply that these terms were unclear; after all, one can always invent and refine some set of criteria or standards to classify a population. The question here is different: Why did it make sense to these officials to describe and classify the Indian population *in this particular way*?

<sup>63</sup> Charsley, *supra* note 7, at 1.

<sup>64</sup> Charsley, *supra* note 7, at 2-3.

<sup>65</sup> Charsley, *supra* note 7, at 5.

<sup>66</sup> The point here should not be misunderstood as saying that the British colonials introduced the phenomenon of untouchability, which had not existed before in India. The point is that (a) 'untouchability' functions as a label used to point to a collection of practices, actions, and situations and (b) 'Untouchable' is a term used to postulate the existence of a separate class of people in Indian society. In both cases, it is unclear which common characteristics constitute the phenomena and people grouped together. When historians of ancient India announce that the appearance of untouchability can be dated to over 2,000 years ago, they beg the question. What did appear? Some of the practices and actions that are today labelled as 'untouchability' and Indian-language words which are today translated as 'untouchable' and 'Untouchables' (say, '*asprishya*' and '*chandala*')? If such historians intend to say anything more, they need to demonstrate, rather than assume, that sources from this period show that Indian society was constituted by a hierarchical caste system that excluded a community or communities of Untouchables. (See Seema Chisthi, *Appearance of Untouchability can be Dated to Over 2,000 Years Ago: Romila Thapar*, THE INDIAN EXPRESS, Apr. 15, 2016.)

## D. Anomalies of Caste

The decision to classify certain people in Indian society as 'Untouchables' cannot have been a matter of administrative convenience; in fact, the census project showed that it brought *inconvenience* to the administrators. Over the years, the same problems had come up again and again. The fact that caste members were treated as 'polluting' or 'untouchable' could not function as a way to distinguish between the Depressed Classes from the Caste Hindus. For several reasons, the characteristic of being at the receiving end of such practices could not define a separate class of Untouchable Castes.

Given the classification's survival in the face of these difficulties, it must have had other grounds. That is, some framework made the bifurcation between Caste Hindus and Untouchables appear self-evident in spite of its inadequacy. The British officials must have worked with a description of caste that made this classification seem obvious. Indeed, during the eighteenth century, European missionaries and orientalist had developed the idea that the structure of Indian society was determined by a fourfold caste hierarchy, which was sanctioned by the Hindu religion and dominated by its Brahmin priests. Moreover, missionaries and scholars argued, there was a distinct group that stood outside of this system: 'the outcastes' or 'the casteless' who were treated as the most polluting of all. This group, some claimed, consisted of the descendants of people that had violated caste rules and had therefore been expelled from the caste system and forced to take up polluting professions like scavenging. By mid-nineteenth century, this cluster of ideas had crystallized into the classical account of the caste system.<sup>67</sup>

When the colonial committees faced the task of identifying 'the Depressed Classes' or 'the Scheduled Castes' in the 1930s, they drew upon this account by turning to the work of the administrator-anthropologists leading the caste censuses. The latter's writings, however, showed that the caste censuses generated an accumulation of conceptual problems and empirical anomalies that undermined this story about the caste system. When they tried to classify the plethora of *jatis* in the different provinces along the lines of the *varna* hierarchy, they generally failed. Some tried to place each *jati* into one of the *varna* categories; others stipulated a larger number of categories for the classification of castes; yet others devised complex schemes that arranged groups and sub-groups in terms of some principle of classification of castes.<sup>68</sup>

<sup>67</sup> See Jakob De Roover, *A Nation of Tribes and Priests: The Jews and the Immorality of the Caste System*, in *WESTERN FOUNDATIONS OF THE CASTE SYSTEM* (Martin Ferek et al. eds. 2017).

<sup>68</sup> For a striking example, see JOHN C. NESFIELD, *BRIEF VIEW OF THE CASTE SYSTEM OF THE NORTH-WESTERN PROVINCES AND OUDH, TOGETHER WITH AN EXAMINATION OF THE NAMES AND FIGURES SHOWN IN THE CENSUS REPORT, 1882* (Allahabad 1885), which the author presented as "an attempt to classify on a functional basis all the main castes of the United Provinces, and to explain their gradations of rank and the process of their formation".

As some administrators admitted, the caste census merely mirrored the classificatory scheme they had decided to use and not the structure of the society that was its object. For most *jatis*, it turned out to be impossible to attribute a stable location in the hierarchy. Even worse, it was often impossible to find out the 'caste' to which Indians belonged. When asked the question "What is your caste?" officials complained, some Hindus would mention one of the four *varnas*, others would say they belonged to some "endogamous sub-caste", yet others would mention some "caste-title" or add "vague and indefinite" entries.<sup>69</sup> Whenever the census officials attributed a location in the hierarchy to some *jati*, the chances were that its representatives would challenge that decision.<sup>70</sup> In short, the Hindus seemed to be ignorant of their own caste system and its hierarchical structure.

Basically, the census research revealed that the structure of Indian society did not correspond to the conception of the caste hierarchy it had started out with. In the process, officials and scholars stumbled upon the problems that have dogged the study of caste to this day. They could neither provide a coherent hierarchical classification of castes nor identify the Untouchables or exterior castes in any consistent way. In other words, *the failure to find criteria to distinguish the Depressed Classes was part of a much larger quandary confronted by the British*. They drew upon the classical account of the caste system as a conceptual framework for their studies, policies, and laws in India, but the results constituted a massive exercise in falsifying this account.

Nevertheless, the post-Independence Government of India continued to rely upon these results in order to decide which groups should be considered as Scheduled Castes. The 1965 Lokur Committee drew extensively from what it called "the standard works of reference on castes and tribes by recognised authorities". It was referring to the works of British officials like Ibbetson, Thurston and Russell and old colonial census publications and District Gazetteers.<sup>71</sup> As recently as 2012, the Standing Committee on Social Justice and Empowerment was unhappy to note that the Registrar-General of India "is referring to old literature of pre-independence era in determining the socio-economic status of castes for clearing proposals for inclusion/exclusion of castes and there is no new literature on the demographic and economic status of castes".<sup>72</sup>

<sup>69</sup> See SIR EDWARD A.H. BLUNT, *THE CASTE SYSTEM OF NORTH INDIA, WITH SPECIAL REFERENCE TO THE UNITED PROVINCES OF AGRA AND OUDH*, 8-9 (Oxford University Press, 1931); NICHOLAS B. DIRKS, *CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA*, 49, 202-212 (Permanent Black, 2002); JOHN STRACHEY, *INDIA: ITS ADMINISTRATION AND PROGRESS*, 328-330 (Macmillan, 1911).

<sup>70</sup> When Risley organized the caste census of 1901 around the principle "of classification by social precedence as recognized by native public opinion at the present day," this gave rise to great number of petitions and memorials from people who demanded a higher ranking for their *jati*. See HERBERT H. RISLEY, *THE PEOPLE OF INDIA*, 111-113 (Thacker, Spink & Co., 2nd ed. 1915).

<sup>71</sup> Department of Social Security Report, *supra* note 5, at 3.

<sup>72</sup> Standing Committee on Social Justice and Empowerment Report, *supra* note 11, at §1.29

#### IV. CONCLUSION

During the past decades, scholars have argued that Orientalist discourse and the British colonial powers constructed caste as the essence of Indian society. Caste, as we now know it, is supposed to be the product of the encounter between colonial rule and Indian society.<sup>73</sup> In the same vein, some suggest that the category of the Untouchables is a construct of colonialism.<sup>74</sup> However, it remains unclear what such statements mean. Does the caste system exist in India today or does it not? Did British and Indian elites construct it as a social organization in India? Or is it a conceptual entity that exists only in a body of descriptions of India? Have the Untouchables (or Dalits) come into being as a community after the creation of this category by the British state and its adoption by the Indian intelligentsia? Or are such terms merely used pragmatically by particular individuals to pursue specific ends? Not surprisingly, given its lack of clarity, this postcolonial literature has had hardly any impact on the general discourse about caste and caste discrimination in India.

The argument developed in this article is of a different nature. It points out that there are *basic cognitive problems* confronting the currently dominant account about Indian society and the so-called 'caste system' and its division of the Hindus into 'Touchables' and 'Untouchables'. From the start, empirical studies of Indian society produced anomaly after anomaly that contradicted this account. Yet, instead of taking these seriously as cognitive threats to the conception of the 'caste system', many scholars continued to reproduce and presuppose this as a veridical description of the Indian social order.<sup>75</sup> The same happened with the idea that Indian society knew of a division between Caste Hindus and Untouchables. The results of the census studies threw many doubts upon its claims. Instead of addressing these difficulties, later scholars either ignored them or added modifications to the account. By the 1940s, some individuals in the Constituent Assembly and elsewhere still noted the obscurity at the heart of the concept of untouchability or the fictitious nature of the category of SCs. The majority, however, considered such issues insignificant or illegitimate. The 1960s saw a revival of concerns about revising the lists of SCs "in a rational and scientific manner" but this did not lead to questioning the basis of that list.<sup>76</sup>

Today, commentators frequently react with indignation when one points out the problems confronting the classical account of the caste system. Worse, questioning this orthodoxy and its hackneyed claims about "the plight of the Dalits"

<sup>73</sup> DIRKS, *CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA* (Permanent Black, 2002); RONALD INDEN, *IMAGINING INDIA* (Blackwell, 1990).

<sup>74</sup> See MENDELSON AND VICZANY, *supra* note 8, at 17-18.

<sup>75</sup> For example, LOUIS DUMONT, *HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS* (The University of Chicago Press, 1980); KLAUS KLOSTERMAIER, *A SURVEY OF HINDUISM*, 288-97 (State University of New York Press, 2010); ANUPAMA RAO, *THE CASTE QUESTION: DALITS AND THE POLITICS OF MODERN INDIA* (The University of California Press, 2009).

<sup>76</sup> Department of Social Security Report, *supra* note 5, at 2.



is often equated to denying the existence of injustice in Indian society. The fact that there are groups in Indian society much poorer and more deprived than others is not in doubt. Neither is the fact that members of some *jatis* treat members of other *jatis* in unethical and inhumane ways. However, the point is that these situations and events cannot be coherently conceptualized in terms of the 'caste system' and its oppression of the 'Untouchables' or 'Dalits'.<sup>77</sup>

The idea that there are two distinct categories or groups in Indian society—namely, Caste Hindus and Untouchables—never described its social structure. No common characteristics are available that allow(ed) one to recognize these as two communities or categories of communities across India. Thus, no empirical investigation could show that they existed in the Indian social world. Indeed, these words have been adopted by some people in Indian society *as a way of speaking about themselves and others*, but adopting words does not entail that the structure of a society has changed. Since this distinction is flawed, it cannot offer a stable foundation for legislation that aims to address injustice and discrimination in Indian society. In fact, the available facts indicate that the laws providing caste-based benefits fail to pass the Supreme Court's test of reasonable classification: there appear to be no intelligible differentiae that distinguish all the persons grouped together as SCs from others excluded from that group.

Indeed, the class of Scheduled Castes exists, but only in the Indian legal and political system. Of course, this classification has consequences in society, given the benefits and rewards associated with drawing upon it. Through their caste policies and censuses, the British spread the idea that 'Hindu society' was characterized by an opposition between Caste Hindus and Untouchables. Thus, in spite of the recurring discovery that this conceptualization was inadequate, it could not but have its effects in a society under colonial rule. The decisive step came in the Government of India Act of 1935 and the related Government of India (Scheduled Castes) Order of 1936, which ordered that "the castes, races or tribes, or parts of or groups within castes, races or tribes specified in Parts I to IX of the Schedule to this Order shall, in the Provinces to which those Parts respectively relate, be deemed to be scheduled castes so far as regards members thereof

<sup>77</sup> This conclusion gives rise to many questions. In spite of all these problems, why did scholars and officials continue to embrace the idea that the Indian social structure had the form of a hierarchy of Caste Hindus and Untouchables? What convinced them that there must be a distinct category of people outside the caste system, regarded as untouchables by all other caste groups? Why did the Indian intelligentsia not only reproduce this story about Indian society, but also build policies and laws around its claims? While these questions cannot be answered within the confines of this article, the reader can find a first set of answers in other texts published by the international research group Comparative Science of Cultures. See S.N. BALAGANGADHARA, *RECONCEPTUALIZING INDIA STUDIES* (Oxford University Press, 2012); JAKOB DE ROOVER, *EUROPE, INDIA, AND THE LIMITS OF SECULARISM* (Oxford University Press, 2015); WESTERN FOUNDATIONS OF THE CASTE SYSTEM (Martin Farek et al. ed., Palgrave Macmillan, 2017); Dunkin Jalki and Sufiya Pathan, *The Impossibility of Refuting or Confirming the Arguments about the Caste System*, 17 *THEATRUM HISTORIAE* (2015); PRAKASH SHAH, *AGAINST CASTE IN BRITISH LAW* (Palgrave Macmillan, 2015).

resident in the localities specified in relation to them respectively in those Parts of that Schedule”.

Strikingly, the leaders and intellectuals of postcolonial India not only succumbed to the colonial account of the ‘caste system’, but also accepted the social divisions among the people of India created by British legislation. It is as though they felt compelled to transform the tenuous distinctions inherent to the colonial account into existing social divisions in India. “The King’s Excellent Majesty” had ordered how the people of India should be divided into Scheduled Castes and others. After 1947, Indian political and intellectual elites began to enforce this decree in their country. This is the mission that the caste legislation of contemporary India continues unto this day.