



Queen Mary University of London, School of Law  
Legal Studies Research Paper No. 267/2017

**Orientalism, Multiculturalism, and Identity Politics:  
Hindus and the British caste law**

Prakash Shah

# Orientalism, Multiculturalism, and Identity Politics: Hindus and the British caste law

Prakash Shah

A final version of this paper has been accepted for publication in the journal *Quaderni di Diritto e Politica Ecclesiastica* (special issue: *Daimon. Diritto comparato delle religioni*), 2017

## **Abstract**

This article discusses the role played by British Hindus in contesting legislation against caste discrimination. It gives an account of their limited objections to the law on caste by placing them within the context of British multiculturalism and the constraints that brings. It introduces some considerations concerning the form their objections to the legislation take, and explains their objections in terms of their inability to contest the premises behind the Western construction of Hinduism and of the caste system.

\*\*\*

Today it is a commonplace that Indians have an hierarchical, oppressive caste system inspired and sanctioned by the Hindu religion, and that neither earlier reformers nor layer upon layer of laws, including the Indian Constitution, have managed to rid India of that system. If laws enacted since the colonial period appear not to be achieving their intended aim, ideally an eradication of caste or its disadvantages, one might expect a reasonable response to include a re-evaluation of the basic assumptions of the idea of the caste system which underlies the legal framework in India. That does not happen, however.

Instead, we see that that existing laws on caste atrocities and caste-based reservations for jobs and university places are regularly expanded in India. With some exceptions, politicians do not dare to argue for a lowering or abandonment of caste-based reservations, effectively a type of quota system for different caste groups. That is despite its widely reported dysfunctional effects and consequent dissatisfaction within the wider society (Shourie 2012). Candidates for university places and jobs do not compete on merit, and the entry standards are often radically asymmetrical as between beneficiaries and non-beneficiaries. Rather, campaigns for inclusion into the quota system often arise, accompanied by public unrest and violence, as seen recently in Gujarat, Haryana, and Maharashtra.

As for the Indian caste atrocities legislation – the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - only members of one of the listed Scheduled Castes and Scheduled Tribes can be victims. Given the background assumption that the caste system targets those putatively lowest in its scale, it might be surprising to learn, as Jalki and Pathan (2007) have recently shown, that the crime statistics do not bear out that assumption. In fact, they point to the politically

incorrect conclusion that members of Scheduled Castes and Scheduled Tribes are *less likely* to be the victims of 'caste atrocities'.

Older writing on the relationship between caste and law (notably, Galanter 1984) in India is somewhat unreadable and now well out of date. Although, much important research remains to be conducted on India, not least given the frozen and unsatisfactory nature of the conventional assumptions about the caste system and the implications for the Indian legal system, the focus of the present discussion is not on India directly. While the caste system has long been associated with India (or broadly South Asia) and with Hinduism, it is striking how debates on caste have been transplanted to some of the places where the Indian diaspora has become established. This is especially so in the United States and the United Kingdom. Conversely, it should be striking too how the issue of caste is hardly raised as a matter of public policy in other places where significant Indian diasporas are also present, especially in Asia, Africa or the Caribbean region. Although the job is not taken up here, it would be important to research why it is that caste discrimination issues are not raised in the rest of Asia, e.g. in Singapore, Malaysia, Fiji, etc. with their sizeable Indian communities or in places in Asia where the Indian influence is regarded as historically significant, including Malaysia, Indonesia, Thailand, Cambodia, etc.

Why don't these jurisdictions and the societies over which they exercise legal power tend to politicise caste in the way that India, the United States and the United Kingdom do? After all, on the same grounds cited as the basis or evidence for the existence of the caste system, one might argue that large segments of Asia should also have had the caste system in place. For example, Thailand's legal past is said to be influenced a great deal by *dharmasashtras*, including the Manusmriti (Kasemsup 1986, 278-289), which is also taken by anti-caste activists as a key document evidencing the caste system and its evils.

B.R. Ambedkar, who is regarded today as the champion of the Dalits of India and elsewhere, and who disagreed intensely with M.K. Gandhi's support for the caste system, responded to the latter saying:

No one who knows anything about the Manu Smriti can say that the caste system is a natural system. What does Manu Smriti show? It shows that the caste system is a legal system maintained at the point of a bayonet. (Ambedkar 1945, 278)

The same Manusmriti is alleged by anti-caste academics as having had a lasting impact, until today, in the everyday lived experience of Hindus (e.g. Dhanda 2015, 36-37). Well, if Manusmriti was indeed so influential in other Asian countries, such as Thailand, in the way it is claimed for India, then one might have expected the same sort of caste system to have risen there too. But this kind of claim is not made for these countries and nor are the fractious legal politics formed around caste visible there as have emerged in India and, lately, in the United States and the United Kingdom.

In the United States, the caste system has come up as a matter of debate with some consistency for the last few years after Hindu parents and some Hindu organizations have raised objections to the portrayal of Hinduism in California school textbooks (and with somewhat less publicity elsewhere in the United States). Campaigners therefore seek to

argue for and negotiate a better deal for Hinduism, including the portrayal of caste. The disputes are yet unsettled but it is notable that academics have played a role in resisting the expectations of objectors that a fairer treatment be given to Hinduism so that it is not, as a matter of course, associated with the oppressive caste system. The defence of Hinduism contains an ambiguity that is widespread among the defenders. They appear to accept that the caste system (with its discriminatory aspects) exists, but they do not wish for it to be highlighted in such a way as to give a completely negative image of Hinduism and the impression that no mobility was present in it.

In the UK, with which this article is chiefly concerned, the caste system generally remained below the surface in the period of significant South Asian settlement, gaining some academic notice (see e.g. Ballard 1994) and occasionally coming up in matters to do with school textbooks (see All Faiths and None 2010, 225-226). However, the issue came up much more starkly from 2009 onwards with the proposal and eventual enactment of the legislative provision in section 9(5) of the Equality Act 2010, which empowered the government to make caste “an aspect of race”, thereby extending the Act’s rules against discrimination to caste. This provision was reinforced in 2013 by an amendment replacing the power to make caste an aspect of race by a *duty* upon the government to do so.

Despite the two parliamentary general elections since 2013, the UK government has not passed the required secondary legislation, which the current Conservative government incidentally does not favour. Meanwhile, the courts have sped ahead and decided, in the *Tirkey v Chandhok* case ([2014] UKEAT 0190\_14\_1912), that the provision on ‘ethnic’ group, which is already an aspect of race in the Equality Act, covers caste. The emergence of this case law during the period of the controversy over the pending legislation has helped muddy the waters somewhat. The government has identified the case law as having the potential to act as a backstop that would allow it to deflect demands for secondary implementing legislation, which the 2013 amendment requires. In March 2017, the UK government announced a consultation on the caste law. The consultation gave a choice to respondents between (1) retaining the case law and (2) implementing the secondary legislation. So it allows only a choice as between the two options and there is no third option to reject both the others. Because of the snap General Election of 2017, the consultation deadline got extended to September 2017, and the results are awaited at the time of writing.

Much of the intervening legislative history and the implications of the law on caste have been covered in previous writing (Shah 2015), as has the fact that the courts have gone ahead and decided that the provision on ethnic group already covers caste (Shah 2017). This article has as its focus the role played by UK Hindus in contesting the legislation on caste. It gives an account of their limited objections to the law on caste, introduces some considerations that might give some form to their objections, and tries to explain why their objections take the form they do.

\*\*\*

Notions of the Indian caste system that are integral to conventional, common sense ideas about the nature of Indian culture and society were noted at the outset of this article. In a recent book, *Western Foundations of the Caste System* (Farek et al 2007) we argue that the caste system is a Western construction. By this we mean that no caste system ever existed nor exists in India. Instead, the *belief* that such an entity exists is the outcome of, and contoured by, Protestant theological polemic about Indian religion that, by the mid-19th century, had settled into a sort of consensus. It was in the process of developing this polemic during the 19th century that the idea of 'Hinduism', a caste-ridden and oppressive religion, first emerged among Protestant theologians and was later taken up by other writers and spread via the social sciences and various government laws and programmes. To avoid ambiguity, the claim we make is that *both* Hinduism (discussed earlier in Balagangadhara 1994, Bloch et al 2010) *and* the caste system were ideas formulated within Western culture, but these units do not describe any aspect of the social and cultural reality of India. They say *nothing* about the Indian traditions but rather tell us about the Western culture that provides the background against which they were conceived. It is important to underline that these claims should not be confused with constructivist claims made by others who, for example, say that the caste system may not have been present in pre-modern times but came about as a result of colonial power-knowledge (see e.g. Dirks 2001 and, more ambiguously, Bayly 1999, 7). Our position also allows a critical evaluation of claims made by all sides in the discussion on caste in the British context especially given they all accept some part of the claim about the existence of Hinduism and the caste system.

To the extent that its members have an opinion on the matter, the conventional notions about the Indian caste system are entrenched and shared, as far as can be estimated, by a large section of British society. This can be viewed as part and parcel of the cultural hegemony that Orientalism holds over the West, described so well by Edward Said (1978, 7-9; see further De Roover 2005: 66-67). This extends to scholars, journalists, politicians, officials and lawyers, so much so that the present writer came out as the *only* academic in the UK who opposed the law on caste. Wherever Indians have settled, including Britain, they have taken the discrimination entailed by the caste system with them, so the story goes. It is such notions that helped parliamentarians along with the job of adding the obligation to legislate to the Equality Act as well as helping to push along the litigation leading to the mentioned case law. The same ideas go into helping to understand statements on caste made by the UN Committee on the Elimination of Racial Discrimination, which has informed the UK government of the requirement to legislate against caste discrimination, after being lobbied by pro-legislation groups in the UK, including the Equality and Human Rights Commission. (The intermittent passing of resolutions against caste discrimination by the European Parliament is another example, with some prominent MEPs from Britain campaigning for them.)<sup>1</sup>

The notion of the hierarchical and oppressive caste system was also used as the basis of evaluating some thirty stories that allegedly testified to the prevalence of caste

---

<sup>1</sup> These activities are detailed in Shah (2015).

discrimination as found by the National Institute of Economic and Social Research, whose report is the only official British study on caste discrimination. It was based on an investigation conducted only after the Equality Act 2010, with its caste provision, had been passed. The group of academics commissioned by the UK's Equality and Human Rights Commission to examine the possibility of enacting legislation on caste discrimination was also composed of those already predisposed to supporting the legislation. Some among the team have also worked with church-backed NGOs to produce reports with stories of caste discrimination in Britain and arguing for the need to legislate against it.

Perniciously, the trope of the caste system mobilised by campaigners for the UK caste law, provides a ready-made explanation for how Indians act so that many an injustice can effortlessly be attributed to caste discrimination. Those who believe in it have little doubt that discrimination consequent to the caste system explains the way human interactions take place within Indian society. When the Equality Act 2010 was a Bill in parliament, and the matter of inserting the caste provision was debated, the government pleaded for more time to conduct research. Lord Lester, a veteran campaigner of the early British laws against racial discrimination in the UK, objected why any research on the prevalence of the caste discrimination was necessary. To him it seemed obvious that the presence of Indians in Britain had to involve immoral practices of discrimination. What was there to research? In the attitude that this conveys, it is echoed in statements made by other parliamentarians who backed the call for legislation in the event that even one case of caste discrimination should arise (Shah 2015, 33), a departure from earlier anti-discrimination law statutes which were passed after considerable evidence was gathered to support their need. In any case, what passed for research to justify *ex post facto* inserting caste into law also carries on this tradition of presupposing what remains yet to be proved about caste discrimination, including the very existence of the caste system.

It would be unsurprising that our account of the Western construction of the caste system does not tally with how Hindus generally think about caste. They have, like everybody else, been subjected to a generation or more of exposure to the idea that Hinduism is a religion that justifies caste discrimination. Those educated in India seem to have even less doubt given the spread of politicisation of caste since Indira Gandhi's time in power. Those who grew up in East Africa may not share the same flagellating reflex as they have tended to be insulated from the fractiousness of caste identity politics as they have developed in India, particularly since the 1970s. One only had to listen to the speeches of Baroness Flather, Lord Parekh and Lord Desai in the British House of Lords to notice how much this view of India and its diaspora has affected Indians. The only acceptable position for a Hindu to take today is to decry the sins of his ancestors and proclaim that he stands against any such oppression. After all, who wants to be *for* oppression?

Neither can we underestimate resistance to questioning the received story of the caste system in academia. Besides the mentioned academics who participated actively in the research for the EHRC, Lords Parekh and Desai, both retired academics, also supported the caste legislation. The Editorial Committee of the journal *South Asia Research*, based at the South Asia Institute at SOAS, University of London objected when Emeritus Prof. Werner Menski, the journal's chief editor, wrote a lukewarm review of my book, *Against Caste in*

*British Law* (Shah 2015) in which I raise questions about the ill-founded nature of the justifications given for, and the potential impact of, the caste legislation. Otherwise unheard of in academic practice, members of the editorial committee insisted that the review may be published only on condition that a scholar who supports the legislation writes a rival review. That review was duly written by Annapurna Waughray who, in her quest to justify the caste legislation, elsewhere accuses Indians of practising apartheid (Waughray 2012).

\*\*\*

One might be hard put to find any prominent Hindu organisation in Britain that is for legislating specifically on caste discrimination. Having said that, the leaders of many organisations have not been able to grasp the significance of rejecting the case law as well as the legislation and have often opted to retain the case law. For the leaders of some such bodies, including the Hindu Forum of Britain, the National Council of Hindu Temples, the BAPS Swaminarayan Sanstha, ISKCON, and the Hindu Council of Birmingham, this appears to have been a conscious choice because they are working closely with the government to help realise the latter's desire to use the existing case law as a backstop to the demands for legislating. During the course of the consultation period, they have acted as the agents of the government, instructing their members, and whoever else would listen, that the government's preferred option of the case law be supported. In effect, this means support for some type of law on caste and an endorsement of the pro-legislation lobby's claims about caste discrimination in Britain. It would allow the Hindu organisations to claim victory, though somewhat disingenuously, for having helped do away with the threat of legislation. The government could claim electoral rewards, such as there may be, from Hindus, for having avoided the prospect of legislating.

These 'political' positions illustrate one facet of what British multiculturalism does today i.e. it provides a framework through which governments attempt to accomplish the realisation of policies through select and favoured 'community' organisations and media outlets. It is a facet of multiculturalism also in the sense that it encourages a type of identity politics, in this case constituted around religious categories through which various organisations act as though they speak on behalf of a religious minority group, the leaders of which are in turn rewarded with status-elevating invitations, honours, consultancies and contracts. Questions of representation and who speaks for a particular group evidently loom large in this context (Zavos 2013). Although there are no contours for what would constitute any kind of answer, such representation questions can also be raised as a way of dislodging one group or representative in favour of another. In reality, group representatives may have little leverage over government policy, and may play a brokerage role that yields a rise in personal status when they engage in the public arena ostensibly on behalf of identity groups. Although Modood (2005) has argued that British multiculturalism is a responsive system that accommodates the demands of various minority groups over time, he fails to discuss the converse situation, whereby governments attempt to impose a policy or law over groups, achieving those aims through their active cooperation. It is this

latter situation that appears truer of the way in which the dynamics around the caste law have been working. Hindu objections to the legislation have also allowed the government to avoid having to confront a wider opposition or to acknowledge a wider public impact. Muslim organizations have remained a total reticence on their issue although Muslims are also likely defendants under the law (Shah 2016).

The Hindu reaction to the caste legislation is not only interesting in terms of the political and other expediencies that might inform them. What stands out in the defences used by Hindu spokespersons is their attempts to prevent slurs on Hinduism by arguing that there is no sanction for caste discrimination in the scriptural tradition of Hinduism. Several layers need unpeeling here before we can get to appreciate the importance of their statements.

Although the caste system is said to be a feature of Indian culture and society it is associated with Hinduism. The way in which this may be done might vary in terms of detail across the different accounts. One scholarly account goes as follows:

The caste system, which is the most obvious and distinctive feature of Indian society' is intimately linked with Hinduism and, indeed, it is given a religious basis in the doctrine of *karma*. ... Whether intrinsically necessary or not, caste has traditionally been viewed as the basis of society in Hinduism, and Hindu legal texts have regularly laid down that it is the duty of the ruler to see to its proper ordering and maintenance. (Brockington 1992, 120)

A rather more pointed variation on the theme is given by Lord Harries, former Anglican Bishop of Oxford, and one of a core group of legislators promoting the caste legislation:

Discrimination on the ground of caste is one of the historic evils of humanity, similar in many ways to discrimination on the ground of race. ... According to Hindu thought, there are four traditional caste groups, which correspond to the different traditional occupations but which are linked to birth and kinship groups. Outside those groups are what used to be called the "untouchables" - today they are termed Dalits - who are shunned and forced into the most menial tasks. For example, vast numbers of Dalits are manual scavengers, forced to scrape up and collect human excreta with their hands. There is now, I am glad to say, a growing worldwide campaign against this form of discrimination. As we know, many people from India have migrated to this country. ... The issue is complicated by the fact that so pernicious is the caste system that it has permeated even those religions that have a strong doctrine of the equality of human beings and in which the caste system has no religious basis, such as, sadly, Christianity, Sikhism and Islam. In this country, for example, according to the 2001 census, there are 336,000 Sikhs, though the true figure is reckoned to be nearer 500,000. Of these, 167,000 are thought to be Dalits. The figures for Hinduism are more difficult to arrive at, but it has been estimated that as many as 1 million people could be adversely affected by the caste system in this country. That is a very significant number of people. (Lord Harries, House of Lords Debates, 15 Dec. 2009, col. 1452)



Besides other important elements of this passage, the one concerning us most prominently here is the association of Hinduism with caste. Such statements as are made by Brockington and Lord Harries are hardly new. They can be traced back to the Protestant predecessors of Lord Harries who, from the late 18<sup>th</sup> century onwards, began to increasingly identify Hinduism as the major Indian religion and connected it to the hierarchical and oppressive caste system. As Jakob de Roover (2007) has demonstrated, the outlines of current accounts of the caste system and its association with Hinduism depend on the ideas about Indian society and its social organisation that had crystallised by the mid-19<sup>th</sup> century as a consequence of the settlement of certain Protestant ideas about the falsity of the religion of Hinduism, which in turn depended on their criticisms of Catholicism and Judaism. These allowed an explanation to take hold regarding the endurance of caste as an inherently discriminatory and oppressive social structure which, though immoral, had continued to function because the priests (Brahmins) falsely gave it a religious clothing.

However, neither contemporary anti-caste activists, like Lord Harries and his colleagues in the House of Lords, nor the defenders of Hinduism acknowledge such problems in their respective accounts. In fact, they share a belief in the existence of Hinduism and the existence of a discriminatory caste system. Where they differ is with respect to whether Hinduism sanctions caste discrimination. The defenders of Hinduism object to the association of Hinduism with the caste system, and it is this association in the statements by Lord Harries and others that triggers the responses of Hindus.

An instance of objection to the association of Hinduism with caste discrimination or the caste system is given in a statement by Pandit Satish Sharma, the General Secretary of the National Council for Hindu Temples who is mentioned as follows in a BBC news report: "While he believes there is no justification for caste-based discrimination, he believes the caste system has nothing to do with his religion and that any new law will present the issue as a Hindu problem." (Samani and Ahmad 2017).<sup>2</sup> In fact, Satish Sharma's position comes close to that of Dirks (2001) who argues that while there was no caste system in pre-colonial India a caste system arose as a consequence of British rule. Thus, the same BBC news report says, "He [Satish Sharma], along with a number of Hindus, maintains that the caste system as it exists now has more to do with the centuries of British colonial rule than ancient religion." The report goes on to quote Sharma as follows: "'This is not something that is part and parcel of our beliefs and ideologies,' he says. 'Our scriptures and our recent history up until a few hundred years ago didn't have this caste system in there. This is being directed at us, this has been put around our necks.'"

Another characteristic Hindu response is provided by Jay Lakhani who is the director of the Hindu Academy, one aim of which is to promote a structured study of Hinduism leading to recognised school qualifications. After the delivery of the Employment Tribunal's final decision in the *Tirkey* case, a BBC programme broadcast Jay Lakhani in a discussion about

---

<sup>2</sup> Satish Sharma's position was also put during the debate between him and Satpal Muman, BBC Asian Network, 18 January 2017, { [HYPERLINK "http://www.bbc.co.uk/programmes/b086tbv4"](http://www.bbc.co.uk/programmes/b086tbv4) } (currently not available for listening). For some undisclosed reason, the programmes on the BBC to do with the caste discrimination law have been not been available for listening or viewing.

whether the case evidenced caste discrimination in Britain.<sup>3</sup> After rejecting the claim that the case was illustrative of caste discrimination (with which the present writer agrees), Lakhani went on to provide his view of the caste system. He says that the original scriptural notion was economic and based on one's ability. The hereditary, hierarchical caste system, a form of social stratification which occurs in all societies, has no sanction from the Hindu scriptures, but was rather an atrocity committed in the name of religion. This system is now dead in the UK although it exists in the villages in India.<sup>4</sup>

Several features of Lakhani's response are notable. As with Sharma's response, that there is an acceptance of Hinduism is obvious and hardly exceptional. However, making it into a discussion about Hinduism turns it into a matter of religion that, in turn, entails a recourse to scriptural authority as a means of validating or rejecting the claim of a Hindu caste system. He refers to scriptural support for the ideal form of occupational allocation, but regards the hereditary, hierarchical caste system as a degradation of that original form. If anything, it is this social system, which he accepts used to exist, and continues to exist in villages in India, that leads to discrimination but it is not one founded on any Hindu scriptural authority.

Also interesting to highlight here is the common theme regarding the *varna* order or system, or *varnavyavastha*, as an original caste order that is presumed to have degraded at some point of time and that may have led in turn to discriminatory practices or atrocities.<sup>5</sup> In the section on Hinduism in a religious studies textbook (see All Faiths and None 2010, 225-226), presumably authored by Jay Lakhani, we find a description of the different dimensions of caste that he discusses in the BBC TV programme in a very similar manner. In that textbook, he provides the additional information that "The great modern teachers of Hinduism such as Swami Vivekananda, Dayananda Saraswati and Mahatma Gandhi all insisted that discrimination based on caste ran contrary to the true and authentic teachings of the Hindu tradition." (All Faiths and None 2010, 225) If we grant that they varied somewhat in their individual responses and accept this summary of the teachings of these figures - that they too denied that Hinduism authorises caste discrimination - then Jay Lakhani and others are following a path trodden for more than a century by Hindu responders to claims about the caste system. Therefore even if one takes a stand that is critical of the approach adopted by Jay Lakhani and other contemporary spokespersons, we should bear in mind that their interventions are not without earlier precedents.

While there is a long lineage of earlier Hindu responders to accusations about the caste system in Hinduism (see e.g. Forrester 1980, 155-172; Bayly 1999, 144-186), we still need

---

<sup>3</sup> The Victoria Derbyshire Programme, BBC2, 2 October 2015, { [HYPERLINK "https://www.youtube.com/watch?v=i9xetWMeZ4g"](https://www.youtube.com/watch?v=i9xetWMeZ4g) }. The BBC link to the programme is { [HYPERLINK "http://www.bbc.co.uk/programmes/b06cw91n"](http://www.bbc.co.uk/programmes/b06cw91n) } although the programme is not currently available for viewing.

<sup>4</sup> A similar account is given in the book, All Faiths and None (2010, 225-226) in which the sections on Hinduism are believed to have been authored by Jay Lakhani.

<sup>5</sup> That it is not uncommon among British Hindus to refer to *varna* in such ideal terms, and moreover as authentically Hindu because it occurs in scripture, is also testified to by the contribution of Ridhi Vyas in a debate on the caste legislation in the Palace of Westminster, 23 November 2016. Both Lakhani and Vyas received many commendations on social media such as Facebook for their statements, indicating popular endorsement by Hindus of their views.

to figure out why and how, since the nineteenth century, these Hindus tended to view *varna* as representative of some ideal order and why they considered it relevant to defend Hinduism in those terms. It may be that they had accepted something of the accounts of those Orientalists, from William Jones to Max Müller, who tended to view the Vedic past as ideal and glorious, which allowed them to develop a defence against the accusations of the Hindu religious sanction for the oppressive caste system. This is suggested for example in how Dirks (2001, 39-40) connects Gandhi's defence to that of Müller's ideas about degradation and corruption since the Vedic age. Whatever the precise dynamics involved a couple of things can be identified at this stage.

First, there appears to be some consistency in the way Hindus developed a way of defending their religion against accusations of the caste system, a way of defending Hinduism which continues to this day and is visible in the way the caste law in the UK is being discussed by them. Second, this defence involves an acceptance of both the idea that there is a Hindu religion (or Hinduism) and that there exists a caste system. What these defenders then try to do is avoid the implication of a connection between them by denying that Hinduism sanctions the caste system. If there is any 'caste system' sanctioned by Hinduism it is the system of *varna* or *varnavyavastha* which is the ideal, non-birth based system based on merit and ability, and that there is no scriptural sanction for any form it may have taken since as a degradation of the ideal. In so doing it appears that Hindus are compelled to accept the premises of Western construction of India (and latterly its diaspora). That is, they have to accept that they have a religion which is Hinduism and that a caste system exists. Thus far they agree with their anti-caste opponents. Where Hindus try to secure some room for manoeuvre is by claiming that such a (degraded) system is unconnected to their religion. In so arguing, however, they do not manage to meet the objections of those who claim that a discriminatory caste system exists but rather talk past them by trying to save their religion from opprobrium. All such Hindus can do is to negotiate a better deal for themselves *within* Orientalism. In fact, they do not manage to defend against the legislation at all. All they manage to do is to try to defend an entity (Hinduism) that fails to exist against the claim about another (the caste system) that also does not exist.

This is the tragedy of the postcolonial Hindu who argues against chimerical allegations about the nature of his culture and society. It typifies what Balangangadhara (2012) describes as 'colonial consciousness' because it provides an example of a group whose members do not enjoy access to the Western culture that produced notions of the caste system and of Hinduism, while at the same time failing to have access to their own traditions.

*The author is a Reader in Culture and Law at Queen Mary, University of London.*

## References

All Faiths and None (AFAN). 2010. *A Handbook for Teachers, FE Chaplains and Multi Faith Teams*. London: AFAN Project c/o Dept of Education, Kings College, London. { [HYPERLINK "http://www.afan.uk.net/files/u5/staff\\_dev/AFAN\\_Handbook\\_A5.pdf" }](http://www.afan.uk.net/files/u5/staff_dev/AFAN_Handbook_A5.pdf) }

Ambedkar, B.R. 1945. *What Congress and Gandhi have done to the Untouchables*. Delhi: Gautam Book Centre.

Balagangadhara, S.N. 1994. *"The Heathen in His Blindness...": Asia, the West, and the Dynamic of Religion*. Studies in the History of Religions, Numen Bookseries. Vol. LXIV. Leiden, New York: E. J. Brill.

Balagangadhara, S.N. 2012. *Reconceptualizing India Studies*. New Delhi: Oxford University Press.

Ballard, Roger, ed. 1994. *Desh pardesh. The South Asian presence in Britain*. London: Hurst & Co.

Bayly, Susan. 1999. *Caste, Society and Politics in India from the 18<sup>th</sup> Century to the Modern Age*. Cambridge: Cambridge University Press.

Bloch, Esther, Marianne Keppens, and Rajaram Hegde, eds. 2010. *Rethinking Religion in India: The Colonial Construction of Hinduism*. Routledge South Asian Religion Series. London and New York: Routledge.

Brockington, John. 1992. *Hinduism and Christianity*. Basingstoke: Macmillan.

De Roover, J. 2015. *Europe, India and the Limits of Secularism*. New Delhi: Oxford University Press.

De Roover, Jakob. 2017. "A Nation of Tribes and Priests: The Jews and the Immorality of the Caste System." In *Western Foundations of the Caste System*, ed. Martin Farek, Dunkin Jalki, Sufiya Pathan, and Prakash Shah, 173-220. Basingstoke: Palgrave Macmillan.

Dirks, Nicholas B. 2001. *Castes of Mind: Colonialism and the Making of Modern India*. Princeton: Princeton University Press.

Farek, Martin, Dunkin Jalki, Sufiya Pathan and Prakash Shah, eds. 2017. *Western Foundations of the Caste System*. Basingstoke: Palgrave.

Forrester, Duncan. 1980. *Caste and Christianity: Attitudes and Policies on Caste of Anglo-Saxon Protestant Missions in India*. London and Atlantic Highlands, NJ: Curzon Press and Humanities Press.

Galanter, Marc. 1984. *Competing Equalities: Law and the Backward Classes in India*. Los Angeles, California: University of California Press.

Jalki, Dunkin, and Sufiya Pathan. 2017. "Are There Caste Atrocities in India? What the Data Can and Cannot Tell Us." In *Western Foundations of the Caste System*, ed. Martin Farek, Dunkin Jalki, Sufiya Pathan, and Prakash Shah, 57-84. Basingstoke: Palgrave Macmillan.

Kasensup, Preedee. 1986. "The reception of law in Thailand: A Buddhist society." In *Asian Indigenous Law in Interaction with Received Law*. ed. Masaji Chiba, 267-300. London and New York: KPI.

Modood, Tariq. 2005. *Multicultural Politics: Racism, Ethnicity and Muslims in Britain*. Edinburgh: Edinburgh University Press.

Said, Edward. 1978. *Orientalism*. London: Penguin.

Samani, Vishva and Athar Ahmad. 2017. "Why are UK Hindus Against a Caste Law?" BBC News, January 18, 2017. { HYPERLINK "<http://www.bbc.co.uk/news/uk-england-38663143>" }

Shah, Prakash. 2015. *Against Caste in British Law: A Critical Perspective on the Caste Discrimination Provision in the Equality Act 2010*. Basingstoke: Palgrave.

Shah, Prakash. 2016. "Muslims and the British Caste Law." *Law and Religion UK*, 19 October 2016. { HYPERLINK "<http://www.lawandreligionuk.com/2016/10/19/muslims-and-the-british-caste-law/>" }

Shah, Prakash. 2017. "Dissimulating on Caste in British Law." *Western Foundations of the Caste System*, ed. Martin Farek, Dunkin Jalki, Sufiya Pathan, and Prakash Shah, 85-126. Basingstoke: Palgrave Macmillan.

Shourie, Arun. 2012. *Falling over Backwards: An Essay against Reservations and against Judicial Populism*. Noida, Uttar Pradesh: Harper Collins.

Waughray, Annapurna. 2012. 'The New Apartheid?' *New Law Journal*, January 6, 2012. { HYPERLINK "<https://www.newlawjournal.co.uk/content/new-apartheid>" }

Zavos, John. 2013. Representing British Hindus. *Public Spirit*, August 20, 2013. { HYPERLINK "<http://www.publicspirit.org.uk/representing-british-hindus/>" }