

ESSAY

RACE, CASTE, AND HUNGER

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The value of a man was reduced to his immediate identity and nearest possibility. To a vote. To a number. To a thing. Never was a man treated as a mind. As a glorious thing made up of star dust. In every field, in studies, in streets, in politics, and in dying and living. My birth is my fatal accident.

- Excerpt from Dalit PHD scholar, Rohit Vemula's last letter.¹

Traditionally, American sociologists have argued for a separation between race and caste. Oliver. C Cox, in 1945,

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1. Rohith Vemula, *Full text: Dalit Scholar Rohith Vemula's Suicide Note*, TIMES OF INDIA (Jan. 19, 2016), <https://timesofindia.indiatimes.com/city/hyderabad/Full-text-Dalit-scholar-Rohith-Vemulas-suicide-note/articleshow/50634646.cms> [<https://perma.cc/99HL-PAUW>].

comparing the caste system to that of a “colony of bees, where with each class of insects doing its work naturally and harmoniously.”² Perhaps Cox did not take the time to wonder whether bees enjoyed this imposition.

Herein, with the romanticizing of a harmful social practice that segregates, discriminates, and oppresses lies problem. So what could be the reason for the nation state, India,³ to refuse to consider caste as a form of racial discrimination as understood under International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”)?⁴ Why is it that a government, with the memory of being subjugated by colonizers and with a history of denied autonomy, identity, and resources for over two hundred years does not want to engage in a conversation about a system of discrimination as insidious? Perhaps the treacherous truth is that, the practice of caste prevails with celebration, it has been thriving all along, and that had little to do with the ascension of white supremacy.⁵

The caste-based hierarchy is the oldest form of systemic social discrimination,⁶ that has furthered the sustained oppression of thousands. Though older conceptually than race, caste-based discrimination in both culture and practice has multiple parallels with the construct of race. The considerations of ongoing struggles

2. Oliver C. Cox, *Race and Caste: A Distinction*, 50 *AM. J. OF SOC.* 360, 361 (1945).

3. India has maintained before the Committee on the Elimination of All Forms of Racial Discrimination that

Discrimination based on caste falls outside the scope of article 1 of the Convention. However, after an extensive exchange of views with the State party, the Committee maintain[ed] its position expressed in general recommendation No. 29 - that discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights. Therefore, the Committee reaffirms that discrimination based on the ground of caste is fully covered by article 1 of [CERD] Convention.

See Committee on the Elimination of Discrimination, *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*, Vol. 660 at 195, U.N. Doc. CERD/C/IND/CO/19 (1969).

4. *Id.*

5. See generally Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 73 *CORNELL L. REV.* 1024 (1989).

6. Human Rights Watch, *CASTE DISCRIMINATION: A GLOBAL CONCERN*, HUM. RTS. WATCH 2 (Sept. 2001), <https://www.hrw.org/reports/2001/globalcaste/index.htm#TopOfPage> [<https://perma.cc/Z48S-WXVT>] [hereinafter Human Rights Watch].

between communities marginalized based on identity markers such as caste and race, are rooted in notions of birth, ethnicity, and “purity.”⁷ Governments, policy, and even legislation has ensured the deliberate dismissal of specific lower[ed] communities in India that is not dissimilar to the experiences of those erased because of racial bias in the United States.⁸

This Essay provides some context to the history and structure of caste in India and contends that caste-based discrimination is a form racial discrimination. This Essay will illustrate this by comparing and contrasting experiences of caste with race through the lens of both domestic law and International Law. Finally, to investigate a specific dimension to the subject matter, this Essay will present some evidence of the practice of discrimination in the politics of food and nutrition.

The parameters of this commentary, for the purposes of this Essay, will gravitate between India and the United States. This is not to say that the relevant and important frameworks do not exist in other parts of the world. This Essay merely attempts restraint and focus. If this Essay expanded further on the subject matter, the rest of the investigation would include (but not be limited to) the imperative history of South Africa’s Apartheid, the Haitian Revolution of 1791,⁹ the Romani Community’s experience with untouchability in Europe,¹⁰ and the existing caste system of Latin

7. C. J. Fuller, *Homo Hierarchicus: The Caste System and its Implications*, 5 MODERN ASIAN STUDIES 405 (1971) (reviewing LOUIS DUMONT, *HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS* (Mark Sainsbury trans., 1970)).

8. Prominent Dalit activists, scholars, journalists, and leaders are specific about how to reference the largely accepted term *Lower Caste*. In light of the historical oppression of such identities and ongoing discrimination, these communities prefer *Lowered Caste*; a term which more accurately reflects imposed condition and social context. For its usage, see Rahul Sonpimple, *Dalit Conversions: an act of Rebellion Against Caste Supremacy*, AL JAZEERA (June 14, 2018), <https://www.aljazeera.com/indepth/opinion/dalit-conversions-act-rebellion-caste-supremacy-180614100002526.html> [https://perma.cc/6MW5-FGDH].

9. Claudia Sutherland, *Haitian Revolution (1791-1804)*, BLACKPAST (July 16, 2007), <https://www.blackpast.org/global-african-history/haitian-revolution-1791-1804/> [https://perma.cc/Q68K-XNKG].

10. Liz Fekete, *Europe Against the Roma*, 3 RACE & CLASS 60, 60-70 (2014).

America,¹¹ where currently a *varna* type labor hierarchy is determined by an individual's racial ancestry.¹²

I. THE INDIAN CASTE SYSTEM- A HISTORY AND CONTEMPORARY IMPLICATIONS

The caste system in India is a mammoth social, religious, political, and economic system of societal hierarchy. Discussions on its origin would be tedious because it remains controversial, due in part to its close relation with the fabric of Hindu religion and Hindu ritual practices.¹³ However, what is evident is that the system was in existence from 1250 BC based off its documentation in the Manusmiriti.¹⁴

To understand the fundamentals, the social structure is made up of 4 main castes or "varnas" (groups). The hierarchy is as follows:

Brahmins – The upper most caste or the priestly caste are predominantly vegetarian, historically have had full access to education, have participated in establishing institutions, and are viewed as gatekeepers of knowledge, be it cultural, scientific, or social.

Kshatriyas – The caste composing soldiers or warriors, often the caste of monarchical families.

Vaishyas – The caste composed of farmers, merchants, and traders.

Shudras – The caste composed of manual laborers and domestic servants.¹⁵

11. See generally Robert H. Jackson, *Race/Caste and the Creation and Meaning of Identity in Colonial Spanish America*, 55 *REVISTA DE INDIAS* 150 (1995).

12. See generally Dipankar Gupta, *From Varna to Jati: The Indian Caste System, from the Asiatic to the Feudal Mode of Production*, 10 *J. CONTEMPORARY ASIA* 249 (1980).

13. NICHOLAS B. DIRKS, *CASTES OF MIND: COLONIALISM AND THE MAKING OF MODERN INDIA* 7 (2001)

14. WILLIAM WILSON HUNTER, *THE INDIAN EMPIRE: ITS PEOPLE, HISTORY AND PRODUCTS* 114 (1924).

15. Irawati Karve, *What is Caste?*, *ECON. WEEKLY* 150 (Jan. 1958), available at https://www.epw.in/system/files/pdf/1959_11/456/what_is_casteiv_castesociety_and_vedantic_thought.pdf [<https://perma.cc/7M77-WJLD>].

The fifth excluded fraction is “Dalits,”¹⁶ who were seen outside of the larger system. Dalits are comprised of tribal communities, nomadic clans who would be responsible for manual scavenging, tannery, and sweeping.¹⁷ Dalits are “untouchable,” which means that they are not allowed to participate in any activity with the other four castes.¹⁸ This exclusion is literal and in every aspect of daily life, including entering temples, residential homes, sharing spaces of education, and using the same water supply, utensils, and toilets.¹⁹ Caste has survived the many changes in the subcontinent, which during the ebbs and flows of its political history, was a vast collection of kingdoms, villages, regions, tribal turfs, and clan territory. Discriminatory and degrading treatment of over 165 million people in India, currently, has been justified by caste.²⁰

The British were among the most prominent and successful of the European colonizers in India, with a two-hundred-year occupation in South Asia, which includes present day Pakistan, Bangladesh, and Sri Lanka.²¹ Historian, Kevin Hobson stated that caste, to the British, was the existing system that defined occupation, social standing, and intellectual ability.²² It was also something of ease for colonial power to adopt given this social stratification. It was not uncommon to them, because of the prevalence of feudalism in England.²³ The first forms of western data collection came from questions on caste identity that were included in census collection by colonial revenue collectors.²⁴

16. Dalits, also formerly known as the “untouchables” are people outside of the Caste System, who are seen as spiritually and physically polluting to Upper Caste-ed Hindus.

17. See Karve, *supra* note 15.

18. *Id.*

19. See Human Rights Watch, *Hidden Apartheid: Discrimination Against India's “Untouchables”*, HUM. RTS. WATCH (Feb. 2007), https://www.hrw.org/sites/default/files/reports/india0207webwcover_0.pdf [<https://perma.cc/HP5Y-64UD>].

20. *Id.*

21. BURTON STEIN, *A HISTORY OF INDIA* 107 (2010).

22. Kevin Hobson, *Ethnographic Mapping and the Construction of the British Census in India*, THE BRITISH EMPIRE, <http://www.britishempire.co.uk/article/castesystem.htm> [<https://perma.cc/74W8-78UF>] (last visited Feb. 24, 2020).

23. N. Patrick Peritore, *Feudalism—Critique of a Model of Society and Political Economy*, 12 ALTERNATIVES 61 (1987).

24. *Id.*

British conceptions of racial purity were interwoven with the categorization of communities based on censuses results. Though caste had its ties to Hinduism, it did not evade those who converted to other faiths, who remained lowered based on their lineage. The early census collection by the British of the Indian population, has the largest impact in the way India today categorizes hieratically the various castes and sub caste groups. Indians, as subjects for the Empire, were used as both census takers and as advisors regarding the caste system of hierarchy.²⁵ Brahmins, as the most literate, seeing the ascendancy of British power, allied themselves to this perceived new ruling class and attempted to gain influence through it.²⁶ They were placed in positions of power, already had access to education, and eventually quartered off all facilities to further their own sect.²⁷

The myriad associations with the caste division benefited colonizers the most when it came to labor. One of the authors of the Indian Constitution and Dalit leader, BR Ambedkar stated the

system, as a division of [laborers], which is quite different from division of [labor]—it is a hierarchy in which the divisions of [laborers] (themselves) are graded one above the other. This division of [labor] brought about [by the Caste System] is not based on choice. Individual sentiment, individual preference, has no place in it. It is based on the dogma of predestination.²⁸

Ambedkar, however, rejected the notion that caste was a racial divide.²⁹ In his analysis, he believed much of the ideas on race were based on assertions of biological differences, of primary color segregation. Here, he presented, “[The] Caste system is a social division of people of the same race. His position became important because in international law forums for addressing racial discrimination, India positioned itself firmly, that caste is not an issue of race, often pivoting on ‘even Ambedkar said so.’”³⁰ To be

25. *Id.*

26. Kevin Hobson, *Ethnographic Mapping and the Construction of the British Census in India*, THE BRITISH EMPIRE, <http://www.britishempire.co.uk/article/castesystem.htm> [<https://perma.cc/7SN5-6M6V>] (last visited Feb. 24, 2020).

27. *Id.*

28. BHIMRAO RAMJI AMBEDKAR, ANNIHILATION OF CASTE 17 (1990).

29. *See id.* *See also* 2 DR. BABASAHEB AMBEDKAR: WRITINGS AND SPEECHES 21 (1st ed. 1982).

30. B.R. Ambedkar, *Castes in India: Their Mechanism, Genesis and Development*, *Indian Antiquary* 41, para. 46 (1917).

born into a specific caste is to inherit all the privileges or detriments, to hold all the social currency or suffer imposed poverty, to be able to access education or excluded from it, to have very limited choices (in general) in association, be it in marriage, friendship, or even occupying the same physical space with others.

The first semblance of dismantling some practices in caste-based discrimination—such as untouchability and social segregation—was considered during the rumblings of dissent and the freedom struggle in the 18th and 19th century. As political groups within India started uniting toward a common goal of breaking the yoke of colonization, caste lines blurred.³¹ Since 1947, and the Indian state's independence, the Indian Constitution and the political climate of a socialist welfare nation was geared in providing distinct measure for the “upliftment” of the oppression lower castes and Dalits faced.³²

II. CASTE AS A RACIAL CONSTRUCT

Caste-based discrimination is seen as a form of racial discrimination in International Human Rights Law's definitions and mechanisms. The advantage in examining caste-based discrimination through the lens of race and racial divide is that it allows for an expansion of forums for marginalized communities. “Caste” as a term is itself of European inheritance, translated to include, in meaning “race, lineage or breed.”³³ The historical understanding of race—particularly when assessing the need for such a construct—did in fact include *caste*. Michelle Alexander's book, *The New Jim Crow*, intentionally refers to the experience and history of racial bias in the United States of America, as “a racial caste system.”³⁴ Her book touches on evidence of segregation and direct discrimination, in spite of US constitutional amendments and landmark judgments to eliminate racism.³⁵ She states that:

31. *Freedom Struggle* is part of India's independence movement, which was a culmination of events, groups and acts of resistance against the British Occupation.

32. August 15, 1947 is India's Independence Day.

33. Julian Pitt-Rivers, *On the Word 'Caste'*, TRANSLATION OF CULTURE 231 (1971).

34. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 34-35 (Paperback ed. 2012).

35. Cases such as, *Brown v. Board of Education*, 347 U.S. 483 (1954); *Bailey v. Patterson*, 369 U.S. 31 (1962); *Batson v. Kentucky* 476 US 79 (1986). Cases such as *Brown*

[h]istory seemed to repeat itself. Just as the white elite had successfully driven a wedge between poor whites and blacks following Bacon's Rebellion by creating the institution of black slavery, another racial caste system was emerging nearly two centuries later, in part due to efforts by white elites to decimate a multiracial alliance of poor people. By the turn of the twentieth century, every state in the South had laws on the books that disenfranchised blacks and discriminated against them in virtually every sphere of life.³⁶

Alexander's reference to "caste" is important on two counts: first, the development of an equation between caste with race has a common socioeconomic foundation. Both concepts were created with an agenda to exploit specific communities for labor.³⁷ The practice of both relied on social segregation and isolation, an aspect key to labelling communities "polluted" and perceived lesser than human.³⁸ Second, in spite of previous constitutional legislative efforts, these systems continue to exist today, oppressing African American and Dalit communities.³⁹

One of the primary features of casteism is the practice of untouchability. Aside from the literal understanding, that those of lower castes cannot be touched, the practice comprehensively includes an active and intentional exclusion of specific communities based on their caste (low birth).⁴⁰ Women of lower castes are disproportionately higher in numbers as victims of sexual violence, more than any other identity.⁴¹ Rape and harassment are among the many habitual forms of caste atrocities Dalits are subjected to. Human Rights Watch's 2001 Report on Caste Discrimination presents "Untouchability" as a hegemony that

v. Board of Education, 347 U.S. 483 (1954); *Bailey v. Patterson* 369 U.S. 31 (1962); and *Batson v. Kentucky*, 476 U.S. 79 (1986).

36. ALEXANDER, *supra* note 34, at 34-35.

37. Ambrose Pinto. *UN Conference Against Racism: is Caste Race?*, 36 *ECON. & POL. WKLY.* 2817, 2819 (2001).

38. *Id.*

39. *Id.*

40. See generally Radhamany Sooryamoorthy, *Untouchability in Modern India*, 23 *INT'L SOC.* 283 (2008).

41. See generally ALOYSIUS IRUDAYAM ET AL., *DALIT WOMEN SPEAK OUT: CASTE, CLASS AND GENDER VIOLENCE IN INDIA* 204-05 (2014); see ALOYSIUS IRUDAYAM ET AL., *DALIT WOMEN SPEAK OUT: VIOLENCE AGAINST DALIT WOMEN IN INDIA* (2006).

is reinforced by state allocation of resources and facilities;⁴² separate facilities are provided for separate caste-based neighborhoods. Dalits often receive the poorer of the two, if they receive any at all.⁴³ In many villages, the state administration installs electricity, sanitation facilities, and water pumps in the upper-caste section, but neglects to do the same in the neighboring, segregated Dalit area.⁴⁴

Similarities can be found in the treatment of African Americans in the United States. Formal institutions here too, have had a history reinforcing of subjudication based on racial identity. To consider, for example, in 1906, Berea College appealed before a Kentucky Court,⁴⁵ against two indictments that prohibit white and black persons from attending the same school. The Court reversed the conviction under the charge that the college was maintaining and operating a college where persons of the people of both races were received as pupils for instruction within a distance of twenty-five miles of each other.⁴⁶ The underpinnings of racial segregation and the court's assertions for justifying the practice are not dissimilar to how "untouchability" was understood in India. The judges in the Berea College Case attempted to explain the value in segregation stating "[t]he danger to the peace engendered by the feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. [...] It is much wiser to avert the consequences of repulsion of race by separation."⁴⁷

Dalits are placed outside the "Varna" system and were not given any status in the caste social hierarchy.⁴⁸ In both tradition and religious doctrine, Dalits are considered "polluted."⁴⁹ In many ways, the caste system goes further than racial segregation because it not only imposes segregation, but dictates what Dalits

42. Human Rights Watch, *supra* note 6, at 6.

43. *Id.*

44. *Id.* at 7.

45. Berea Coll. v. Commonwealth, 29 Ky. L. Rptr. 284, 94 S.W. 623 (1906).

46. *Id.*

47. *Id.*

48. HUNTER, *supra* note 14, at 114.

49. Shalini Randeria, *Carrion and Corpses: Conflict in Categorizing Untouchability in Gujarat*, 30 EUR. J. Soc. 171, 172 (1989).

do in their segregated space.⁵⁰ The jobs considered repulsive and impure are reserved for Dalits, and they are prevented from engaging in any other work.⁵¹ These jobs include removing human waste (known as manual scavenging), dragging away and skinning animal carcasses, tanning leather, making and fixing shoes, and washing clothes.⁵² Not only are they restricted in terms of workspace, but their houses are also supposed to be inferior in quality and devoid of any facilities like a fresh water supply. Untouchability was abolished by the Indian Constitution in 1950,⁵³ and despite the Government of India's assertions that legislation and policy established affirmative action, non-discrimination and access to justice, lower caste communities remain marginalized. Representing over one-sixth of India's population, Dalits endure near complete social ostracization.⁵⁴

The reinforcement of the interpretation of caste as a notion of racial purity was also adopted by Nazi Germany's usage of the word of Indian origin "Aryan."⁵⁵ The eugenic program of laws of sterilization, which led to the holocaust, was rooted in the condition of the "German stock."⁵⁶ The Aryans in the Indian context are claimed as an Indo-European population of high birth (or good genetic stock).⁵⁷ Though the theory on whether the population was native to the subcontinent or part of a huge migration is still being

50. According to a 1979 study, Punjabi Christians of the sweeper caste were also reportedly treated as untouchables in Pakistan. Historically, Punjabi Christians belonged to a low-caste Hindu group called the Chuhras. After the partition of India in 1947, many migrated to Pakistan where they took on occupations that others considered to be impure, such as sweeping and scavenging. They were regarded and treated as untouchables, as were those referred to as Musallis, untouchable converts to Islam. Sweepers were confined to live in segregated areas, such as the slaughterhouse neighborhood in Karachi. Such neighborhoods were extremely poor and squalid. Members of the sweeper and other untouchable castes were also forbidden from entering Muslim tea houses. PIETER H. STREEFLAND, *THE SWEEPERS OF THE SLAUGHTERHOUSE: CONFLICT AND SURVIVAL IN A KARACHI NEIGHBORHOOD* 13-15 (1979).

51. Randeria, *supra* note 49, at 172.

52. *Id.*

53. INDIA CONST. art. 17.

54. Human Rights Watch, *supra* note 6, at 7.

55. MADAN GOPAL, *INDIA THROUGH THE AGES* 70 (K.S. Gautam ed. 1990).

56. DAVID KEANE, *CASTE BASED DISCRIMINATION IN INTERNATIONAL HUMAN RIGHTS LAW* 102 (2007).

57. *Id.*

debated, the association made with the Aryans has been that they are “racially pure” or upper caste.

The late Father Ambrose Pinto, a prominent scholar and activist, argued for the consideration of caste-based discrimination to be seen within the purview of racism. He presented several parallels. He provided the following insight:

The catena of judgments relating to the caste-based discrimination [...] shows that caste is recognised and acknowledged by the judicial decisions as a prohibited ground of discrimination not only at par with race, but also as a form of racial discrimination. The different definitions of caste adopted by the several decisions of the Supreme Court of India show that for the purposes of treating caste as a prohibited ground of discrimination, caste is race in the Indian context (K C Vasant Kumar vs state of Karnataka, 1985 (Supp) SCR 352). In the said decision caste is even identified as a race or unit of race, as per the definition of caste accepted by justice Venkataramaiah in the said case.⁵⁸

Thus, casteism as racism is not wholly alien by many interpretations. Moreover, Article 341 of the Indian Constitution refers to Scheduled Cast (“SC”⁵⁹) groups including race.⁶⁰

III. WHERE CASTE AND RACE DIVERGE

The government of India has positioned itself consistently on the stance that “caste” is not “race.”⁶¹ It has been a safer and more politically neutral assertion to prescribe caste as a form of ethnic-class stratification. An ethnic group consists of people who

58. Pinto, *supra* note 37, at 2820.

59. Scheduled Castes (“SCs”) and Scheduled Tribes (“STs”) are communities categorized as disadvantaged socio-economic groups in India. Rights of these groups are recognized and safeguarded by virtue of the Indian Constitution’s explicit aim to ‘protect affirm, and develop’ their rights. The National Commission for Scheduled Castes and the National Commission for Scheduled Tribes are responsible for overseeing welfare measure, policy, or legislation concerning SC and ST groups.

60. Article 341 of the Indian Constitution mentions Scheduled Castes—(1) The president may with [...] specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that state or union territory, as the case may be. INDIA CONST. art. 341.

61. Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination, India, U.N. Doc. CERD/C/IND/CO/19 (May 5, 2007).

conceive of themselves as being alike by virtue of common ancestry, real or fictitious, and are so regarded by others as “a distinct category of the population in a larger society whose culture is usually different from its own.”⁶² This commonality is held responsible for such characteristics as shared appearance, intelligence, personality, morality, capability, purity, honor, custom, speech, religion, and so forth.⁶³ However, Van Den Berghe has held that “ethnic” should be distinguished from “race” or “caste” in that the former implies real, important, and often valued social and cultural differences (language, values, social organization), while the latter are artificial and invidious distinctions reflecting irrelevant (and sometimes non-existent) differences in physiognomy, or artificial differences in social role.⁶⁴

The Indian Constitution and the Indian legal system have recognized and acknowledged the existence in Indian society of discrimination based on caste.⁶⁵ This discrimination because of forced occupation has been the subject matter of a number of legislative measures including constitutional provisions and judicial decisions of the Supreme Court of India and the high courts of different states.⁶⁶ Article 17 of the Indian Constitution abolished the practice of “untouchability,” including any disability or discrimination arising from the practice.⁶⁷ It is important to note that “untouchability” as a practice is not expressly defined. The outcome has been controversial, with prominent contributors at the time the Constitution was being drafted—like Rohini Kumar Chowdary—demanding for the practice of untouchability to be expressly defined.⁶⁸ The President at the time and the Assembly arrived at a consensus that the government would be able to realize the Constitution’s vision through enactment of law, and thus the term remained undefined. Untouchability may have been outlawed, but the caste system itself remains intact.⁶⁹ Promotha

62. Gerald D. Berreman, *Race, Caste, and Other Invidious Distinctions in Social Stratification* 13 *RACE* 385, 388 (1972).

63. *Id.*

64. *Id.*

65. INDIA CONST. arts. 15-16.

66. Pinto, *supra* note 37, at 2819.

67. INDIA CONST. art. 17.

68. INDIA, 3 CONSTITUENT ASSEMBLY DEBATES: OFFICIAL REPORT 434 (1999).

69. *Id.*

Rajan Thakur, the leader of All India Depressed Classes League founded in 1935 to represent the Dalits in attaining equality, commented on the advisory committee's Interim Report on Fundamental Rights during the drafting, stating that:

I do not understand how you can abolish untouchability without abolishing the very caste system. Untouchability is nothing but the symptom of the disease [...] Unless we do away with caste system all together there is no use tinkering with the problem of untouchability superficially.⁷⁰

Article 46 of the Indian Constitution explicitly recognizes the lowest strata of the caste hierarchy (Scheduled Castes and Scheduled Tribes) with the intention of promoting "special care in the education and economic interest of communities, protecting them from social injustice and all forms of exploitation."⁷¹

Many contemporary post-colonial constitutions—such as those of India and South Africa—align with the expansion of economic, social and cultural rights. The treatment of the Indian Constitution towards caste is one that acknowledges the socio-economic disparities of the various [historically] oppressed communities. This perspective is among the most prominent in detaching "caste" from the idea of race. The systemic challenges (as discussed and considered in the Constituent Assembly debates of 1947)⁷² Dalit and other lower-caste communities face is grasped as a problem of class disparity. The hierarchy, or the "Varna" system, was claimed to be a division based on labor dictated by scriptures associated with Hinduism. This resulted in clear notions of who was what caste depending on historical access to resources, land, education, and social liberties. This allows a claim that little normative imposition of racial discrimination or segregation laws in the history of Indian legislation, and therefore India had no "Jim Crow" or did not see race.

IV. CASTE-BASED AND RACIAL DISCRIMINATION ADDRESSED IN INTERNATIONAL HUMAN RIGHTS

Yeah, your Constitution,

70. INDIA, *supra* note 68, at 403.

71. INDIA CONST. art. 46.

72. 1947 is the year of independence for the Republic of India.

Well, my friend, it's gonna have to bend.
 I'm here to tell you about destruction —
 Of all the evil that will have to end.
 —Nina Simone and Weldon Irvine, *Revolution*⁷³

A. Race

Race and racial discrimination initially found both text and interpretation in International Human Rights Law through the work of the United Nations Educational, Scientific and Cultural Organization's ("UNESCO") statements.⁷⁴ Countries and experts did not come to a consensus on the scope of 'race' or the implications of the concept. The influence, however, of these statements led to the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") in 1965.⁷⁵ The Convention departed from UNESCO's attempts to define or construct an understanding of race and the language focused more on addressing forms of discrimination as well as providing redressals.⁷⁶ The ICERD was among the first of the human rights treaties to establish a monitoring body of its kind.⁷⁷ The document and its subsequent procedures and functions remains the most momentous collective global stance against racism.

The American Civil Liberties Union ("ACLU") clarifies the importance of the ICERD with regard to US domestic law:

[b]y signing and ratifying ICERD in 1994, the [United States] has legally agreed to be bound by its requirements and is obligated to protect and promote equality and non-discrimination in the enjoyment of human rights, including in the areas of education, housing, criminal justice, health, voting, labour, access to justice, and more. This is important because ICERD requires that countries eliminate both intentional

73. NINA SIMONE & WELDON IRVINE, *REVOLUTION* (RCA Records 1969).

74. G.A. Res. 1904 (XVIII) (Nov. 20, 1963).

75. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, S. Exec. Doc. C, 95-2 (1978); S. Treaty Doc. 95-18; 660 U.N.T.S. 195, 212 [hereinafter ICERD].

76. See generally Patrick Thornberry, *Confronting Racial Discrimination: A CERD Perspective*, 5 HUM. RTS. L. REV. 239 (2005).

77. *Id.*

discrimination and discrimination in effect. While the U.S. Constitution and domestic laws have mechanisms in place to reduce the frequency of racial discrimination, both forms of discrimination are still pervasive in the United States.⁷⁸

The ICERD defines racial discrimination as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.⁷⁹

The expansion of the grounds of identity—that is race, color, descent, or national or ethnic origin—intentionally includes all manifestations of descent-based discrimination.⁸⁰ Scholar David Keane stated that there was an effort to include “color” among the grounds, but the Committee assured this interpretation would be encompassed in “descent.”⁸¹ The Convention and its associated measures place the onus on countries to eliminate all forms of discrimination pertaining to the identities described. However, this alone does not fulfil the state’s responsibility. The obligations

78. *Frequently Asked Questions: Convention on the Elimination of All Forms of Racial Discrimination*, AM. C.L. UNION [ACLU], https://www.aclu.org/sites/default/files/field_document/cerd_faqs.pdf [<https://perma.cc/YZ3T-SP3C>] (last visited Feb. 26, 2020).

79. ICERD, *supra* note 75, art. 1.

80. CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent) (Nov. 1, 2002) [hereinafter CERD General Recommendation].

81. KEANE, *supra* note 56, at 180. *See id.*

under Articles 2(1),⁸² 3,⁸³ and 7,⁸⁴ include that states should “promote an understanding between all races” and “encourage where appropriate multiracial organisations and movements for eliminating the barriers of race.”⁸⁵

B. Caste

The term “caste” is not explicitly included in any International Human Rights treaties, ICERD being no exception.⁸⁶ Under the tremendous advocacy and initiative of Dalit groups in India, with support from racial minorities around the world, there was a demand for redressals for caste-based atrocities in International Human Rights Law as well as to recognize caste as a ground of racial discrimination. India’s contribution to the negotiations regarding the provisions of ICERD was one of discomfort and

82. ICERD, *supra* note 75, art. 2 para. 1.

States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists; (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

83. ICERD, *supra* note 75, art. 3. States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

84. ICERD, *supra* note 75, art. 7. States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

85. *Id.*

86. See ICERD, *supra* note 75.

reservations, taking issue with any inclusion of caste as part of the Convention's mandate.⁸⁷ However, since its independence, the government of India has been deeply invested in its reputation in the international community,⁸⁸ and this geo-political premise has driven all legislative action to address caste-based discrimination within the country. India alleged that the country had already addressed (dare we say eradicated) caste-based discrimination through the Articles of the Indian Constitution and domestic statutes ensuring civil, political, economic, social and cultural rights to low-caste groups.⁸⁹

The ICERD, in its general comment No. 29,⁹⁰ included caste within the comprehensive understanding and meaning of "descent."⁹¹ The definition of descent by the ICERD included an inheritance of characteristics that resulted in stratification.⁹² In spite of India's reports to the Committee on Elimination of All Forms of Racial Discrimination ("CERD") protesting that caste is not understood as an identity of "descent," the CERD and the United Nations have maintained their conclusions. It is interesting to note that pushing the UN countries and the ICERD to expand their understanding of descent was an assertion made by a number of other communities around the world, including Nepal, Mali, Yemen, Senegal, and Micronesia.⁹³ Expanding on the work and investment in "descent" was also important for people of African Descent.⁹⁴

87. Comm. on the Elimination of Racial Discrimination, Rep. Submitted by States Parties under Article 9 of the Convention U.N. Doc. CERD/C/IND/19 (Mar. 29, 2006) (reiterating the position made in its report in 1996 that 'caste' cannot be equated with 'race' or covered under 'descent' under Article 1 of the Convention).

88. See George W. Downs, & Michael A. Jones, *Reputation, Compliance, and International Law*, 31 J. LEGAL STUD. S95 (2002).

89. UN Committee on the Elimination of Racial Discrimination: Addendum to the Nineteenth Periodic Reports of States Parties Due in 2006, India, CERD/C/IND/19 (Mar. 29, 2006) [hereinafter Addendum].

90. Comm. on the Elimination of Racial Discrimination, General Recommendation 29, Discrimination Based on Descent, at 111, U.N. Doc. A/57/18 (Nov. 1, 2002).

91. *Id.*

92. Comm. on the Elimination of Racial Discrimination, 61st Sess., 1531st mtg., at 5, U.N. Doc. CERD/C/SR.1531 (Aug. 9, 2002).

93. Human Rights Watch, *supra* note 6, at 4.

94. *Id.*

The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in 2001 was an opportunity to address the term along with intersectionality as a collective of inequalities faced by communities of color.⁹⁵ The juxtaposition between the sentiments of political leaders to cater to the vast number of Dalit voters in the country, yet maintain optics before other governments, was evident when then Indian Prime Minister Manmohan Singh became the first leader to compare the condition of low-caste Hindus with that of black South Africans under apartheid.⁹⁶ At a conference in India on social injustices based on caste identity, Prime Minister Singh spoke to the failure of post-independence policies and a lack of shift in social attitude:

[e]ven after [sixty] years of constitutional and legal protection and support, there is still social discrimination against Dalits in many parts of our country. Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was apartheid.⁹⁷

The statement irked the largest oppositional right wing Hindu conservative Bharatiya Janata Party (“BJP”), but echoed the struggle that Dalit and Schedule Tribe movements has expressed for decades, that not enough has been done to address atrocities and it is unacceptable that the situation has not been acknowledged as a mass human rights violation.⁹⁸ Dalit Diaspora, in the United States—who align themselves with the Dalit Rights movement—pushed for changes to be made beyond the borders of India. So not long after Prime Minister Singh’s statement, the 110th US Congress passed Concurrent Resolution 139, urging US citizens working in India to “avoid discrimination toward the Dalits in all business interactions.”⁹⁹

95. *Id.*

96. Comm. on the Elimination of Racial Discrimination, Concluding Observations of the Committee, Canada, ¶ 6, CERD/C/IND/CO/19 (May 25, 2007).

97. Indian Prime Minister Manmohan Singh, Address in New Delhi at the Center for Social Justice (Dec. 27, 2006).

98. Human Rights Watch, “*WE HAVE NO ORDERS TO SAVE YOU*”: *State Participation and Complicity in Communal Violence in Gujarat*, HUM. RTS. WATCH 39-46 (Apr. 2002), <https://www.hrw.org/reports/2002/india/gujarat.pdf> [<https://perma.cc/LY86-3PLR>].

99. H.R. Con. Res. 139, 110th Cong. § 7 (as referred in Senate, July 24, 2007).

Much of the hesitation in embracing an understanding of caste as a racial discrimination can also be attributed to the fact that the caste system has intimate ties with the practice of the Hindu Religion. The argument of cultural relativism has long limited the full realization of the universality of human rights.¹⁰⁰ Ambedkar's disaffection and finally total dismissal of Hinduism can be attributed his distinct experiences.¹⁰¹ India is a majority Hindu country with over eighty percent of the population identifying with the Hindu faith.¹⁰² In light of this, there is a resistance to pin *racism* or *racist behavior* to the faith.¹⁰³ All attempts to reform Hinduism to exclude the ritual of caste have failed or if there is any success, the ideology has been diverted so expansively, it can barely be recognized as "Hindu" any longer.¹⁰⁴

To account for only European or Western anthropologists as the only experts on race or caste is a huge disservice to the many Dalit thinkers who, in pursuit of rights and equality, approached the subject matter for advocacy and research. The Dalit movement sees itself and the violations of the caste system as those comparable with racial discrimination.¹⁰⁵ The Civil Rights Movement in the United States has had a profound influence on many movements around the world and Dalit Rights activism is no different in its reverence. The consideration is not to homogenize the many groups that fall into Scheduled Caste, Scheduled Tribe or Other Backward Caste categories,¹⁰⁶ but to unify their challenges. As the People's Union for Civil Liberties Member and Human Rights Lawyer, Kalpana Kannabiran appropriately asked, "[i]s it political

100. See Addendum, *supra* note 89.

101. See generally Anne M. Blackburn, *Religion, Kinship and Buddhism: Ambedkar's Vision of a Moral Community*, 16 J. INT'L ASS'N BUDDHIST STUD. 1 (1993).

102. *Religion*, OFF. OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, http://censusindia.gov.in/Census_And_You/religion.aspx [https://perma.cc/SV3M-MRFV] (last visited Feb. 26, 2020).

103. See DIRKS, *supra* note 13.

104. *Id.*

105. Christopher Queen, *What Ambedkar's Anti-caste Struggle Shared With the US Civil Rights Movement*, SCROLL.IN (Oct. 14, 2016), <https://scroll.in/article/818942/what-ambedkars-anti-caste-movement-shares-with-martin-luther-kings-civil-rights-movement-in-the-us> [https://perma.cc/WSW8-LD9C].

106. Categories set by the Indian Constitution as 'low caste' groups. Kalpana Kannabiran, *Race and Caste: A Response to Andre Beteille*, PUCL BULL. (Aug. 2001), http://www.doccentre.org/docswweb/CasteRace/documents_caste/beteille_response.htm [https://perma.cc/YH78-5BCX].

mischief to say that Blacks and Dalits share a history of subjugation, slavery and social exclusion, that has changed only in form and continues untrammelled even today and that both must have recourse to common international instruments of redress?"¹⁰⁷

V. YOU ARE WHAT YOU EAT...

The Author's interest in including an approach to the subject matter through food comes from polar experiences: a love for all food and personal experiences as someone personally policed for food choices as a lowered caste individual. Thus, this Essay moves away from the more common themes of housing, education, health and employment, but an investigation through food touches on all the above in number of ways. By providing some insight, this Essay to engage with idea that food policing transcends immediate discrimination, asserting that it has implications that are far-reaching, intergenerational, with long-term harm to communities' nutrition and wellness.

Food, Rights, and Dignity

The right to food rhetoric is often understood as to be free from hunger. Identifying food and water as the most important source for human sustenance means that our imagination of the rights that are associated with it are limited to certain assumptions. "Do not waste food" the western world is told, "someone in Africa or India is starving". These assumptions undermine a real opportunity for all of us, across regions, races, castes and classes to think more comprehensively about food, therein a lack of it. This is not to dismiss the realness of hunger, but to place a caste and race lens to hunger as very much a central issue of systemic oppression. If our most conventional experience of starvation is a lack of nutrition, are we open to considering an imposition of food practices without any nutritional value also "starving"?

"The right to food is the right of every fellow human being to live in dignity."¹⁰⁸ Hunger is a constant state of distraction and to

107. *Id.*

108. Jacques Diouf, Director-General, *Food and Agriculture Organisation*, Keynote Speech at the International Conference on the Right to Food and the Costs of Hunger (June 20, 2003).

be ever engaged in the cyclic trauma of not having anything to eat, quite possibly means an inability to meaningfully participate as social and political being. The Universal Declaration on Human Rights recognizes the “right to food” through Article 25, which states that “[e]veryone has the right to a standard of living adequate for the health and well-being of themselves and of their family, including food [...]”¹⁰⁹ Much of the current international advocacy around food was established in by 1996 World Food Summit. The Summit called for and concluded with a “plan of action,” where by the UN High Commissioner for Human Rights formed intergovernmental mechanisms to realize the right to food.¹¹⁰

One of the most important follow up documents from the Summit was the May 1999, the UN Committee on Economic, Social and Cultural Rights (“CESCR”) releasing its General Comment 12 The Right to Adequate Food.¹¹¹ The expansion from mere consumption to understanding the food more broadly was an important step. The Committee proposed that the right to adequate food be legally binding on all countries party to the Convention on Economic, Social and Cultural Rights as a positive human right. States now had a core obligation to take the necessary action to mitigate and alleviate hunger even in times of natural or other disasters.¹¹² The Comment was also intentional in its approach to hunger as an issue of political will. It drew a distinction between availability and access, whereby “fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of access to available food, inter alia because of poverty, by large segments of the world’s population.”¹¹³

Three key responsibilities were scoped for Countries: respect, protect, facilitate and provide. The following enumerates the meaning of each:

109. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

110. Rome Declaration on World Food Security Objective 7.4, Nov. 13, 1996, available at <http://www.fao.org/3/w3613e/w3613e00.htm#Note1> [https://perma.cc/V82A-ND2J].

111. UN Comm. on Econ., Soc. and Cultural Rts. (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11) (May 12, 1999).

112. “Adequacy,” in the General Comment meant that an account must be taken of what is appropriate under given circumstances. Food security implies food being accessible for both present and future generations. *Id.*

113. *Id.* at para. 5.

Respect. “The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access.”

Protect. “The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.”

Fulfil (facilitate). “The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security.”

Fulfil (provide). “Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.”¹¹⁴

All these obligations were conceived to comprehensive include other human rights and freedoms such as liberty, equal treatment, and a life of dignity.

VI. AND YOU EAT WHAT YOU ARE.

“You can’t eat a dead dog, can you?”¹¹⁵

– Excerpt from “Black Boy” by African American Author, Richard Wright

The United States of America does not support the “right to food” idea as prescribed by the United Nations and the General Comment.¹¹⁶ Within the United States, the Supplemental Nutrition Assistance Program (SNAP, formerly known as the Food Stamp Program), the National School Lunch Program, and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) provide a criteria for individual to be eligible.¹¹⁷ In realizing the normative value to “right to food” though the General Comment, it would be important to account for access to include

114. *Id* at para. 15.

115. RICHARD WRIGHT, *BLACK BOY* 71 (1945).

116. *U.S. Explanation of Vote on the Right to Food*, U.S. MISSION TO INT’L ORGS. IN GENEVA, <https://geneva.usmission.gov/2017/03/24/u-s-explanation-of-vote-on-the-right-to-food/> [<https://perma.cc/RG24-R764>].

117. George Kent, *The Human Right to Food and Dignity*, 37 *HUM. RTS. MAG.* (2010).

dimensions of employment (livelihood), quality of produce, and the government's intention when allocating resources for the supply of food.

Food Deserts

A research initiative by the New York Law School Racial Justice Project and ACLU specifically tracks low-income communities' access to supermarkets in New York City. The inquiry was to further an understanding of a phenomena known as "food deserts," where low income neighborhood blocks are more distant from grocery stores than other blocks within a city.¹¹⁸ With food deserts in the City of Chicago, the ratio of the distance to a grocery store relative to the distance to a fast food restaurant had an impact on neighborhood's food balance.¹¹⁹

The report in its entirety is an alarming account of the detrimental impact on the lack of nutritious food produce in low income neighborhoods. These neighborhoods are predominantly communities of color or disproportionately African American.¹²⁰ Narratives include the stark reality of working parents who juggle two to four jobs, resorting to the closest sources of meals for their children at fast food chains.¹²¹ Any attempt to overcome those choices involve traveling great distances, diminishing time and finances available. The long-term impact on health is reflected with individuals living in deserts have a higher predisposition to diabetes and cardiovascular disease compared to high income (predominantly white) neighborhoods.¹²² Professor Andrea Freeman at the University of Hawai'i asserts that the issue is even more systemic referring to the fact that poor nutritional labelling

118. N.Y. L. Sch. Racial Just. Project, *Unshared Bounty: How Structural Racism Contributes to the Creation and Persistence of Food Deserts*, RACIAL JUST. PROJECT 19 (June 2012), https://digitalcommons.nyls.edu/cgi/viewcontent.cgi?article=1002&context=racial_justice_project [<https://perma.cc/447W-YL3D>].

119. MARI GALLAGHER, MARI GALLAGHER RESEARCH & CONSULTING GROUP, *GOOD FOOD EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN CHICAGO* 6 (2006).

120. *Id.*

121. See N.Y. L. Sch. Racial Just. Project, *supra* note 118.

122. *Id.* at 6-8.

doubly marginalizes low income communities.¹²³ With a fundamental restraint on choice, coupled with no information on what is being eaten, extremely harmful food additives in cheap meals are being consumed in dangerously large quantities by low income families. She argues that the Federal government's inability to regulate labelling requirements is the state's way of contributing to structural inequalities and racial marginalization.¹²⁴

Freeman's definition of food oppression is astoundingly accurate, describing it as

the institutional, systemic, food-related action or policy that physically debilitates a socially subordinated group. Politically and financially weak communities absorb the external costs of food oppression, rendering these costs largely invisible to the mainstream. The effects of the oppression also increase the harmed groups' vulnerability by constraining their political voices, reducing their work capacity, and draining the energy of household and community members who must care for the sick and take on the responsibilities that ill members cannot fulfill. In the long term, food oppression diminishes already vulnerable populations in numbers and in power. Illness arising from food oppression also leads to social invisibility, decreased social status, depression, and despair.¹²⁵

VII. CASTE ON THE MENU

"Dal means split, an etymology that comes from how we prepare pulses. Most Indian pulses are dicotyledons, seeds with two halves. To make them easier to cook we crush them in a mill, simultaneously splitting and dehusking them to yield the two broken halves which are dal. The term Dalit comes from the same root, a coinage popularised by those who knew what it was to be broken and crushed by society." - Dalit Poet, Namdeo Dhasal¹²⁶

123. Andrea Freeman, *Transparency for Food Consumers: Nutrition Labeling and Food Oppression*, 41 AM. J. L. & MED. 315 (2015).

124. *Id.*

125. Andrea Freeman, *The Unbearable Whiteness of Milk: Food Oppression and the USDA*, 3 U.C. IRVINE L. REV. 1251, 1253 (2013).

126. Vikram Doctor, *Dalit Food: How it Became a Means of Oppression*, THE ECON. TIMES (Apr. 12, 2008), <https://economictimes.indiatimes.com/the-leisure-lounge/dalit->

The right to food is a part of fundamental rights and directives principles of the Indian Constitution.¹²⁷ The food habits are viewing glass into the vast and complex caste association based on consumptions. Known often as a nation that caters best to vegetarians, India's reputation is based on the food habits of what is assumed as its majority preference. In reality, however, seventy percent of Indians are non-vegetarian.¹²⁸ Dalits and other lower caste groups are almost completely non-vegetarian and consume most kinds of meat, dairy and egg products.¹²⁹ The most controversial meat in India is beef because of Hinduism's long and very vocal history with the cow and its divinity.¹³⁰

At the time of the Constitution was being drafted, cow slaughter was an issue of many debates.¹³¹ The consideration drifted far from the declaration of "secularism" that is established as one of the core values of the Republic. India was recovering from the large-scale exploitation and leeching of its resources by its colonizers, and one of the deliberations was the significance of the

food-how-it-became-a-means-of-oppression/articleshow/2945790.cms?from=mdr [https://perma.cc/SV4G-S7RE].

127. The National Human Rights Commission, India, has taken the view that the Right to Food is inherent to a life with dignity. Article 21 of the Constitution of India which guarantees a fundamental right to life and personal liberty should be read with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realization of this right. INDIA CONST. arts. 21, 39A, 47. Article 39(a) of the Constitution, enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policies towards securing that all its citizens have the right to an adequate means of livelihood, while Article 47 spells out the duty of the State to raise the level of nutrition and standard of living of its people as a primary responsibility. INDIA CONST. arts. 39A, 47. The Constitution thus makes the Right to Food a guaranteed Fundamental Right, which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. INDIA CONST. art. 32.

128. OFF. OF REGISTRAR GEN. & CENSUS COMM'R, INDIA, SAMPLE REGISTRATION SYSTEM BASELINE SURVEY (2014), available at http://censusindia.gov.in/vital_statistics/BASELINE%20TABLES08082016.pdf [https://perma.cc/XL5B-8KWG].

129. Ashwaq Masoodi, *A Story of Culinary Apartheid*, LIVE MINT (Sept. 16, 2016), <https://www.livemint.com/Leisure/wjzDhGEE4csaX2BjhjHMsL/A-story-of-culinary-apartheid.html> [https://perma.cc/NG3M-WZFW].

130. MARGO DEMELLO, ANIMALS AND SOCIETY: AN INTRODUCTION TO HUMAN-ANIMAL STUDIES 314 (2012).

131. Lovish Garg, *Examining the Constituent Assembly Debates on Cow Protection*, WIRE.IN (Oct. 15, 2016), <https://thewire.in/law/unveiling-indias-long-history-of-hypocrisy-on-cow-slaughter-laws> [https://perma.cc/WJ9L-8QRQ].

agricultural economy as backbone as well as the recourse for food security.¹³² Without the advantage of advanced technology in farming, bovines were important in all their functions. They supported the milk industry, were beasts of burden, necessary for cultivation and the leather production. Seth Govind Das, a member of the Constituent Assembly, called for the prohibition of cow slaughter to be made part of the Constitution's chapter on fundamental rights, on a par with the prohibition of untouchability.¹³³ The cow was both sacred and an economic asset, so by no means was it to be fed on. In order to satisfy the religious sentiments of many (mostly upper caste leaders) and move forward with more crucial aspects of the drafting, Assembly reached a compromise. Prohibition of cow slaughter would be a "directive principle" of state policy, not attaining enforceability.¹³⁴ States and their respective votes would decide whether they would impose such restrictions.¹³⁵ The sentiments that were vocalized at the time the Constitution was being drafted did not account for the many Hindu communities that do in fact eat beef, these being Hindus of the Dalit and lower caste groups. There was also no acknowledgement of the food habits of religious minorities such as the Muslims and Christians.

India's central government is currently led by the BJP, the politically right-wing sect with Prime Minister Narendra Modi as its head. In June 2017, government issued the Prevention of Cruelty to Animals (Regulation of Livestock Market) Rules.¹³⁶ The order issues a nationwide control prohibiting the sale of cows, buffaloes and oxen for slaughter.¹³⁷ Diverting from a state-based regulation, the order is treated as complete ban on beef for consumption. Many states, particularly those with populations that eat beef, have condemned the order and have taken steps to resist

132. 3 CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) (1948), *available at* https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-18 [<https://perma.cc/JFZ4-QDLL>].

133. *Id.*

134. *Id.*

135. *Id.*

136. Prevention of Cruelty to Animals (Regulation of Livestock Markets) Rules, 2017, Gazette of India, pt. II sec. 3(i) (May 23, 2017).

137. *Id.*

the ban.¹³⁸ Food policing has become the agenda of right-wing fringe groups who seek out Dalits and Muslims and kill them for eating beef.¹³⁹

While the slow wheels of justice turn, the beef industry has sustained huge losses in the livelihood of cattle farmers, butchers and transporters, most of whom are from the Muslim and Dalit communities.¹⁴⁰ Religious minorities are not beyond the caste boundaries, with almost forty percent of India's Christian population identifying as Dalit or from lower castes. Pegged as an issue of communal disharmony, with Hindus on one side and Muslims on another, the "beef ban" is not deemed enough as a caste atrocity that further marginalizes Dalit communities whose occupation (an occupation beyond their choice) relies on the beef industry.¹⁴¹

The beef ban is not isolated in the larger question of impact on health and nutrition of low[er] caste groups. In 2008, forty-three percent of Indian children under the age of five were underweight.¹⁴² The corresponding figure for Somalia was thirty-two percent and for Rwanda it was eleven percent.¹⁴³ In 2001, after forty-seven tribal people and Dalits were starved to death in southeastern Rajasthan, despite India's food stocks having an excess of around forty million tons of food grain that year, activists and organizations had approached the Supreme Court to enforce the right to food for all citizens and form a mandate for the government assuring food security for all.¹⁴⁴ Beef is the cheapest source of

138. Kerala Adopts Resolution Asking Centre to Withdraw Cattle Slaughter Ban, *ECON. TIMES* (June 8, 2017), <https://economictimes.indiatimes.com/kerala-adopts-resolution-asking-centre-to-withdraw-cattle-slaughter-ban/articleshow/59058287.cms> [<https://perma.cc/9SJC-RPMU>].

139. Hum. Rts. Watch, *Violent Cow Protection in India: Vigilante Groups Attack Minorities*, *HUM. RTS. WATCH* (Feb. 18, 2019), <https://www.hrw.org/report/2019/02/18/violent-cow-protection-india/vigilante-groups-attack-minorities> [<https://perma.cc/EMA4-RQHJ>].

140. *Id.*

141. *Dalit Christians Demand SC Status*, *THE HINDU* (Aug. 12, 2019), <https://www.thehindu.com/news/cities/kolkata/dalit-christians-demand-sc-status/article28986154.ece> [<https://perma.cc/E2F3-NRRJ>].

142. Shoab Daniyal, *Between Banned Beef and Expensive Dal, How Are Poor Indians Supposed to Get Enough Protein?*, *SCROLL.IN* (Oct. 31, 2015), <https://scroll.in/article/765001/between-banned-beef-and-expensive-dal-how-are-poor-indians-supposed-to-get-enough-protein> [<https://perma.cc/L96N-VUGP>].

143. *Id.*

144. *Id.*

protein in the country, with Rupees 0.77 per gram compared to Rupees 3.33 for pulses or Rupees 6.33 for milk.¹⁴⁵ Soon after the beef ban was issued, the cost of rice, other grain, pulses and wheat soared.¹⁴⁶

To equate an entire identity, its richness in culture, its treasured recipes and preference of ingredients with “meat, no meat” would be counter intuitive what this Essay seeks to shed light on. The issue at hand is not classification of consumers to argue for a majoritarian food habit, just as the objective in addressing food deserts is not to criticize the occasional person of color who likes their Big Mac. What remains a mass violation of the rights of these communities is the systemic coercion that limits their options. These limitations have very particular repercussions shouldered by them alone. This Essay could not begin to even consider the encumbrance being gendered. With the scale of mass incarceration of black men in the United States, most households are run by women demonstrating insurmountable resilience while they feed their families.

VIII. *LET THEM EAT CAKE*

“She would not sit next to me, Ma. She said I stank of liver and skin. You would eat your children if you could, she said, you filthy thing” – Lamentations of a Dalit Child

Queen Marie Antoinette never said these words, but she would have to suffer their reference to her infinitely.¹⁴⁷ The underpinnings of the association are real, because it was believed that this was the response of those of her class to peasants and farmers who expressed concerns over a shortage of food in France. Perhaps much has not changed and myth is as real today. Oppressive conditions are not the accidents of society, but rather, structured with enough and more facilitation through power, politics, policy and law.

International Human Rights Law has broadened its horizons to consider an expansion of definitions and determinations when comes to rights violations. The difficulty is the enforcement.

145. *Id.*

146. *Id.*

147. ÉVELYNE LEVER & CATHERINE TEMERSON, *MARIE-ANTOINETTE: THE LAST QUEEN OF FRANCE* 63-65 (2000).

Unless there is statutory realization in domestic law that has meaningful mechanisms for redressals, these debates are lost to winds of academia. India, admittedly could be named and shamed by the United Nations and its agencies to inch slightly forward, but there is no doubt with the current political climate, this may no longer deliver favorable results.

In formulating some thoughts and possibilities with race and caste, this Essay asks for consideration not just of the similarities in problems, but a real opportunity for overarching solutions. The caste system is the longest surviving social hierarchy in the world and the discrimination it perpetrates has deep roots in the Indian identity. Critical race theory, though much younger, is a much more developed framework, particularly when it comes to the articulation of inequalities. The fundamental contention is not that race and caste are the same, but it is that racial discrimination and caste-based discrimination are the same. The prejudices faced by communities entrenched in the rigidity of these identities can be regarded a widespread act of untouchability in continuum.

