**The OHRC’s Policy Position on Caste-Based Discrimination:**

***A Law Student’s Perspective***

On October 26, 2023, Ontario became the first province in Canada to cite caste-based discrimination under the Human Rights Code. Specifically, the Ontario Human Rights Commission’s (“OHRC”) policy position is that existing *Code* grounds can indeed provide the necessary protections against potential forms of discrimination based on caste. Recently, Samantha Peters spoke with Nikisha Thapar, a third-year law student at Western University Faculty of Law and an incoming articling student at Cambridge LLP who is interested in exploring the intersection between governance, business, and social issues and its influence on the law, about the OHRC’s policy position on caste-based discrimination through a law student’s perspective.

*For those who may be unaware, what is caste-based discrimination?*

The caste system is a hereditary social hierarchy to determine social standing and occupation in South Asia, specifically in India. It arises from ancient Hindu doctrine and stratifies individuals into distinct groups, or "castes," based on perceived spiritual purity and proximity to the Divine. Like other social hierarchies, this system affords those in the higher-most castes more privilege than those in lower castes and groups, regardless of their individual power and wealth. Those that are considered outside of this hierarchy, the "Dalits," are often referred to as "Untouchables" because of their perceived impurity and spiritual pollution. Adherence to this system is incentivized both by the assertion that the caste system is necessary to maintain social order, and the promise of reincarnation into a higher caste for fulfilling one’s *dharma,* or duty (or into a lower caste for not doing so). This understanding, coupled with ancient doctrine, is used to justify the increased privileges and opportunities afforded to higher castes and the continued suppression of those in lower ones.

*What are your thoughts on the OHRC’s policy position on caste-based discrimination?*

I support and appreciate the OHRC’s policy position, as well as their clear and intersectional definition of caste-based discrimination that highlights the many ways in which individuals may experience such prejudice based on caste in addition to other aspects of their identity.

*Why is it necessary for caste-based discrimination to be explicitly addressed in the context of employment, for instance?*

I believe that an understanding of caste discrimination would be highly important in any industry and geographic location where there is a South Asian presence, and increasingly so where South Asians are substantially represented. Caste discrimination can manifest in a variety of different fields and places - for example, in response to several high-profile actions against Seattle-based employers for hiring discrimination based on caste, specifically in the big tech industry, the city became the first in the United States to ban caste discrimination. Of the Canadian jurisdictions that have so far elected to recognize caste discrimination - Burnaby, Brampton, and the Toronto District School Board - all have significant South Asian populations.

Caste discrimination also doesn’t just stop at the hiring stage. In 2023, a Dalit taxi driver was awarded nearly $10k by the Human Rights Tribunal for aggression and violence he experienced at his workplace because of his caste. His story is not unlike many South Asian Dalits and lower caste people in Canada, and it highlights the pressing need for comprehensive awareness of this issue and how it manifests in the workplace.

*Why is it important for law students like yourself to be aware of the OHRC’s policy position on caste discrimination?*

I believe it is highly important for law students to be aware of this policy. Not only do I see it being a large part of the human rights legal landscape in Ontario and Canada, but I also believe that being aware of this policy will allow for students to change their perspectives on what inequality looks like. While undertaking my research on casteism and discrimination in Canada, many of my peers who weren’t familiar with the topic were fascinated with what I was working on, and were shocked at how they had never heard of this issue before, despite it being so evident in other parts of the world. I don’t necessarily blame them - while a pertinent issue in South Asia, caste discrimination is not widely discussed in Canada despite its large and ever increasing South Asian population.

By familiarizing themselves with the OHRC’s stance on this matter, students gain insight

into an often-overlooked aspect of discrimination, challenging preconceived notions of inequality only boiling down to the seventeen or so grounds that are in our human rights codes, and begin to think about how to handle the conflict between promoting equality and navigating other cultures and religions. In our multicultural society, this consideration is paramount, and in my opinion, essential for anyone looking to become a lawyer today.

*What are some additional thoughts that you have on this policy position?*

But while, as correctly noted by the OHRC, it is outside their jurisdiction to codify caste as a protected ground under the Code, I believe that the next - and most crucial - step in combating caste discrimination in Canada is to do so under provincial human rights laws. Some have opposed such a move in their own jurisdictions, saying that such measures are "unnecessary" due to existing bans on discrimination based on other analogous protected grounds such as race, religion, colour and ancestry.

While these lines of reasoning are understandable, I argue that they do not go far enough. Caste cannot be labelled as synonymous or as a mere "subset" of any of these grounds, and doing so may lead to the continued marginalization and exclusion of those suffering from casteism by dismissing how caste, with its particular cultural nuance, drives discrimination in the first place. In recognizing the distinctive cultural nuance of caste-based discrimination and its unique impact on South Asians and wider Canadian society, it is imperative that we extend legal protection under provincial human rights laws in Canada to promote a comprehensive and inclusive approach to combating casteism and ensure the continued full and free participation of all in our society.

About the Author: Samantha Peters (she/her) is a lawyer, researcher and educator, whose work focuses on labour, employment and human rights law.  She is also the Black Legal Mentor-in-Residence/Mentor Juridique pour la Communauté Noire at the University of Ottawa Faculty of Law for the 2020 – 2021 academic year.