Caste on UK Shores
Legal Lessons from the Diaspora

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This article applauds the judgment of the Employment Tribunal at Cambridge for understanding caste as race discrimination while granting unpaid dues to an Adivasi woman employed as a domestic servant by an upper-caste Indian family in the United Kingdom. The dismal conditions of work and wages of domestic labour in India are linked to the caste system from which emanates the low worth of manual work.

The judgment of the Employment Tribunal in the United Kingdom (UK) on 17 September 2015 has extended the protection of the Equality Act 2010 to those affected by caste oppression. At the onset, P Tirkey v Mr and Mrs Chandhok (2015) looks like a typical case of claiming employment dues under the National Minimum Wage Act 1998. No overt instances of ill-treatment—physical or sexual violence, bondage, starvation—are noted in this case. It is a seemingly unremarkable case and, therefore, startling in the discoveries it makes about the conditions of domestic labour within an Indian upper-caste family residing in the UK, and its undeniable connection with the caste practices and normativity prevalent in India. The issues in this case are located in three premises: first, employment regulations, such as the National Minimum Wage Act 1998 and the Working Time Regulations 1998; second, how domestic labour relations are caste relations; and third, treatment of discrimination against lower castes as race discrimination for the purpose of the Equality Act 2010.

The claimant, Permila Tirkey, an Adivasi Christian woman from rural Bihar, described herself as belonging to the “servant class” and “lower caste” before the Employment Tribunal in Cambridge (hereinafter, the tribunal) that heard the matter on 13 to 17 July and 20 to 22 July 2015. She had received only basic education as she was expected to be a domestic servant in the wealthier parts of India. She was employed by the Chandhoks in 2008 at the time their twins were born, and was brought to the UK to their Milton Keynes residence. The tribunal in its 50-page judgment lists out the irregularities and legal violations in her employment. After having made a promise, in her visa application, that a separate room with a bathroom will be offered to her, her employers failed to provide her reasonable living space for the five years of her tenure. She slept in the landing, with no privacy, or with the children so she could tend to them during the night. She slept on a foam mattress and never had a bed. She did not eat with the family but cooked for herself after 9 pm and ate in the kitchen.

For middle-class Indians this is no novelty. In fact, the expectation that the
domestic help should be given all of these facilities would sound preposterous against the background of the overall treatment of servants in India (Menon 2011). India does not have a domestic labour law to regularise and protect workers, and the unionisation of domestic labour has been only in pockets and sporadically (Mahanta and Gupta 2015). While reading the judgment most of us would have to wince since we accept and continue many indignities towards domestic labour—from 18-hour working days to eating leftover food sitting on the kitchen floor—as normal practice. We might even offer the same justification, that the servant had “very little to do during the day” (P Tirkey v Mr and Mrs Chandhok 2015: para 60), as the Chandhoks did. However, the tribunal found these relentless hours of work with no rest and no leisure as “unacceptable working conditions.” The Working Time Regulations, 1998 require 11 hours of uninterrupted rest, 24 hours of rest in a week, and 5.6 weeks of paid holiday per year; none of which was offered to Tirkey. The tribunal notes that she was “on call at all times” or “at the beck and call of the Respondents whenever they required her to carry out tasks for them, their children, or their extended family” (P Tirkey v Mr and Mrs Chandhok 2015: para 73).

The question, then, would be: why this might not distress most Indians, employers and workers alike? The answer lies in the invisible avatar of caste in contemporary India; the entrenched caste practices and oppression that we live with and tend not to notice in our own daily lives.

Employment Issues and Caste

The tribunal considered whether the treatment of Tirkey has its roots in caste discrimination. The tribunal noted that “in the ‘caste pyramid’ the Adivasi are the lowest class.” It describes Tirkey’s people as “dark skinned and poor...recognised by the saree they wear at festivals” (P Tirkey v Mr and Mrs Chandhok 2015: paras 8–9). However, none of these are obvious markers of caste. Technically, Tirkey—who is tribal and Christian—would not even feature in the caste pyramid. Tribal people have always existed outside the village caste order—carrying the burden of the dichotomy of the “plains people” versus “hills people”—wherein the dominant mainstream groups exploit their land, resources and labour. Historically, they face atrocities such as being arrested and shot at by the police and forest guards for “poaching,” while they are merely carrying out their traditional livelihoods. Owing to their norms, which are less patriarchal, and their liberal sexual normativity; mainstream discourses brand their lifestyle as immoral and subject them to the same, if not worse, caste practices as they do the lower castes (Devi 2002).

The tribunal took this into account when it chose to go beyond the technicality or factum of caste and view the ethos of the caste system into the manner in which Tirkey was treated by her employers. For example, Tirkey met P Chandhok for the first time outside her aunt’s home, but was not invited inside the house, which she described as being normal for a lower-caste person when meeting an upper-caste person at their home. The tribunal notes this incident to understand the caste practices and hierarchy within the lower-caste servant—upper-caste employer relationship that started in India and was carried into the UK.

Two aspects connect Tirkey’s case and, in general, domestic labour in India to the caste system: first, the discourse of power, control, and dehumanisation, and second, poor value of labour. The caste discourse prompts employers to expect servitude rather than service (P Tirkey v Mr and Mrs Chandhok 2015: para 202), as the tribunal noted in several aspects of the Tirkey case:

(i) Tirkey could not step out of the house without someone from the Chandhok family accompanying her. Despite living in the UK for five years, she could not function on her own there.

(ii) Despite her enthusiasm to learn English and enrolment into an English language class, the Chandhoks did not allow her to attend the classes once a week, thereby denying her education and a chance of a life in her new country.

(iii) She had no access to her own money. She could not operate her bank account or her debit card. She or her family were intermittently paid in cash, not a regular weekly or monthly salary.

(iv) Since she had no money, nor a chance to venture out to shop, she could not choose her own attire. She was compelled to wear second-hand clothes inappropriate for her age/personality. For example, she was photographed wearing a t-shirt with a Playboy bunny symbol with the words “vcux like a bunny,” and when she was explained the meaning and implication of the slogan, she found it distressing.

(v) The Chandhoks referred to her as a “girl,” even though she was nearly 40 years old, which she found humiliating.

(vi) She was not allowed to carry her Bible with her to UK in her luggage, stating it was too heavy. She was not allowed to read the Bible, take time off to pray or attend church during her years in the UK.

(vii) She was not allowed to use the landline. She was given a mobile phone so that the Chandhoks could call her with instructions and check on the children, but she could not use this to speak to her family. She would give a missed call and her brothers in India would call her back. In the last four months of her employment in 2013, she had no credit on her phone—despite repeated entreaties—and could not communicate with her family at all.

(viii) She was not paid a regular salary, which was her right as an employee, but was given a “gift” of cash (£10) on Diwali day. This was when Tirkey, desperate to speak to her family, left for Morrisons alone to recharge her phone and set in motion events that led to the termination of her employment.

This was not an individual working, earning and living her life. She had no life of her own. The tribunal found the Chandhoks guilty of “seeking to exercise control over her not as an employee or worker but as someone servile to their needs and whims” (P Tirkey v Mr and Mrs Chandhok 2015: para 252). It was possible to treat her so due to her “inherited position.” In fact, she was employed not because of her skills, but because by the virtue of her birth and upbringing she had no higher expectations in life than to be a domestic servant (P Tirkey v Mr and Mrs Chandhok 2015: para 205–8). Her caste
positionality meant that Tirkey herself did not think of her employment as an atrocity.

What the tribunal failed to notice is that not only caste, but also gender plays a role in this case. As a lower-caste woman, Tirkey's position was all the more precarious. She faced strikingly similar situations—control over actions and movement, housebound isolation, intimidation and helplessness—to that of many South Asian brides married into the UK. Her situation cannot be explained only through the prism of caste, but must be seen as an intersection of caste and gender. While the Equality Act 2010 covers gender and sex under the protected characteristics, legal mechanism finds it harder to deal with the manifestation of intersectionality of identity and oppression, such as race and gender, and caste and gender.

Tirkey's abysmal pay, as also that of domestic workers in India, is linked to the poor value of labour of the labouring castes/classes. Unpaid or underpaid labour from the lower castes for the benefit of the upper castes is a significant feature of the caste system, one that allows the upper castes to accumulate surplus. Tirkey's pay was so low, not because the labour she offered was freely available in the UK or was poorly paid otherwise. In fact, in the UK, where domestic help is often sorely missed by parents of newborn twins, the Chandhoks would be well aware of the worth of Tirkey's services in their daily lives. Yet, as a “serving class Adivasi woman,” the worth/value of her labour was deemed low and she was paid Rs 5,000 per month and very little cash in pounds. As I have argued elsewhere, it is not the kind of work, but who is working that decides the monetary value of wage labour in the current form of caste economics. The worth of her labour was determined by her positionality in the caste hierarchy, rather than by the type of work or services she was offering (Daiwai forthcoming).

**The Equality Act**

Under the Equality Act 2010, Section 4, religion, race and belief are protected characteristics. Under Section 9, race includes colour, nationality, ethnic or national origins. Under Section 13, discrimination occurs when because of a protected characteristic a person is treated less favourably than others. Under Section 26(4), a person is deemed as harassing another if they engage in unwanted conduct related to race, religion, and ethnic origins that has the effect of creating an intimidating, hostile, degrading, humiliating, and offensive atmosphere for them. For deciding this, Section 26(4) states that the perception of the person harassed is to be taken into account along with the circumstances of the case, as also whether it is reasonable for the conduct to have that effect.

To decide whether this case falls under the ambit of the Equality Act 2010, the tribunal considered whether the Chandhoks' treatment of Tirkey amounted to “unwanted course of conduct,” whether they created an intimidating, humiliating atmosphere and violated her dignity, and whether such treatment related to race, religion or belief. The tribunal, in this case, had the additional job of deciding whether caste adequately falls under the protected characteristics, since the act does not mention caste.

The tribunal used the precedent from *Mandla v Dowell Lee (1983)* and *r(e) v Governing Body of Jewish Free School* (2010) to say that “ethnic origins” under the Equality Act 2010 is a “wide and flexible” phrase, and could, using the jurisprudential technique of equivalence—demonstrated by the above discussion on caste as a function of social malpractice and a cultural ethos of discrimination—be read to include Tirkey's caste situation. This appears consistent with contemporary interpretation in international human rights law. The tribunal also held the Chandhoks guilty of indirect discrimination based on religion (*P Tirkey v Mr and Mrs Chandhook* 2015: paras 218–20); it is religious discrimination because Tirkey was not allowed to practice her religion, pray, read her holy book or attend church. It is “indirect” because the reason was not negativity towards her religion, but because they wanted to control every minute of her time. If she attended church, she would get exposure to the outside world that the Chandhoks could not control. The denial to carry her small Bible to the UK shows the desire to exercise power and control.

In this case, as in many other cases, the UK courts face the task of dealing with Indians who have carried their dal, masala, and caste norms along with them across the seven seas. By migrating to the West, these mostly upper-caste Indians have gained access to the opportunities, freedom and lifestyle in the belly of “global capitalism,” yet they are unable to imbibe the self-reliance of their new land, and shed the habit of getting work done by others and underpay them for it. Indians have struggled for dignity in a society where they are a minority and have been at the forefront of anti-racist activism. However, they have been unable to wash away the blight of caste subjectivity.

**Triumphs of the Tirkey Case**

In this case, a domestic worker from Bihar has been awarded £1,83,000 as the shortfall of wages computed for her years of service. For this, the tribunal simply counted 18 hours of daily labour for the duration of five years by the corresponding minimum wage relevant to the period. The remedy for race and religious discrimination, violation of employment terms and conditions will be decided at a later date by the tribunal, and this might incur criminal penalty for the Chandhoks.

This judgment marks the triumph of consistent and concerted efforts by anticastride activists and scholars in the UK. The Cambridge employment tribunal in its wisdom and empathy has viewed the dehumanising caste practices as race discrimination and, thus, in violation of the Equality Act 2012. Indian courts, despite the closer knowledge and massive equipment at hand, such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, fail to bring caste into legal discourse. What cases do we know of where labour relations have been considered through a caste lens?

**Lessons for Indian Jurisprudence**

The cases we know are of caste violence, where caste and gender intersect with devastating outcomes for lower-caste women, and the legal response had been devastating. When a criminal court deems
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A Dalit rape as a crime of “lust,” or “revenge,” or a “property dispute,” it disregards the fact that this man in lust did not rape women in his own community, but found a Dalit or Adivasi woman to satisfy his lust. It also disregards the fact that the sexual exploitation of lower-caste women is a caste privilege that allows immunity to upper-caste men to assault lower-caste women (Rao 2009: 235), and that the culture of impunity and silence continues to prohibit these cases from getting anywhere close to justice (Narula 1999; Irudayam et al 2011).6

When the Bombay High Court dismissed the Khairlanji massacre in Maharashtra in 2006 as a property dispute and revenge, it refused to see the patterns of gendered caste violence, wherein parading one naked through the village is a particular form of punishment reserved for Dalit women. It does not acknowledge that in the umpteen number of property disputes, even where violence is resorted to, rarely are the sexually tortured and mutilated bodies of victims found in canals. This is reserved for Dalits who dare to challenge the economics of the caste hierarchy by trying to educate their children, or own land, or build cement houses (Teltumbde 2007).

The globalising and shining India likes to believe that it has thrown away the yoke of the archaic caste system. But, we still are the only country with terribly dirty toilets and nearly 50% of the population illiterate. Why? Because we expect Bhangi women to clean our faeces,7 and we actively deny our lower castes access to meaningful education (Chakravarti 2003: 17–22). We even claim “cultural relativism,” but in reality dirty toilets, illiteracy, child labour, indignity of manual work and workers are all very commonplace Indian trends, which are not expressions of “cultural difference,” but of caste. It is about time we owned up to it and begin to make amends. Learning from the UK employment tribunal judgment could be a good step forward.

NOTES

1 Nivedita Menon (2011) narrates an incident of a young female servant found to be defecating on the terrace of a building in South Delhi as she was not allowed to use the toilets in the house of her employers. She notes how the Delhi upper-middle class employs child labour to care for their kids and keeps them standing, attending to the toddlers without offering them a glass of water or a meal, while the parents spend hours and thousands of rupees in a posh restaurant.

2 Jotirao Phule (2002), the 19th century radical thinker from Maharashtra, considered the denial of education to women and lower castes as fundamental to Brahminism, as with education and learning they would know the falsehood in religion and challenge their lot.

3 Some of the brides taken from South Asia to the UK are treated as domestic slaves. Seeking police help is difficult due to isolation, lack of language and other skills (Bano 2010).

4 Many Indians in the UK, including community leaders and academics, are in denial of the existence of caste and are actively lobbying against caste being included into the equality legislations (Shah 2015).

5 Caste discrimination in the UK was argued in Dhanda et al (2014). The UK government Equalities Office published “Caste discrimination and harassment in Great Britain,” which found evidence of caste discrimination in the forms of recruitment, promotion and task allocation in work, bullying within students in education and provision of goods and services (Metcalfe and Rolfe 2010).

6 The latest book by Irudayam et al (2011) presents the testimonies of 500 Dalit women with tales of commonplace and unspeakable sexual violence as well as helplessness at the hands of state agencies that wilfully neglect their duty to protect and ensure justice to these survivors of gang rape, naked-parading, torture, mutilation and family murders.

7 Despite the Manual Scavengers Act 2013 prohibiting it, Bhangi women continue to be engaged with it through economic destitution, intimidation, and threat of violence. They earn less than Rs 10 per month per house they clean (Human Rights Watch 2014).

REFERENCES


Mandla v Dowell Lee (1983): 2 AC 548, HL.


