



# A Theory of Discrimination Law

By Tarunabh Khaitan

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Marrying legal doctrine from five pioneering and conversant jurisdictions with contemporary political philosophy, this book provides a general theory of discrimination law. Part I gives a theoretically rigorous account of the identity and scope of discrimination law: what makes a legal norm a norm of *discrimination* law? What is the architecture of discrimination law? Unlike the approach popular with most textbooks, the discussion eschews list-based discussions of protected grounds, instead organising the doctrine in a clear thematic structure.

This definitional preamble sets the agenda for the next two parts. Part II draws upon the identity and structure of discrimination law to consider what the *point* of this area of law is. Attention to legal doctrine rules out many answers that ideologically-entrenched writers have offered to this question. The real point of discrimination law, this Part argues, is to remove abiding, pervasive, and substantial relative group disadvantage. This objective is best defended on liberal rather than egalitarian grounds.

Having considered its overall purpose, Part III gives a theoretical account of the duties imposed by discrimination law. A common definition of the antidiscrimination duty accommodates tools as diverse as direct and indirect discrimination, harassment, and reasonable accommodation. These different tools are shown to share a common normative concern and a single analytical structure. Uniquely in the literature, this Part also defends the imposition of these duties only to certain duty-bearers in specified contexts. Finally, the conditions under which affirmative action is justified are explained.

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## **Editorial Review**

### **Review**

"There is a remarkable amount to think about in this book, and it accomplishes a great deal. It sheds light on the commonalities between discrimination laws from different jurisdictions. It makes a significant contribution to methodological questions by insisting on a distinction between the ultimate aims of discrimination law and the particular tools that it uses to achieve these aims. And it articulates a novel perfectionist and sufficientarian approach to discrimination, an approach that merits significant consideration from both legal and philosophical scholars." - Sophia Moureau, Law and Philosophy

"There is much that academics, lawyers and policymakers can take from this book and use when practising discrimination law or reforming and developing the law. Those unfamiliar to discrimination law will also find it useful as a critical analysis of how these laws could work. One of the things readers will find so enjoyable about this book is the clarity with which Khaitan expresses his ideas and in doing so, he makes complex theoretical ideas accessible." - Dominique Allen, Deakin Law School

"Regardless of whether the reader, in the guise of legislator, academician, student, lawyer, activist or layperson, agrees with this theory, Khaitan has so neatly presented each step in his approach and in such a manner that any response, whether positive or negative, requires serious contemplation and argumentEL As a teacher in the field of discrimination law, I am grateful for Khaitan's theory of discrimination law, as it gives a platform for students to work from in their attempts to master the tricky shoals of discrimination law and human rights in general." - Laura Carlson, Retfærd

"The central ambition of Khaitan's book is 'to give a theoretical account of the legal model of regulating discrimination'. His favoured account is a liberal, freedom based, group-disadvantage-focused account, which allows for asymmetric antidiscrimination norms and explains the unity of discrimination laws, where these include reasonable accommodation, affirmative action and harassment norms...It offers a number of excellent challenges to the views of people like myself who are inclined to think of discrimination as having something to do with equality and that the distinction between direct and indirect discrimination is to be drawn on the basis of the presence or absence of certain mental states of the discriminator... Khaitan's account is sophisticated, extensive and among the very best normative accounts of discrimination law available." - Kasper Lippert-Rasmussen, The Modern Law Review

"In general, this book is a significant achievement. Khaitan's arguments make an invaluable contribution to the diffuse theoretical literature on discrimination law, and are bound to become a major point of reference in conceptual debates about this highly significant area of law." - Colm O'Cinneide, Oxford Journal of Legal Studies

## About the Author

*Tarunabh Khaitan, Associate Professor and Hackney Fellow in Law, Wadham College, Oxford University*

Dr Tarun Khaitan is an Associate Professor in the Faculty of Law at the University of Oxford and the Hackney Fellow in Law at Wadham College. His teaching and research interests cover legal theory, public law, and human rights.

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