



Government
Equalities Office

CASTE IN GREAT BRITAIN AND EQUALITY LAW: A PUBLIC CONSULTATION

Section 1 – Your details

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Do you want is your response to be treated as confidential?

No

If yes, please explain why (please refer to notes below on confidentiality)

Confidentiality

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

The Government may publish responses received from organisations. If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Section 2 – List of consultation questions

Please refer to the consultation document before completing the survey below, as it provides further background to all of the questions.

Questions for you to consider on Option 1 - Prohibiting caste discrimination through developing case-law:

Q1. To what extent do you agree or disagree that protection against discrimination on grounds of ethnic origin provides an appropriate level of protection against caste discrimination?

- Strongly Agree
- Agree
- Disagree
- Strongly Disagree**
- Don't know

Q2. Why do you think this? Please explain your answer to Q1.

There is no guarantee that case law will develop in the desired direction, or at all, to fully protect against caste discrimination. Your consultation , paras 3.6 to 3.9, also acknowledges the Tirkey v. Chandok judgment was **not** a definitive assessment of whether caste is or is not within the scope of the EA2010 ; and that claims would need to show that discrimination had been because of the claimant's descent (and thus their ethnic origins (paras 3.11, 3.12)
Inserting Caste into the EA2010 will provide the legal clarity the EHRC has also said is desirable <http://acdauk.org.uk/pdf/270%20Dass.pdf>¹

Q3. Which types of caste discrimination, if any, do you think would not be covered by the concept of ethnic origin in case-law? Please clearly list the features of caste which you think are not covered by ethnic origin and explain

¹ <http://acdauk.org.uk/pdf/270%20Dass.pdf>

why you think this.

Dalits (identity spanning different castes), and other castes have multiple and varying ethnic identities including different languages, religions and cultures. Discrimination occurs within and between ethnic groups and religions. Lawyers' understanding of 'ethnic origins' is not necessarily the same as non-lawyers. Your consultation acknowledges this (paras 3.11 and 3.12) . For example in UK equality law, Sikhs are considered an ethnic group but Muslims, Christians, Jains and Hindus are not. That is why caste needs to be inserted into the EA2010, as agreed by Parliament, rather than relying on judicial interpretation of the ethnic origins sub-category and on case law.

Q4. What are the benefits (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination?

We know of none.

Q5. What are the disadvantages (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination?

No guarantee that case law will ever develop to recognise that caste is covered by existing law.

Courts may be restrictive in their interpretation of the existing law and say this is a matter for Parliament/Government - already a precedent on heterosexual civil partnerships and on assisted dying cases.

Processing caste discrimination cases based on race or religion discrimination law will be greater because these will take longer to proceed with increased costs to employers/business, individuals and the courts and tribunals.

Employers' efficiency and profits may suffer if employment patterns are based on caste assumptions that are inefficient or labour-intensive.

Option 2 - Prohibition of caste discrimination by specifying caste in the Equality Act

Q6. What are the benefits (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?

There will be structures for redress that have preventive and educational effects for people of all Castes.

Caste will be a distinct type of identity or status across different religious, class and ethnic groups.

Courts and Tribunals costs will be reduced because there will be no need to determine each relevant case against *Chandok v Tirkey*.

Employers will be able to understand and identify sources of discrimination and address Caste-related incidents before they result in costly and long drawn-out legal cases.

Employers' efficiency/profits will benefit if employment patterns aren't allowed to be based on caste assumptions.

Improve community cohesion.

Q7. What are the disadvantages (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?

It will not hinder culture, tradition, religious rituals or caste associations because exceptions already apply to the EA2010. It won't interfere with religious freedom already protected by the Human Rights Act.

Continuation of the status quo would reinforce existing caste consciousness/discrimination, and act as propaganda for the perpetuation of Caste and its heinous traditional prejudices. BBC Radio's , [The Nihal Show \(21.7.2017² \)](#) confirmed caste amongst the young and '[The Kitchen Cabinet](#)' (5.8.2017³) had a culinary panel member Nisha, refer to her 'Hindu Brahmin parents' food habits to a Radio 4 audience. Schools text books⁴ teach about caste.

² <http://www.bbc.co.uk/programmes/b08xfvgy#play>

³ <http://www.bbc.co.uk/programmes/b08zz3g7>

⁴ <https://www.amazon.co.uk/Discovering-Religions-Foundation-Sue-Penney/dp/0435304720>

Q8. There are also two specific provisions in the Equality Act 2010 that we would particularly like to get your opinion on – the Public Sector Equality Duty and positive action. To what extent do you agree or disagree that the following provisions should apply to caste:

a) Public Sector Equality Duty

Strongly Agree

Agree

Disagree

Strongly Disagree

Don't know

b) Positive action

Strongly Agree

Agree

Disagree

Strongly Disagree

Don't know

Q9. Why do you think this? Please explain the reason for your answers to Q8a and/or Q8b

a) Public Sector Equality Duty

This is a useful method to enhance equality of treatment and equality of treatment as long as it does not require monitoring or auditing of caste identity. We believe the PSED is applied in the case of other protected characteristics where no monitoring is done, so we would expect the same to apply with caste.

b) Positive action

Positive Action may require monitoring of caste identity, we do not want. . Therefore, we disagree with applying it to caste.

Key summary questions for you to consider on options 1 and 2:

Q10. Which is your preferred option to tackle caste discrimination?

- Case-law
- Using the legislative duty to insert caste into the Equality Act 2010 as an aspect of race***
- Other

Q11. Why do you think this? Please explain the reasons for your answer to Q10.

Caste-based discrimination is no different to other forms of discrimination already protected in the EA2010 and specified in it.

Our experience of listening to people who have experienced caste discrimination and our 2009 report *A Hidden Apartheid – Voice of the Community* – have led us to conclude the only method for dealing with the caste discrimination and harassment is to add caste into the EA2010 as a specific aspect of race.

Putting caste into legislation enables all sections of society to be aware that caste-based discrimination exists and is wrong. The PSED will help reduce caste-based discrimination occurring in the UK.

Q12. Can you provide any data on costs and benefits, including costs and benefits to individuals, of caste becoming an aspect of race in the Equality Act either through:

(A) A specific change to the legislation

The law will provide structures for redress and have preventive and educational effects for all castes and reduce caste discrimination. There will be clarity for the courts. Employers will be able to identify and understand the sources of discrimination and deal with caste-related incidents before they result in costly and long drawn-out legal cases.

Some familiarisation costs to businesses and public sector and costs to Taxpayers, Employers, Business, and individuals related to taking cases to courts and tribunals. The closest proxy for estimating caste related cases progressing through courts would be Race of which a percentage will be caste related.

(B) Through reliance of case-law following the judgment in *Tirkey v Chandhok*?

(C)

The costs to individuals of bringing complaints to a court is very high in the absence of the law on caste discrimination. If the case drags on, individuals may run out of money. We understand the Begrajs [applied for £120,000⁵](#) in costs related upto where the first [Judge excused herself⁶](#). In *Tirkey v Chandok*, Ms Tirkey was supported by an NGO, but no one can be sure there will be an NGO or charity ready to help out. We can only see costs and stress with this route, and no justice or benefit for vulnerable sufferers of discrimination.

Q13. Apart from the options covered in this document, is there anything else you think Government can do to prevent discrimination on grounds of caste in Britain?

No. The Government must provide legal protection for all individuals facing all forms of discrimination, harassment and human rights abuses. At a minimum, Government must ensure that caste is added to the EA 2010. In doing so, greater confidence in the legal system would be instilled amongst the over 4.5 million South Asian diaspora in the UK and amongst other communities where caste discrimination may occur.

Once caste is inserted in the EA2010 the Government should produce information on caste-based discrimination and share this widely across society, including employers, to help educate, identify it and prevent it from occurring.

⁵ <https://www.solicitorsjournal.com/news/litigation/costs/22753/ongoing-caste-discrimination-case-hit-costs-claim>

⁶ <https://www.employmentcasesupdate.co.uk/site.aspx?i=ed22375>