



The Equality Act 2010: caste discrimination

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The concept of “caste” is complex, although is generally understood to refer to hereditary, endogamous (marrying within the group) communities differentiated according to different functions of life, such as occupation. The concept is associated with South Asia, particularly India, and its diaspora. Caste discrimination is not expressly prohibited under UK equality legislation, although section 9 of the *Equality Act 2010*, as amended, requires the Government to introduce secondary legislation to make “caste” an aspect of race, thereby making caste discrimination a form of race discrimination. The Government has provisionally indicated that this legislation will be introduced to Parliament during summer 2015.

This note provides an overview of the concept of caste, explains the existing law and sets out the background to the order-making power in the *Equality Act 2010*.

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1 Introduction

Since debate on the *Equality Bill 2008-09* there have been various attempts to legislate to prohibit caste discrimination and harassment.¹ At present, section 9 of the *Equality Act 2010*, as amended in 2013, imposes a duty on the Government to prohibit caste discrimination by way of secondary legislation.

While there is no universally accepted definition of “caste” the [Explanatory Notes](#) to the *Equality Act 2010* provide the following:

The term “caste” denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed “untouchable”) are known as Dalit.²

The Dalits are considered to be the main victims of caste discrimination, and proposals to prohibit caste discrimination are associated with a desire to protect them.

Although some argue that international law already obliges courts to interpret the *Equality Act’s* provisions on race in such a way as to cover caste discrimination,³ proposals for an express statutory prohibition have been resisted by successive governments. This is due primarily to a lack of evidence substantiating the existence of caste discrimination in the areas to which equality law applies, as well as to concerns that a statutory prohibition may entrench the notion of caste as a form of social identification. There is also considerable difficulty in arriving at a functional definition of “caste”. A 2014 article in *Equal Opportunities Review* underscored this difficulty:

Caste identity, differentiation and discrimination predominantly affect communities from the subcontinent but “caste” is not a straightforward concept and has different connotations in different contexts. Very broadly, a caste system differentiates people according to allocated stations or functions in life, which are considered to be immutable. Some classifications are specifically associated with the Hindu religion (*Varna*) and involve rituals of purity and pollution; some are socially significant groupings and identities found in their thousands across South Asia, not necessarily associated with any particular religion but involving functions and jobs (*Jati*) and some are clan-like structures that have some correlations with lineage and an association with Muslim communities (*biradari* – literally, “brotherhood”) and often also involving designation of roles. Dalits, a political term for people who were once described as “Untouchables”, comprise a number of castes that are outside the varna system.

Caste distinctions are reinforced by endogamy but are not generally associated with ethnicity or colour. Whilst caste distinctions are most closely associated with Hinduism, there are caste differentiations associated with all the major religions in South Asia, including Buddhism and Christianity. In India, caste-based discrimination

¹ Harassment and discrimination are distinct statutory torts. However, hereafter I will use “caste discrimination” as shorthand for both.

² Equality Act 2010 Explanatory Notes, [EN 49](#)

³ See below - Lord Lester’s contribution to the Committee Stage debate on the Equality Bill, and also the employment tribunal decision in *Tirkey v Chandok*.

and untouchability practices are unlawful and there is a raft of laws protecting members of “scheduled”, “lower” and “other backward castes”.

....

To further complicate an already multi-faceted picture, many people who might be identified as belonging to a particular social grouping or Jati by others do not use or accepted caste distinctions So the definitions of caste, its origins and the mechanisms of perpetuation are all matters of controversy⁴

Notwithstanding these difficulties, the *Enterprise and Regulatory Reform Act 2013* amended section 9(5) of the *Equality Act 2010* to provide that the Government “must by order ... provide for caste to be an aspect of race”.⁵ The Government has published an indicative [timetable](#) setting out the process of evidence-gathering and consultation it intends to undertake prior to legislating, and anticipates that a draft Order will be introduced to Parliament during **summer 2015**.⁶

2 The Equality Act 2010

The *Equality Act 2010* as amended deals with caste in section 9. Section 9 is the part of the Act that defines “race” for the purposes of prohibiting race discrimination, and provides materially:

9 Race

(1) Race includes—

- (a) colour;
- (b) nationality;
- (c) ethnic or national origins.

....

(5) A Minister of the Crown —

- (a) **must** by order amend this section so as to provide for caste to be an aspect of race;
- (b) may by order amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.

(6) The power under section 207(4)(b), in its application to subsection (5), includes power to amend this Act.

This requires the Government to introduce secondary legislation that would include caste within the definition of race and thereby prohibit caste discrimination as a subset of race discrimination. The Act does not prescribe a time limit for the exercise of this power.

Originally, section 9(5) provided a discretionary power:

A Minister of the Crown **may** by order ... provide for caste to be an aspect of race

⁴ Ashtiany, S., Caste discrimination in the UK: legal developments, *EOR*, 247, April/May 2014

⁵ See [section 97](#) of the *Enterprise and Regulatory Reform Act 2013*

⁶ [Caste discrimination legislation timetable](#), GOV.UK, 29 July 2013 (accessed 9 April 2014)

That power resulted from an amendment to the *Equality Bill* tabled in the Lords. The debate leading to that amendment is described below.

3 The Equality Bill (Bill No 131 of 2008-09)

An answer to a Parliamentary Question in June 2007 indicated that caste discrimination would be considered by the Labour Government as part of its Discrimination Law Review, which preceded the *Equality Bill*:⁷

Lord Lester of Herne Hill asked Her Majesty's Government: Whether caste discrimination is unlawful in the United Kingdom; and whether they will introduce amending legislation extending the definition of unlawful discrimination in the Race Relations Act 1976 to include discrimination based on descent, so as to comply with the obligations imposed on the United Kingdom by the United Nations Convention on the Elimination of All Forms of Racial Discrimination, and with the recommendations of the United Nations Committee on the Elimination of All Forms of Racial Discrimination.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Andrews): Caste discrimination is not explicitly prohibited by UK law. We are currently assessing the evidence of caste discrimination in the UK and are considering this issue as part of the discrimination law review.⁸

In July 2008 the Government's response to its consultation on the *Equality Bill* made it clear that caste discrimination would not be addressed by the Bill:

We have decided not to extend protection against caste discrimination. While recognising that caste discrimination is unacceptable, we have found no strong evidence of such discrimination in Britain, in the context of employment or the provision of goods, facilities or services. We would, however, consult the Equality and Human Rights Commission about monitoring the position.⁹

The reasoning for this decision was explained:

Caste discrimination is claimed to affect around 300 million people worldwide. The Communities and Local Government department has recently concluded an informal survey of around 20 key stakeholders to determine whether they were aware of any evidence that individuals or communities had been discriminated against on grounds of caste, in the UK.

On the basis of the responses received to the recent informal survey, we have concluded that there is no strong evidence of caste discrimination in the UK. In particular, there is no evidence of caste discrimination occurring in the specific fields which discrimination law covers: employment; vocational training; provision of goods, facilities and services; management or disposal of premises; education; the exercise of public functions.

To the extent that caste may be a factor in individual decision-making, some anecdotal evidence suggests that this would appear to be a reflection of social or cultural considerations, for example in choice of whom to marry. However, an individual's marriage choice is not a matter for discrimination law. We have therefore decided not to provide protection against caste discrimination in the Equality Bill.

⁷ See: Department for Communities and Local Government, *Discrimination Law Review: A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain - A consultation paper*, 12 June 2007

⁸ HL Deb 19 June 2007 cWA33

⁹ HM Government, *The Equality Bill – Government Response to the Consultation*, Cm 7454, July 2008, p.177

We will consult the Equality and Human Rights Commission about monitoring for any future evidence of caste discrimination in the UK and advising Government accordingly, in line with its statutory duties.¹⁰

A response to a Parliamentary Question during November 2008 revealed that the Department for Communities and Local Government had undertaken some informal work on the caste system in the UK:

Mr. Kidney: To ask the Secretary of State for Communities and Local Government if she will assess the extent of inter-communal discrimination against Dalit people living in the UK.

Mr. Khan: The Department for Communities and Local Government has conducted, with stakeholders, an informal scoping exercise to learn more about the extent to which some communities believe caste is a continuing social phenomenon within British society and to identify any evidence that individuals have been discriminated against on these grounds. We are currently in the process of assessing responses received.¹¹

3.1 Commons debate on the Bill

Second Reading

Caste discrimination was mentioned only briefly during the Second Reading debate on the *Equality Bill*. In response to a question from Jeremy Corbyn, Harriet Harman, the Minister for Women and Equality, stated her view that caste discrimination was unlawful under existing law:

Jeremy Corbyn (Islington, North) (Lab): The Minister will be aware that one of the biggest types of discrimination all around the world is by caste and descent, and that Dalit people suffer appalling discrimination, particularly but not exclusively in India. Is it possible that, under the Bill, such discrimination by caste and descent would be absolutely illegal?

Ms Harman: I think that such discrimination is already outwith the law.¹²

The view that caste discrimination was already prohibited was founded on domestic case law and international law. In short, the argument was that the *Convention on the Elimination of All Forms of Racial Discrimination* obliged UK courts to interpret race discrimination in such a way as to include “descent” as an aspect of race; the effect of this would be to prohibit caste discrimination, as being a form of discrimination based on descent, which in turn is a form of race discrimination.¹³ The merits of this view and its relevance to a potential statutory prohibition were discussed during the Bill’s Committee Stage in the Lords (see below).

Committee Stage

The issue came up again during the Bill’s Committee Stage in the Commons. Lynne Featherstone tabled an amendment which sought to “probe the Solicitor-General’s thinking on caste being a protected characteristic”.¹⁴

¹⁰ HM Government, *The Equality Bill – Government Response to the Consultation*, Cm 7454, July 2008, pp.183-184

¹¹ HC Deb 20 November 2008 c 759W; see also [HC Deb 16 Jan 2007 c1096W](#)

¹² [HC Deb 11 May 2009 c652](#)

¹³ See *International Convention on the Elimination of All Forms of Racial Discrimination* (1969), Article 1

¹⁴ [PBC Deb \(afternoon\) 11 June 2009 c176](#) (the amendment was withdrawn)

The Solicitor General responded stating that there was insufficient evidence of caste discrimination to justify legislating to prohibit it:

The Solicitor-General: The amendment would add caste to the list of characteristics. I am invited to add it, in a sense, speculatively, and I do not propose to accede to that invitation. We are always willing to consider whether there is a case for legislating on caste discrimination, but it is not a matter of the Government “claiming”, as the hon. Member for Hornsey and Wood Green put it, that there is no evidence of it; it is the fact. We have done our best to look for the necessary evidence, but we have not found any. There really is not sufficient evidence to suggest that caste discrimination is a significant problem domestically. We would protect if it was seen to be a problem, but we cannot find any evidence to justify such a measure. One has to appreciate the areas in which domestic legislation prohibits discrimination—in the workplace, in vocational training, in the provision of goods, facilities and services, in education, in the management and disposal of premises and in the exercise of public functions. There is no evidence that, in those areas, caste discrimination is occurring.

....

Although I am sure that many members of the Committee have had correspondence about this issue from what I shall in shorthand, without the slightest disrespect, as a write-in campaign, there is, apart from the odd piece of anecdotal evidence, none of which we have been able to drive down to a factual basis, still no evidence from that campaign that the territory which can be covered by anti-discrimination legislation is impacted upon by caste at all.¹⁵

As noted above, prior to the introduction of the *Equality Bill*, the Department for Communities and Local Government had conducted “an informal scoping exercise” which gathered views about the existence of caste discrimination. During debate in Committee the Solicitor General discussed some of the results of that exercise:

John Mason (Glasgow, East) (SNP): I take the Minister’s point that there is very little evidence at the moment. Can she at least give the assurance that, if evidence comes to light in the future, she will look at this issue again?

The Solicitor-General: Yes, we are considering looking at it. I have found out about the stakeholders surveyed. The Hindu Forum of Britain and the Hindu Council were the two largest and the best we could do in terms of representative organisations in that field. They were, and to this day remain, totally against the introduction of caste legislation. We consulted a variety of predominantly Hindu groups and some Sikh and Muslim groups as well, and because this was a scoping survey and would have carried on to a more profound consultation, people did their best to ensure that we were not talking only to the discriminators, as it were, and not talking to the discriminated against.

Lynne Featherstone: Will the Minister go back to those organisations to ask why they were so against caste being included as a protected characteristic?

The Solicitor-General: Because it is socially divisive to have legislation against something that is not happening and is needed by no one. The hon. Lady is inviting us to introduce a new characteristic when there is no evidence that protection is needed. That is hardly going to contribute to community cohesion, and I think that those groups

¹⁵ Ibid, c178

are very sensible in taking the view that they do, having, we are satisfied, conscientiously sought for what we asked.¹⁶

3.2 Lords debate on the Bill

Second Reading

The issue was raised during Second Reading in the Lords by Lord Harries of Pentregarth, who stated that he and a number of their Lordships intended to table amendments to add caste to the list of protected characteristics. His discussion of the evidence of caste discrimination warrants quotation at length:

In the short time available to me this evening, I will focus on only one issue, which is discrimination on the ground of caste. I and others will table amendments that will add this form of discrimination to discrimination on the grounds of gender, disability, race and so on.

Discrimination on the ground of caste is one of the historic evils of humanity, similar in many ways to discrimination on the ground of race. This has been recognised by people from William Wilberforce to the present Pope. The Indian constitution is exemplary in recognising this; indeed, in 2008 the Prime Minister of India, Dr Manmohan Singh, described such discrimination as a "blot on humanity". However, in practice it remains a terrible blight.

According to Hindu thought, there are four traditional caste groups, which correspond to the different traditional occupations but which are linked to birth and kinship groups. Outside those groups are what used to be called the "untouchables" - today they are termed Dalits - who are shunned and forced into the most menial tasks. For example, vast numbers of Dalits are manual scavengers, forced to scrape up and collect human excreta with their hands. There is now, I am glad to say, a growing worldwide campaign against this form of discrimination.

As we know, many people from India have migrated to this country. Therefore, two questions arise. First, how many Dalits are there in the UK? Secondly, is there evidence that they are discriminated against here, as undoubtedly they are in India? The issue is complicated by the fact that so pernicious is the caste system that it has permeated even those religions that have a strong doctrine of the equality of human beings and in which the caste system has no religious basis, such as, sadly, Christianity, Sikhism and Islam. In this country, for example, according to the 2001 census, there are 336,000 Sikhs, though the true figure is reckoned to be nearer 500,000. Of these, 167,000 are thought to be Dalits. The figures for Hinduism are more difficult to arrive at, but it has been estimated that as many as 1 million people could be adversely affected by the caste system in this country. That is a very significant number of people.

One study, which was done by the Hindu Forum and carried out over only two weeks in August, with only 19 respondents, agreed that caste discrimination was present in Britain but said that it was confined to private social practice. However, the Hindu Forum and the Hindu Council do not speak for the Dalit communities, who are regarded as untouchable by those who accept the caste system.

I urge the Government to look again at the recent report by the Anti Caste Discrimination Alliance, *Hidden Apartheid-Voice of the Community: Caste and Caste Discrimination in the UK*. This was a reputable academic study, undertaken by a

¹⁶ Ibid, cc178-179

professor of law and a director of the Centre for Community Research, with outside legal advice; it was a thorough study, involving a lot of people over a long period.

The report shows that discrimination has seeped out of the private sphere into issues of employment, education and healthcare. I will give a few examples. In the field of employment, a bus company operating in Southampton had to reorganise its shift system so that a "lower caste" driver would not have to drive with a "higher caste" inspector. Similar issues arose when drivers were being tested. Another person said:

"Caste came up in the college on a daily basis and you would find that people would group together. The name calling happened every day ... You think there is something wrong with you - why am I being treated very different?".

At school, there is very strong evidence of children being called "chamar" or "chuhra", which are derogatory terms akin to terms of racial abuse of black or Pakistani people.

In the provision of services, a good number of people complained about intrusive questioning about the caste that they belonged to, with the result that when they revealed that they were Dalits they were rejected in some way. For example, a woman in Coventry was not given care in accordance with her care plan because it was due to be given by a "higher caste" woman who refused to help her shower.

These are just a few quick examples from a very thorough survey. Of those surveyed, 71 per cent identified themselves as being Dalits; 58 per cent of these said that they had been discriminated against because of their caste and 37 per cent said that this had happened on more than one occasion.

In the other place, the Government indicated sympathy for this issue but said that they remained uncertain about the evidence. I suggest that the evidence put forward by the Anti Caste Discrimination Alliance is more than enough to show that discrimination is a reality and needs to be made illegal. The evidence adduced there is certainly as compelling as that which convinced the Government in relation to transgender and transsexual issues. The Anti Caste Discrimination Alliance report, as I mentioned, was a serious study undertaken by academics and it deserves to be given serious weight.

In October this year, the UN High Commissioner for Human Rights, Navi Pillay, said:

"The time has come to eradicate the shameful concept of caste".

He called on the international community to come together,

"as it did when it helped put an end to apartheid".

There are 270 million Dalits in the world. We in this country can play our part, with the international community, in ensuring that caste discrimination at least has no place at all in our own society. When appropriate amendments are brought forward to ban discrimination on the ground of caste, they will receive support from all sides of the House and I very much hope that the Government will be sympathetic.¹⁷

Baroness Royall of Blaisdon responded on behalf of the Government, stating the Government's belief that further research should be conducted prior to legislating to prohibit caste discrimination:

We believe that further detailed work would need to be carried out to test the assertions of the study produced by the Anti-Caste Discrimination Alliance since much

¹⁷ [HL Deb 15 December 2009 cc1452-4](#); see also speeches of Baroness Flather at [c1458](#); Baroness Northover at [c1477](#); Lord Wallace of Tankerness [c1504](#);

of the study relies on anecdotal evidence. We consider that at this stage a sensible approach is for a research project to be undertaken on caste discrimination. Indeed, the ACDA report itself calls for the Equality and Human Rights Commission to do this. The Government are currently in discussion with the HRC about this recommendation.¹⁸

Committee Stage

There was extensive debate about caste discrimination during the Bill's Committee Stage in the Lords, prompted by an amendment moved by Lord Avebury that would have added caste to the list of protected characteristics.¹⁹ During his speech on the amendment, Lord Avebury discussed the view, advanced by legal experts, that caste discrimination was prohibited under then current law, being a subcategory of race discrimination:

The EHRC tells me that it thinks that caste is already covered, even though it has not conducted any research on the matter, nor has it consulted the NGOs that deal with caste discrimination. It believes that the Court of Appeal decision in the JFS case lent support to its approach by opening up arguments on "descent", and that what is needed is a test case to establish the position. It has offered to work with the Anti-Caste Discrimination Alliance to identify and support a case, and it will be meeting a lawyer from the ACDA in February to discuss this further. Having read the judgment of Sedley LJ in the JFS case, I was not entirely clear how an argument that turned on the racial identity of the litigant could somehow extend to caste, but I was advised that the reasoning is this: in JFS, the Supreme Court held that ethnic origin has a descent aspect; descent includes caste under international law, and descent as a UK category could therefore also be argued to include caste. Meanwhile, however, as Robin Allen QC has pointed out, cases of apparent caste or descent-based discrimination are likely to come before advisers, and they will need to know how to respond.²⁰

His Lordship stated that, notwithstanding the merits of this argument, it would be clearer to express the prohibition of caste discrimination in statute, rather than wait for a test case to clarify that caste discrimination is a form of race discrimination.²¹ Lord Harries of Pentregarth agreed and outlined some of the obstacles to bringing a test case:

Noble Lords may ask, if they are feeling like this, why do they not go to the Equalities and Human Rights Commission and seek a legal case? We put that to some of the dalit community leaders who had met a group of us previously and they pointed out that, for many of them, there is the fear of losing their job. One example given was of someone from Coventry who was badly discriminated against, and in order to draw attention to it they went on hunger strike. Thank goodness it was a sensitive management which saw that something was wrong and managed to ensure that it did not happen any more. However, it should not have to depend on someone going on hunger strike to draw attention to the fact that they are being discriminated against.

The second point that was made to us was that members of this community are the product of centuries of marginalisation. Many of them do not feel confident or powerful enough to go to a body such as the EHRC in order to bring a legal case. The third point made to us was that at the moment there is no clear remedy in the law. If there

¹⁸ [HL Deb 15 December c1514](#)

¹⁹ [HL Deb 11 January 2010 c 331-348](#)

²⁰ [HL Deb 11 January 2010 c332-333](#)

²¹ *Ibid*, c333

was a clear remedy in the law, they might have that much more confidence to draw these examples of discrimination to the attention of the proper authorities.²²

Lord Lester of Herne Hill, a leading expert on equality law, tabled an amendment that would have prohibited discrimination based on “descent”, an effect of which would be to prohibit caste discrimination. Lord Lester also supported the view that caste was prohibited under existing law:

it will be important to hear the Government's understanding of whether and to what extent discrimination because a person does not belong to a particular caste or belongs to the wrong caste is capable of falling within the concept of race as it stands. Am I not right in saying that if there were to be litigation about this, the correct approach for the English courts to take would necessarily be to have regard, as they did in the Jewish Free School case, to the definition in the Convention on the Elimination of All Forms of Racial Discrimination? They would do so because we are bound by that convention and by an obligation to give effect in domestic law to the definition in the convention. If I am right in saying, as I think I am, that our courts would do their best to make sure that our statute law fitted the Convention on the Elimination of All Forms of Racial Discrimination - the international obligation in interpreting any ambiguity or doubt about the definition - in doing so would the Government not look at the word "descent" and make sure that whatever the Bill now says "descent" is included if it makes any difference? I believe that they would.

If those two steps are correct, the third step is why not make it clear in the Bill, either by including the word "caste" or the word "descent" so that we do not have to have litigation up to the Supreme Court to decide a fairly obvious question. It is very important that the Minister's reply should be on the record and have regard to the comments made by the noble and learned Lord, Lord Mackay of Clashfern. Pepper and Hart, with all its imperfections, at least leads to the opportunity for the Minister to make a Pepper and Hart statement as to the Government's understanding of whether caste and descent are already included. If we get a clear reply to that, does that need to be embodied in statutory language? Before reaching a decision on that, it is very important to have on the record the Minister's reply on whether and to what extent the Convention on the Elimination of All Forms of Racial Discrimination covers caste and descent - the answer is obviously yes - to what extent it binds us - the answer is that it does - and to what extent must it be taken into account in interpreting our law - the answer is that it must. Surely, if what I have said is right, there should be no problem in accepting either the amendment proposed by my noble friend Lord Avebury or my amendment.²³

In responding to the proposed amendments for the Government, Baroness Thornton stated that the available evidence of caste discrimination related to areas not covered by discrimination law and restated the Government's position that more research was needed prior to legislating to prohibit caste discrimination.²⁴ In relation to Lord Lester's question about the extent to which existing law covered caste discrimination, Baroness Thornton stated:

We are of the view that current discrimination law may already cover some aspects of caste discrimination where it can be shown that the active discrimination was grounded in race or religious discrimination. This would, of course, need to be determined based on the facts of each individual case, but it is important to point out that some victims of

²² Ibid, c334

²³ Ibid, c337-338

²⁴ Ibid, c342

caste discrimination may already be able to seek redress under existing laws. For example, in employment an instance of caste discrimination being grounded in race or religious discrimination could include the effective demotion of a secretary, where it would need to be established how other employees of different races and religions were treated for this act to be an instance of racial or religious discrimination.

A significant point is that the extent to which caste-related issues are covered by existing laws has not been tested in the courts. I am aware that the Equality and Human Rights Commission is keen to explore further this aspect in partnership with the ACDA and others. Given this position, I hope that noble Lords will agree that the proposal in the amendment, which could amount to a significant addition to the strand-based structure of equality law and, moreover, introduce social or class-based elements directly into protected characteristics, may be an unacceptably high-risk way of dealing with the issue without proper examination of all its implications.²⁵

Report Stage

During the Bill's Report Stage their Lordships tabled an amendment that proposed a power to prohibit caste discrimination by way of secondary legislation. This effectively brought together the Government's position with that of those who advocated prohibition of caste discrimination. It allowed for more research to be carried out with a view to prohibiting caste discrimination, without the need for primary legislation, if that research demonstrated its existence. The Government supported the amendment, which went on to form part of [section 9](#) of the *Equality Act 2010*; the section that deals with race discrimination (see above).

During debate the Minister, Baroness Thornton, described the amendment's effect:

My Lords, this amendment contains a power to add caste to the definition of race in Clause 9. The power, if used, would prohibit unlawful discrimination and harassment because of caste in the same way as for colour, nationality and ethnic or national origins. The amendment also contains a power to make exceptions to provisions on caste and consequential amendments.²⁶

Baroness Thornton explained that the power would only be exercised if research evidenced the existence of caste discrimination in areas of life to which equality law applies (eg employment, services and education), and went on to state that the Government had commissioned research to discover whether that was the case:

the Government have commissioned the National Institute of Economic and Social Research to conduct this research. It will be wide-ranging and will go beyond the relatively narrow area covered by discrimination law to examine caste-based prejudice and discrimination more broadly. It will involve structured discussions with stakeholders and individuals. The aims of the study will explore the nature, extent and severity of caste prejudice and discrimination in Britain, and its associated implications for future government policy. I would be very happy to share the other parts of the brief with noble Lords. It will report in July or August of this year.²⁷

²⁵ Ibid, c344-345

²⁶ [HL Deb 2 Mar 2010 c1348](#)

²⁷ [HL Deb 2 Mar 2010 c1349](#)

4 The National Institute of Economic and Social Research report

The National Institute of Economic and Social Research (NIESR) published its [report](#) in December 2010.²⁸ The study indicated that caste discrimination may exist:

The study identified evidence suggesting caste discrimination and harassment of the type covered by the Equality Act 2010 in relation to:

- work (bullying, recruitment, promotion, task allocation);
- provision of services; and
- education (pupil on pupil bullying).

The study also identified evidence suggesting caste discrimination and harassment which may fall outside the Equality Act 2010 in relation to voluntary work, demeaning behaviour and violence. The caste discrimination and harassment identified in this study was by higher castes against the lowest castes.²⁹

On the potential Government responses to caste discrimination, the study concluded:

To reduce caste discrimination and harassment the Government might take educative or legislative approaches. Either would be useful in the public sector. However, non-legislative approaches are less likely to be effective in the private sector and do not assist those where the authorities themselves are discriminating.³⁰

5 The Enterprise and Regulatory Reform Act 2013

Following the findings in the NIESR research, an amendment to the *Enterprise and Regulatory Reform Bill* was tabled in the Lords with a view to requiring the exercise of the order-making power in section 9 of the *Equality Act 2010* (EA 2010). After extensive debate the amendment became part of the *Enterprise and Regulatory Reform Act 2013* (ERRA).

[Section 97](#) ERRA amended section 9 of the EA 2010 to require a Minister of the Crown to exercise the power to make caste an aspect of race. As noted, section 9(5) EA 2010 originally provided:

A Minister of the Crown **may** by order ... amend this section so as to provide for caste to be an aspect of race

The ERRA changed the “may” to a “must” although did not specify a time by which the power must be exercised. At the time of writing, the power has yet to be exercised, although the Government has published a timetable indicating when it will be (see below).

Section 97 ERRA also provided that a Minister may carry out a review of the effect of the section 9(5) EA 2010 (and orders made under it) and whether it remains appropriate. If a review is carried out, it must be published. The review must not be carried out before the end of a period of five years, beginning with the day the ERRA was passed (25 June 2013). If a Minister considers it appropriate in the light of the outcome of the review, he may by order repeal or otherwise amend the provision on caste. Any such order must be made by statutory instrument and would be subject to the affirmative resolution procedure.

²⁸ Metcalfe, H., Rolfe, H., *Caste discrimination and harassment in Great Britain*, NIESR, December 2010

²⁹ *Ibid*, page vi

³⁰ *Ibid*

6 The Enterprise and Regulatory Reform Bill (Bill 7 of 2012-13)

The *Enterprise and Regulatory Reform Bill* did not, as presented to Parliament, propose to amend the EA 2010's provision on caste discrimination. The ERRA's changes to the EA 2010 originated with an amendment to the Bill moved by Lord Harries of Pentregarth.³¹ As noted above, Lord Harries was among the group of their Lordships that supported amendments to the *Equality Bill* which led to the EA 2010's provision on caste discrimination.

Lord Harries' amendment would have made caste an aspect of race outright, rather than require a Minister to exercise a power to make caste an aspect of race. It was only later, during ping-pong,³² that agreement was reached on the final mandatory order-making power. Lord Harries spoke to the amendment as follows:

My Lords, this amendment seeks to add the word "caste" into the Equality Act 2010 and I will very briefly sketch in its background. The Dalit communities in this country, which are about 480,000 strong, have been concerned for some time about discrimination against them. The previous Government, aware of this, introduced an order-making power into the Equality Act 2010 and to assess the evidence commissioned a report from the National Institute for Economic and Social Research. The NIESR concluded that there was discrimination in the areas covered by the Equality Act; namely, education, employment and the provision of public goods and services. It recommended legislation as one of the ways of dealing with this.

The present Government, understandably, wanted time to consider this issue but on Friday gave their response. They recommended that discrimination be tackled by education first rather than by triggering the order-making power in the Act. The Dalit communities in this country are deeply disappointed by this long-awaited response. Indeed, there are more than 400 community leaders from all over the country expressing their feelings outside the House at the moment. I find it disappointing and genuinely distressing because not only are the recommendations a distraction from the real issue but they could cause a great deal of hard feeling and resentment and be seriously counterproductive.

I want to explain briefly why I believe this to be so. It is natural in every society for people to mix with other like-minded people—those with the same education, background, religion, class or occupation. If sometimes this goes along with feelings of superiority to other groups this is reprehensible but when it is manifested only in social life it is not a matter for legislation. By focusing on education there is a huge danger that these kinds of social distinction will become blurred and confused with the real issue of discrimination in the public sphere when people are not employed or are harassed in their jobs because of their caste. An education programme, however sensitive—and frankly one wonders how on earth this one is going to be costed—is likely to be regarded as patronising and interfering, while at the same time distracting from the essential issue.

We hear that there is opposition to triggering the order-making power. I find it very difficult to work out what are the grounds of this opposition. The NIESR is a highly reputable academic body, well used to doing this research, and it has concluded that there is clear evidence of discrimination in the public sphere. Therefore, I wonder about the Government's second recommendation, which is that the Equality and Human

³¹ Amendment 73, [HL Deb 4 March 2013 c1295](#); Lord Harries was among their Lordships who participated in debate on the Equality Bill and tabled amendments to it to prohibit caste discrimination.

³² The process whereby amendments made in the Lords are considered by the Commons, and vice versa – it can lead to the Bill moving repeatedly back and forth between the two chambers.

Rights Commission should be asked to look again at the evidence. Is there something flawed with the original evidence? Why is it being asked to look at it again?

Another possible reason is that discrimination does indeed exist, as the Government seem to accept, but should be tolerated. That position would be quite unacceptable to all your Lordships. So we come to the third reason. Is the law really needed? We know that in the case of legislation on race nothing has been more effective in reducing racial prejudice than the law. It has had a most powerful educative effect. Nothing could be more significant and effective in reducing discrimination on the grounds of caste than to have a clear-cut law saying that discrimination in the public sphere will not be tolerated. India, Bangladesh and Nepal all have laws against discrimination on the grounds of caste. The problem in those countries is that the caste system is so deeply entrenched that the laws are not properly enforced. The situation in this country is very different. The law is, on the whole, effective. If other countries see nothing shaming in having a law, why should we?

There are something like 200 million Dalits in the world and the institutionalised prejudice against them is one of the most degrading and humiliating forms of rejection invented by cruel human beings, of which being confined to jobs such as manual scavenging is only one expression. It is indeed a surprise and a shock to learn that caste prejudice has come to this country. It is not, of course, in that extreme form but we need to show that in any public form it is totally unacceptable. We can do that quite simply and clearly by accepting this amendment.

At the moment, when a person believes that they have been discriminated against because of their caste, they have no legal means of redress. Someone I once interviewed had had a good training in India as a medical technician and was employed by the NHS in this country. All went well until this person asked their Asian boss for leave to go back to India for a family wedding. There then followed a set of highly intrusive questions about their family background, after which the person's life was made hell for the next year, which nearly brought on a breakdown. The trade union that he consulted thought that he had certainly been the subject of unfair discrimination and harassment, but had to advise him that at the moment it was not possible to bring a case for discrimination on the grounds of caste.

Even if there are likely to be few such cases, it is essential that there should be a proper means of legal address for those that exist. I appreciate that the Government are serious in wanting to do something about caste discrimination but I honestly believe, for the reason I have given, that their education programme could turn out to be highly counterproductive. No less importantly, it will blur the issue and distract attention from what is really needed: a clear legal signal that discrimination in this country in the public sphere—in education, employment and the provision of public goods and services—is quite unacceptable. I beg to move.³³

Baroness Stowell of Beeston responded for the Government, setting out its opposition to the proposed amendment, maintaining the position of the previous government that there was insufficient evidence of caste discrimination within the areas to which equality law applies:

My Lords, I am grateful to all noble Lords who have contributed to this very important debate. Let me start by being absolutely clear: the Government recognise that there is some evidence of caste prejudice and discrimination taking place in the United Kingdom. Such behaviour is wrong; no one should suffer prejudice or discrimination, whether because of caste or any personal characteristic, and it should not be condoned whether or not it is prohibited by legislation.

³³ [HL Deb 4 March 2013 cc1295-1297](#)

....

There is a clear demand for legislation; that has been put forward without any doubt today. That demand is from those who are affected as well as from those who are speaking for them today. But new legislation is always a big step. Before taking it, we need to be satisfied that it is the most appropriate and effective way of tackling the specific problem. My noble friend Lord Deben, as other noble Lords have rightly acknowledged, made an incredibly powerful speech in this debate. One of the things he said was that no one should suffer discrimination on the grounds of something that they cannot help. He was referring to castes and I agree with him. However, there are other people who suffer prejudice in this country because of their class, their background or their place of birth but we have no legislation on these matters and we deal with them through other approaches.

....

At this point, let me make it clear that we remain willing to consider whether there may be a case for legislating specifically in regard to caste discrimination, and hence our willingness to meet representatives of the key groups. I will return in a moment to the circumstances that would lead us to such a decision, and why we remain unconvinced that legislation is the best answer. It is clear from the NIESR report, which is the most robust study available so far, that the majority of incidents of caste-related prejudice or abuse would not be covered by equality legislation. Our assessment is that the great majority of cases in the report are either in areas outside the legislation—such as in relation to volunteering, which is not covered by discrimination law—or would already be subject to redress through a range of measures from claims for constructive dismissal to criminal prosecution. That said, we are clear that no one should suffer prejudice because of caste. Such prejudice should not be condoned and it should never be ignored, and that is why I am pleased that the Government have announced that they are taking clear action to tackle caste prejudice and discrimination through an education initiative. I thank my noble friend Lord Sheikh for his support for this initiative, and I must say that I was rather surprised that the noble and right reverend Lord, Lord Harries, dismissed it as being patronising and interfering. Even if a new law on caste discrimination was to be introduced, without education it would not address the underlying causes.

....

The Government are largely in accord with the aims of this amendment. We all want to see an end to caste-based prejudice and discrimination. We are not closing the door to legislation. We have no plans to remove the power from the Act, and we will leave it there in case new evidence emerges which makes it clear that legislation would help to achieve the aim that we all share. As I have already made clear, we will consider the outcome of the commission's study when it reports later this year.

From the limited evidence of caste prejudice already available, we believe that there is much to be gained through a programme of education, and that is something that we can and will get on with immediately. Those who suffer this prejudice have strong support from all sides of this House—that has been made evident today. However, let me also make clear that the people who suffer from this prejudice also have support from Ministers who are currently in government; most particularly, my honourable friend Helen Grant and my noble friend Lady Warsi, who will take a very active role in monitoring the effect of this educational programme and will most definitely take quite seriously the results of the work that the commission has said that it will do. I cannot accept this amendment for all the reasons that I have given, and I hope that, in view of

the comprehensive way in which I have responded today, it is possible for the noble and right reverend Lord to consider withdrawing his amendment.³⁴

Lord Harries pressed the amendment to a vote; it was agreed to by 256 votes to 153.³⁵ When the Bill returned to the Commons on 16 April 2013 the Minister for Women and Equalities, Jo Swinson, reiterated the Government's opposition to the amendment:

In terms of the evidence of whether legislation is required at this point, we are not yet convinced that it is the right way forward. Some discrimination cases can already be brought under employment law. Some cases of the operation of prejudice would fall outside discrimination law, but might be able to be brought under other forms of law, such as constructive dismissal legislation. The NIESR report contained a range of cases, many of which do not actually fall within the scope of discrimination law, such as prejudice within society outside of the workplace or the sale of goods and services. Therefore the number of cases that would be potentially covered is quite small. A range of groups has expressed significant concerns about legislation on this issue, including many Sikh and Hindu groups, some of which represent low castes, such as Gujarati Arya Kshatriya Mahasabha UK, the Sikh Council UK, the National Council of Hindu Temples UK, the Rita Trust, the Hindu Forum of Britain, Vishwa Hindu Parishad UK, the National Hindu Students Forum UK and Hindu Swayamsevak Sangh UK. All those organisations have expressed their concern about legislating, and we need to listen to their voices.³⁶

For the Opposition, Chukka Umunna spoke in support of the Lords amendment:

Let me turn now to deal with caste discrimination, a matter that has attracted considerable interest outside this House. Labour has a proud history of tackling injustice and discrimination. We believe that people should be able to make the most of their potential opportunities—whatever their race, gender, family background or social circumstances. In recent months, organisations such as the Anti-caste Discrimination Alliance have campaigned for stronger action to tackle caste discrimination, and their case has been powerful. Every community group and every faith group to which we have spoken—on either side of the debate in recent days—has been united in the belief that caste discrimination has no place in our country.

We Labour Members thus believe that we must send a strong and clear message today—that caste discrimination is completely unacceptable, and that we support taking more action. That is why we will support the amendment. We need to do more to ensure that the small number of people who face such injustice have access to the redress they deserve and have somewhere to turn to for support.

It is fair to say, however, that some have raised legitimate concerns about the practicalities of how the legislation would work—about its drafting and implementation. We take those practical points seriously and we agree that any new action we take must over time reduce rather than increase the number of people being identified by their caste, eliminating discrimination in the future.³⁷

³⁴ [HL Deb 4 March 2013 cc1311-1315](#)

³⁵ [HL Deb 4 March 2013 c1316](#)

³⁶ [HC Deb 16 April 2013 c220](#)

³⁷ [HC Deb 16 April 2013 c227](#)

The Commons voted to disagree with the Lords amendment by 307 votes to 243.³⁸ The Bill returned to the Lords on 22 April 2013, where Lord Harries moved a motion to insist on the amendment.³⁹ The motion was agreed to on division by 181 votes to 168.⁴⁰

When the Bill returned to the Commons on 23 April 2013 the Government tabled a motion to disagree with the Lords' amendment, although proposed its own.⁴¹ Instead of the outright prohibition of caste discrimination proposed by the Lords, the Government's amendment proposed to amend the order-making power in the EA 2010 to make its exercise mandatory. The effect of this would be to impose a duty on the Government in future to make caste an aspect of race, while permitting time for the Government first to consult on the matter. Jo Swinson explained the Government's revised position:

I turn now to Lords amendment 37, which relates to caste, and amendments (a) to (d) that the Government tabled today. In our previous debate on this matter, I made it clear that the Government recognise that caste prejudice occurs in the UK. Even if that happens at a low level, such prejudice is unacceptable and must not be tolerated. I also said that, although we remained unconvinced that there was sufficiently compelling evidence to require the introduction of legislation, the Government were not averse in principle to introducing legislation, should it become clear that that was the appropriate solution to the severity of the problem.

Strong views have been expressed in the other place on this matter. In the light of those views, we have reconsidered our position and agreed to introduce caste-related legislation. However, we need to ensure that any legislation that we introduce will have the desired effect. We therefore propose amendments in lieu of Lords amendment 37 that will impose a duty on the Government to exercise the power in the Equality Act 2010 that would make caste an aspect of race for the purposes of the Act. We think that that option, rather than the amendment proposed yesterday in the other place, is the best way forward.

As has been discussed in this House and in the other place, the issue of caste is very complex. Many people have voiced the opinion that our understanding of the relevant issues would benefit from some form of consultation to ensure that all the pertinent considerations are identified and, where possible, taken into account. Converting the order-making power in the 2010 Act into a duty will ensure that the Government legislate to incorporate caste protection into discrimination law. It will also give us an opportunity to undertake consideration, possibly through consultation, on whether any other factors, such as the need for specific caste-related exceptions, need to be introduced at the same time that caste is given legal protection. One example that has been raised is that we would not want monitoring forms to demand that people say which caste they are from, because we want to see such a characteristic gone from society and do not want to perpetuate it. Ensuring that there is proper guidance, and that we legislate sensitively, is therefore important. We will all welcome the opportunity of a little time to ensure that it is got right. That will help to ensure that the legislation is focused and robust and addresses all the relevant factors.

I turn to the slight tweak to the motion, which now includes a provision enabling review of the duty and the effect of the order once the Act, as I hope it will become, has been on the statute book for five years and periodically thereafter. That picks up on the concern expressed in recent debates that, because caste is inherently an undesirable

³⁸ [HC Deb 16 April 2013 c255](#)

³⁹ Motion C1, [HL Deb 22 April 2013 c1300](#)

⁴⁰ [HL Deb 22 April 2013 c1320](#)

⁴¹ [HC Deb 23 April 2013 c788](#)

concept that we want to fade away, we do not necessarily want to be stuck with references to it on the statute book, given that that will no longer be necessary once, as we all hope, the concept has disappeared from UK society. The hon. Member for Stretford and Urmston (Kate Green) said in a letter to me at the end of last week:

“Given that we are all united in our desire to see caste as an identifier in the UK erode over time, it would also be possible to put in place a timetable for statutory review to establish at what point the measure could be withdrawn if caste discrimination has become a thing of the past.”

That point was also picked up by Baroness Thornton in her closing remarks in last night’s debate. The new provision addresses those concerns by introducing a review and sunset clause.⁴²

The Shadow Minister for Equalities, Kate Green, said that the Opposition would support the Government’s proposed amendment;⁴³ the Commons agreed to it without division.⁴⁴ When the Bill returned to the Lords on 24 April 2013 their Lordships agreed to the amendment without division.⁴⁵

7 The Government consultation timetable

On 29 July 2013 the Government [announced](#) that it would consult in early 2014 on how best to prohibit caste discrimination and published a [timetable](#) setting out the consultation process:

- preparation of a full public consultation, drawing on research;
- issue the consultation in **February** or **March 2014**, which would last for twelve weeks and conclude in **May/June 2014**;
- during **summer 2014** the Government will analyse consultation responses and conduct sector-specific engagement;
- publish the Government’s consultation response during **autumn 2014**, including a draft order;
- a twelve-week period of consultation on the draft order which, allowing for Christmas, would end in **February 2015**;
- the final draft order likely to be introduced to Parliament during **summer 2015**.⁴⁶

The announcement stated that:

[the] consultation will draw on existing reports, as well as the findings of research on caste and caste discrimination which the Equality and Human Rights Commission will carry out shortly.⁴⁷

⁴² Ibid, [cc789-790](#)

⁴³ Ibid, [c792](#)

⁴⁴ Ibid, [c796](#)

⁴⁵ [HL Deb 24 April 2013 c1476](#)

⁴⁶ [Caste discrimination legislation timetable](#), GOV.UK, 29 July 2013 (accessed 9 April 2014); [Caste discrimination consultation programme timetable announced](#), GOV.UK, 29 July 2013 (accessed 9 April 2014)

⁴⁷ Ibid

The Equality and Human Rights Commission published its research in two reports on 28 February 2014.⁴⁸ The EHRC [announcement](#) accompanying the research provided the following summary of its findings, including a recommendation that any statutory definition of caste should be neither too broad nor too precise:

Both reports are from the Commission's Caste in Britain project which was undertaken at the request of government to help inform the introduction of a new statutory law. This followed the Enterprise and Regulatory Reform Act 2013 requirement that government introduce a statutory prohibition of caste discrimination into British equality law.

Key findings from the report to help inform this process include:

- Caste is a form of identity that is used as a basis for social differentiation, distinct from class, race or religion.
- Discrimination against an individual because of caste, including perception of caste, in education, employment, housing, business or public services cannot be tolerated and should be included in the protections against discrimination and harassment provided in the Equality Act 2010.
- However, the State should not intervene in cultural or social usages which are a matter of private practice. Therefore, in regulating in this area particular regard should be given to individuals' rights under the European Convention on Human Rights.
- **The definition of caste should be neither too precise nor too broad. A minimum definition of caste in terms of endogamy (marriage restricted within a specific group) inherited status and social stratification would be useful.**
- Businesses and public authorities will need clear and practical information about how the prohibition of caste discrimination will affect them. The Commission's initial view is that the impact will be small given that the straightforward message remains that employers and service providers must not make decisions on the basis of irrelevant considerations such as caste.⁴⁹

A number of Parliamentary Questions have sought to discover the date on which the Government will publish its consultation. On 9 January 2014 Lord Avebury asked the following:

To ask Her Majesty's Government what progress has been made in drafting the questions for the public consultation on the prospective legislation on caste.

Baroness Northover (LD): The Government timetable for the introduction of caste legislation was published in July 2013 in both Houses. The research currently being carried out by the Equality and Human Rights Commission will help inform the contents of the consultation document.⁵⁰

On 25 March 2014 Lord Avebury asked "on what date the Government Equalities Office wrote to all government departments seeking their approval to launch the consultation on the

⁴⁸ Equality and Human Rights Commission Research report 91, [Caste in Britain: Socio-legal Review](#), 2014; Equality and Human Rights Commission Research report 92, [Caste in Britain: Experts' Seminar and Stakeholders' Workshop](#), 2014

⁴⁹ [Commission publishes new caste research](#), EHRC website, 28 February 2013 (accessed 9 April 2013)

⁵⁰ [HL Deb 9 January 2014 ccWA317-318](#)

introduction of caste legislation”, although was advised that “Government does not disclose information relating to internal discussions in order to preserve “collective responsibility”.⁵¹

8 European Parliament Resolution

On 10 October 2013 the European Parliament [debated](#) and then adopted a resolution on caste discrimination: [European Parliament resolution of 10 October 2013 on caste-based discrimination](#).⁵² The resolution, among other things:

Calls on the Commission to recognise caste as a distinct form of discrimination rooted in the social and/or religious context, which must be tackled together with other grounds of discrimination, i.e. ethnicity, race, descent, religion, gender and sexuality, in EU efforts to fight all forms of discrimination; calls for the EU, in its policies and programmes, to consider people affected by caste-based discrimination as an identifiable group.⁵³

Resolutions of the European Parliament are not legally binding; rather, they signify a political desire and/or intention to act on an issue.

9 Employment tribunal decision in *Tirkey v Chandok*

In *Tirkey v Chandok* (ET/3400174/13), 24 January 2014, an employment tribunal held that caste discrimination can constitute unlawful race discrimination in certain contexts and that caste should be an aspect of race as defined by section 9(1) of the *Equality Act 2010* (see above). Employment Judge Sigsworth concluded that:

Section 9(1) can and should be construed in such a way as to provide for caste discrimination in the context of this case to be part of the protected characteristic of race....⁵⁴

In short, the argument centred on the obligation of UK courts to implement domestic law in line with European law, the relevant provisions of which are based on the [International Convention on the Elimination of All Forms of Racial Discrimination](#). The Convention provides that a “distinction, exclusion, restriction or preference based on ... descent” is a form of race discrimination.⁵⁵ As caste is related to descent, the argument ran that UK courts are obliged to interpret the race discrimination provisions of the *Equality Act 2010* so as to prohibit caste discrimination. The argument is essentially the same as that advanced by Lord Lester during Committee Stage debate on the *Equality Bill* (see above).

The judgment resulted from a preliminary hearing (a type of hearing that considers applications concerning the progress of the case) rather than a full merits hearing. As such, the decision has no binding force; in any event, first instance employment tribunal decisions do not set legal precedent. However, the decision is interesting as it established that the courts are, in principle, open to the possibility that caste discrimination is prohibited under current law, without the need for secondary legislation.

⁵¹ [HL Deb 25 March 2014 cWA93](#)

⁵² See the [European Parliament / Legislative Observatory page](#) on the resolution for details of the proceedings leading up to it (accessed 9 April 2013).

⁵³ Clause 13

⁵⁴ Para 26.3

⁵⁵ Article 1