

CASTE DISCRIMINATION LAW

Joint Statement to the Coalition Government that strongly calls on the Government to implement the law on Caste-based discrimination in the UK without further delay

1. This Joint Statement by organisations (listed at Annex A):
 - a. **Finds the Government is being disingenuous in the two reasons given for the delay in launching the first of the consultations on Caste discrimination (in a response by Lord Ahmad to a Parliamentary Question (PQ) tabled by Lord Avebury – Annex B)** Lord Ahmed says, “The Government is currently considering two issues which have developed and which have potential implications for the consultation.” It is very clear that the first of the two issues has not just developed recently. It became redundant in September 2013 when the EHRC with the full knowledge of Government decided not to carry out the research into the extent of Caste discrimination in Britain (see paragraphs 2-7 below). The second reason given is the Employment Tribunal’s December 2013 ruling in the *Tirkey vs Chandok* case. This is ongoing litigation and cannot be used as an excuse not to implement law agreed by Parliament in April 2013 to make clear that Caste is one of the protected characteristics (see paragraphs 8-13 below);
 - b. **Demands legal certainty by calling on the Government to bring into force Section 9(5)a of the Equality Act 2010 without further unnecessary delay; and**
 - c. **Seeks an urgent meeting with the Secretary of State, Department for Culture Media and Sport, to discuss our concerns about the delay in implementation of the law on Caste discrimination.**

EHRC research into the extent of Caste and discrimination in the UK

2. In its [Caste legislation implementation timetable](#), the Government’s Equality Office (GEO) stated *“Drawing on research including published reports and, as appropriate, work being undertaken by the Equality and Human Rights Commission (EHRC), a public consultation will be prepared setting out the Government’s proposals for Caste discrimination legislation as provided for in Section 9 of the Equality Act 2010. The consultation will in particular include proposals for whether and how “caste” should be defined in the legislation, and will seek to identify any legislative exceptions that may be necessary”* This suggests that the consultation is to be based on published research and, as appropriate, the EHRC research. The [EHRC research Caste in Britain](#) commissioned in September 2013 at the request of the Government and in discussion with Government was published in February 2014. We are aware that the government were informed from the outset, in September 2013, that the quantitative element was not being commissioned by the EHRC. So nine months later – this is not an issue which has developed recently.
3. In a letter (at Annex C) to Lord Harries of Pentregarth 13 May 2014, Baroness O’Neill Chair of the EHRC has explained why quantitative research was not commissioned in September 2013 *“We decided not to go ahead with work on a second stage largely because there was no very obvious way of obtaining robust data. It is difficult not only*

because of the complexity and multidimensionality of the Caste system and the very large numbers of distinct Castes; because of uneven awareness and understanding of Caste affiliations; but because of reluctance by some to disclose membership, not least because some people feel that in coming to the UK they have left Caste behind.” We are not asking for disclosure of caste membership that would identify the individual or their Caste. Whilst we accept Baroness O'Neill's point (above) that some people feel they have left Caste behind, there are clearly others who feel victimised and need to be protected by implementation of the law.

4. There is no doubt about the existence of Caste and Caste-based discrimination in the UK. This is evident in the various testimonies, academic studies and reports since 2004 submitted to Government by the Anti Caste Discrimination Alliance, CasteWatchUK, Dalit Solidarity Network UK, Federation of Ambedkarite and Buddhist Organisations UK, Voice of Dalit International UK. Indeed these reports and the Government's own commissioned reports by the National Institute of Economic and Social Research (NIESR) and the EHRC have highlighted that Caste features in varying degrees in the lives of the South Asian Diaspora. Both NIESR and the EHRC have been robust in their position that there are major methodological difficulties in trying to quantify the extent of Caste discrimination - even with a very costly study.
5. In the same letter Baroness O'Neill added that when Caste discrimination is brought into effect, it would form part of the Public Sector Equality Duty (PSED) but “ *it would not be necessary for public bodies to start collecting data on Caste membership, since there are specific ways of limiting that requirement for data. In addition it would not be essential to know the incidence of such discrimination, since the crucial matter in showing that unlawful discrimination has taken place is to establish the basis of decisions.*” This indicates that the bringing the law into effect is not dependent on a quantitative study.
6. Lord Ahmad in the PQ reply also notes the difficulties with carrying out quantitative research and says that Government is looking at how to proceed with the consultation with this in mind. Again this is disingenuous. There is nothing in the Government's Caste discrimination legislation timetable to indicate that the first public consultation expected in February/March was dependent on having quantitative research to hand: “*Separately, work will also be undertaken to determine information about the extent of Caste discrimination in Britain that can be used as a comparative baseline for any future consideration of the effectiveness of Caste legislation*”.
7. So we do not therefore, accept the Government's first reason for delay to the consultation - an issue "which has developed" as per Lord Ahmad's answer to Lord Avebury's PQ.

Employment Tribunal - Tirkey vs Chandok

8. The second reason the Government has given for delaying the consultation on Caste law is the “*recent case law to consider whether and how it may affect the way in which we [the Government] implement the legislation*” - *Tirkey vs Chandok*.

9. The Employment Tribunal (ET) ruling in the *Tirkey vs Chandok* case was in the context of a preliminary hearing. The judge had allowed the claimants to add Caste Discrimination to the original claims of race and religious discrimination. The respondents applied to have the claim of Caste Discrimination struck out on the grounds that the ET had no jurisdiction to hear a claim of Caste discrimination.
10. There has not yet been a hearing on the merits of the case. This will not happen until the issue of whether Caste Discrimination can also be dealt with has been addressed. If appeal is granted, the respondents can then proceed with their appeal on the point of whether the ET can hear the claim of Caste Discrimination. It is only once that issue has been disposed of will the case proceed to a merits hearing.
11. It is therefore premature for anyone – including Government and lawyers - to suggest that a preliminary ruling in an ET case is decisive of whether Caste is already part of race. Whatever the outcome of the appeal on this point (assuming it goes ahead) that outcome in turn could be appealed, theoretically right up to the Supreme Court. Therefore, whether race as it currently stands can be construed to include Caste may well be argued and ruled on again. The Employment Appeal Tribunal (EAT) may make an Article 267 reference to the Court of Justice of the European Union (EU) as to the scope of the EU Race Directive. That could take many months. The outcome may be the same, or different as the ET. Either way, the EAT ruling in turn may be appealed. This ongoing litigation is a clear example of why the legislation on Caste-based discrimination is needed to provide legal certainty without further unnecessary delay.
12. Years before the *Tirkey vs Chandok* ET, the first Caste related ET *Begraj v Heer Manak*, in 2011 and the second *Naveed v Aslam* ET in 2012, both called for legal certainty (see paper ‘Legislation against Caste Discrimination’ by Lord Lester of Herne Hill QC and Emma Fenelon of the Odysseus Trust at Annex D). Legal certainty will mean:
 - a. the Courts and Tribunals will not have to waste time and resources in determining in relevant cases whether discrimination based on Caste is covered legislation; and
 - b. employers and providers of services will be able to identify and understand the sources of discrimination and have confidence to discuss Caste-related incidents before they result in costly and long drawn-out (on both sides) legal cases that find their way to the courts.
13. So in conclusion, what has happened so far in *Tirkey vs Chandok* is the beginning, not the end. The Government should not use this case as an excuse not to implement the law agreed by Parliament in April 2013 and make clear on the face of the legislation that Caste is one of the protected characteristics.

June, 10, 2014

ANNEX A

Ambedkar Mission Society, Bedford
Anti Caste Discrimination Alliance
Anti Land Grab and Forced Displacement of People
Asian Rationalist Society, Britain
Asian Christian Minorities
Association for Community Cohesion
Bedford Asian Christian Association
Begumpura Foundation
Bhagwan Valmik Sabha Bedford
Bhagwan Valmik Sabha Birmingham
Bhagwan Valmik Sabha Coventry
Bhagwan Valmik Sabha London
Bhagwan Valmik Sabha Oxford
Bhagwan Valmik Sabha Southall
Bhagwan Valmik Temple Wolverhampton
British Asian Christian Council
British Organisation for People of Asian-origin
British Organisation Of People of Indian Origin
Buddha Dhamma Association, Southall
CasteWatchUK
Catholic Association for Racial Justice
Central Valmik Sabha UK
Christian Network Against Caste Discrimination
Dalit Solidarity Network UK
Dalit Freedom Network
Dr Ambedkar Memorial Trust, London
Dr. Ambedkar Action committee, Birmingham
Dr. Ambedkar Buddhist Organisation, Birmingham
Dr Ambedkar Memorial Committee of GB, Wolverhampton
Dr Ambedkar Mission Society, Glasgow, Scotland
Federation of Ambedkarite and Buddhist Organisations UK
Guru Ravidas Community Centre - Derby
Indian Workers Association GB
Indian Scheduled Caste Welfare Association
Indian Christian Concern
Indian Overseas Congress UK
International Asian Christian Forum
International Imam Hussain Council
KESRI LEHAR

National Liberal Party

Nations Without States

Punjab Buddhist Society, UK

Shri Guru Valmik Sabha International

Shri Guru Ravidass Sabha UK (SGRS-UK) umbrella body for the following:

- Bedford - Gurudwara Ravidass Bhawan
- Berkshire-Shri Guru Ravidass Sabha
- Bilston-Sant Dera Baba Gobind Dass Temple(Ravidass)
- Birmingham -Gurudwara Ravidass Sabha
- Bradford-Gurudwara Shri Guru Ravidass
- Darlaston-Shri Guru Ravidass Temple
- Coventry- Gurudwara Ravidass Sabha, Jesmond Road
- Coventry- Gurudwara Ravidass Temple 2, Foleshill,
- Derby - Shri Guru Ravidass Temple
- Derby- Shri Guru Ravidass Community Centre
- Erith Kent -Shri Guru Ravidass Bhawan
- Gravesend, Kent- Shri Guru Ravidass Temple
- Hitchin/Letchworth - Shri Guru Ravidass,
- Leicester- Shri Guru Ravidass Temple
- Luton- Gurudwara Shri Guru Ravidass Sabha, Luton
- Newham -Shri Guru Ravidass Bhawan
- Southall -Gurudwara Ravidass Sabha
- Southampton- Shri Guru Ravidass Bhawan
- Strood - Shri Guru Ravidass Bhawan
- Walsall -Gurudwara Ravidass Sabha
- Willenhall -Gurudwara Ravidass Sabha
- Wolverhampton- Gurudwara Ravidass Sabha
- Glasgow- Shri Guru Ravidass Sabha

Southall Black Sisters

South Azerbaijan Independence Party

South Asia Solidarity Group

Voice of Dalit International UK

1984 Genocide Coalition

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/140506w0001.htm#14050626002136>

Caste Discrimination

Question

Asked by Lord Avebury

To ask Her Majesty's Government, in the light of their announcement in July 2013 that the consultation on caste legislation was expected in February or March 2014, why it has not yet been issued.[HL6447]

Lord Ahmad of Wimbledon (Con): The Government is currently considering two issues which have developed and which have potential implications for the consultation.

6 May 2014 : Column WA332

In February, the Equality and Human Rights Commission (EHRC) published helpful research designed to inform the introduction of new legislation on caste, as outlined in the July 2013 announcement. However, that announcement said:

‘...work will also be undertaken to determine information about the extent of caste discrimination in Britain that can be used as a comparative baseline for any future consideration of the effectiveness of caste legislation.’

We had intended to reflect consideration of this work in the public consultation process. However, further discussions between Government and the EHRC about the research needed for it have revealed concerns that not only might this be difficult to commission successfully, but it could be seen as intrusive and might have an adverse effect on good relations in the relevant communities. We are therefore considering how best to proceed with the consultation in the light of this.

Another recent development is the judgment in the Employment Tribunal case of *Tirkey v Chandok* which concluded that there is already legal protection against caste discrimination through the race provisions of the Equality Act 2010. We need to review recent case law to consider whether and how it may affect the way in which we implement the legislation.

We would expect the public consultation document, including our conclusions on these matters, to issue in the Autumn.

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Lord Harries of Pentregarth
House of Lords
London SW1A 0PW

13 May 2014

Our Reference: OON/LS/288Harries

Dear Richard,

Caste Discrimination

It was good to talk about the caste discrimination issues on Monday, and this letter is to follow up that conversation.

As you are aware EHRC commissioned research on the options for bringing the legal provision on caste into effect at the request of GEO. We also considered whether and how one could obtain robust quantitative work on the issue.

The report of research completed can be found under this link:
<http://www.equalityhumanrights.com/news/2014/february/commission-publishes-new-caste-research/>

We decided not to go ahead with work on a second stage largely because there was no very obvious way of obtaining robust data. It is difficult not only because of the complexity and multidimensionality of the caste system and the very large numbers of distinct castes; because of uneven awareness and understanding of caste affiliations; but because of reluctance by some to disclose membership, not least because some people feel that in coming to the UK they have left caste behind.

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**Equality and
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As and when caste discrimination is brought into effect, it would form part of the Public Sector Equality Duty (PSED). However it would not be necessary for public bodies to start collecting data on caste membership, since there are specific ways of limiting that requirement for data. In addition it would not be essential to know the incidence of such discrimination, since the crucial matter in showing that unlawful discrimination has taken place is to establish the basis of decisions. I mentioned a judgment of Lord Justice Stephen Sedley's which I have found particularly helpful in thinking about this. The text of the judgement can be found at:

<http://www.employmentcasesupdate.co.uk/site.aspx?i=ed8101>

A useful point made in this judgement is that an act may constitute unlawful discrimination even if the person affected does not in fact have the relevant characteristic. What matters is the basis of the decision taken.

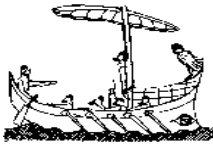
Another useful, if incidental, finding of the research we commissioned is that it showed there was some concern that if caste were a protected characteristic, this would provide a basis for interfering with the religious observances of certain groups. However, Article 9 rights to religion and belief and their manifestation mean that this fear is not well founded.

So our position is that we have contributed the research as we undertook to do, and while we recognise the value which better quantification of the problem would bring, we have explained to the department why we do not think we can usefully add to the work we have done. Whether one needs an understanding of the quantitative aspects of the matter before consulting is a matter for ministers.

I am copying this letter to Lord Avebury,

Yours Sincerely,

Onora O'Neill
Chair



LEGISLATING AGAINST CASTE DISCRIMINATION

Introduction

1. Section 9 (5) of the Equality Act 2010 provides that:

“A Minister of the Crown may by order –

- (a) amend this section so as to provide for caste to be an aspect of race;
- (b) 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.”

2. Section 97 of the Enterprise and Regulatory Reform Act 2013 requires the Government to prohibit caste discrimination by making it an aspect of race discrimination within the meaning of the Equality Act 2010.

The Law

3. The UK is party to the International Convention on the Elimination of all forms of Racial Discrimination (CERD). Article 1 of the CERD defines “racial discrimination” to mean “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin...” The UN Committee on the Elimination of Racial Discrimination monitors the implementation of the CERD by State parties and publishes General Recommendations explaining its meaning.
4. In 2002 the UN Committee made a General Recommendation on descent explaining that;

“discrimination based on ‘descent’ includes discrimination against members of communities based on forms of social stratification such as caste and

analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.¹

5. The UN Committee therefore treats caste discrimination as within the definition of discrimination prohibited by the CERD.

6. In 2011 the UN Committee observed in relation to the UK that :-

“While noting the assertion of the State party that there is no evidence in the State party of the existence of caste-based discrimination to any significant extent in the fields covered by the Convention, the Committee has received information from non governmental organizations and from recent research studies commissioned by State party institutions that such discrimination and harassment in violation of the rights to work, to education and to the supply of goods and services does exist in the State party (article 2)”

“... [T]he Committee recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for caste to be an aspect of race in order to provide remedies to victims of this form of discrimination. The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report.”²

Judicial Interpretation

7. In August 2011 the first employment tribunal case involving complaints of caste-based discrimination collapsed when the Judge recused herself after a 36 day hearing.³ As a result there was no determination of the complaints in spite of the great expense that had been incurred.

8. In 2012, an employment tribunal rejected a claim for caste discrimination for two reasons :

- i. the Government has not yet exercised its power to amend the Equality Act to include caste discrimination within the definition of race discrimination and
- ii. the Claimant’s caste was the same as the caste of the Respondent.⁴

¹ Committee on the Elimination of Racial Discrimination, General Recommendation 29(2002)

² Committee on the Elimination of Racial Discrimination, Seventy-ninth session , 8 August-2 September 2011, Concluding observations of the Committee on the Elimination of Racial Discrimination, UK and Northern Ireland

³ *Begraj v Heer Manak Solicitors*

⁴ *Naveed v Aslam*, Unreported November 26, 2012 (ET)

9. In a 2014 decision, a different employment tribunal considered that the definition of “ethnic origin” within the meaning of the Equality Act 2010 was arguably wide enough to include caste and on the facts of the case permitted the Claimant to advance a caste discrimination claim.⁵ Both decisions were first instance decisions and are therefore not determinative. The second decision did not consider the argument that, since Parliament had decided that legislation was needed, it would be inappropriate for the courts and tribunals to intervene. These divergent decisions do make clear, however, that the law is uncertain which is why Parliament decided that it required to be clarified by legislation.

Research

10. In 2010, the then Government commissioned the National Institute of Economic and Social Research to conduct independent research to assess the nature, extent and severity of caste prejudice, discrimination and harassment in Britain and the implications for Government policy. The final report, published in December 2010, confirmed that evidence of caste-based discrimination exists in the UK in the areas covered by the Equality Act 2010 – employment, education and the provision of goods and services.
11. In February 2014, the Equality and Human Rights Commission published research carried out by an independent team of academics and undertaken at the Government’s request.⁶ The aim was
 - a. to chart the background of Section 97 of the Enterprise and Regulatory Reform Act and the emergence of the issue of caste within the framework of British equality law;
 - b. to assess the lessons that can be drawn from legal approaches to caste adopted in other jurisdictions; and
 - c. to consider how caste will work as a legal concept within the Equality Act 2010.

The report concluded that discrimination against an individual because of caste, including perception of caste, in education, employment, housing,

⁵ *Tirkey v Chandok and another* (ET/3400174/2013)

⁶ EHRC Research Report 91, Caste in Britain: Socio-legal Review Meena Dhanda, Annapurna Waughray, David Keane, David Mosse, Roger Green and Stephen Whittle; and EHRC Research Report 92, Caste in Britain: Experts’ Seminar and Stakeholders’ Workshop Meena Dhanda, David Mosse, Annapurna Waughray, David Keane, Roger Green, Stephen Jafrati and Jessie Kate Mundy

business or public services cannot be tolerated and should be included in the protections against discrimination and harassment provided for in the Equality Act 2010.

Consultation

12. The Government announced in July 2013 that a public consultation on caste legislation was expected in February or March 2014. That announcement said “separately, work will also be undertaken to determine information about the extent of caste discrimination in Britain that can be used as a comparative baseline for any future consideration of the effectiveness of caste legislation.”

13. In response to a Parliamentary Question tabled by Lord Avebury in May 2014, the Government announced that they had intended to reflect this work (on the extent of caste discrimination in order to establish a baseline) in the public consultation process. The Government stated however, that;

“further discussions between Government and the EHRC about the research needed for it have revealed concerns that not only might this be difficult to commission successfully, but it could be seen as intrusive and might have an adverse effect on good relations in the relevant communities”. In addition the government cited the 2014 employment tribunal decision discussed above as further reason to “review recent case law to consider whether and how it may affect the way in which we implement the legislation”.

Response to the Government’s reasons for delay

(1) The need for further research to establish a comparative baseline

14. In its July 2013 announcement, the Government undertook to conduct further research on the extent of caste discrimination “that can be used as a comparative baseline for any future consideration of the effectiveness of caste legislation”. Similar research was not necessary for the other protected characteristics in the Equality Act 2010. It is not clear why the consultation should be delayed for this reason. The statement suggests that, contrary to the will of Parliament, the Government is not persuaded of the effectiveness of legislation against caste discrimination.

(2) The Risk Of Adverse Effects On Good Relations In The Relevant Communities

15. The Government has indicated its concern that research on the extent of caste discrimination could be seen as intrusive and might have an adverse effect on good relations in the relevant communities.
16. Caste discrimination, like other forms of discrimination, is a sensitive issue. But that is no reason to refrain from outlawing this form of injustice and anti-social behaviour.

(3) The Need To Review The Case Law

17. Until caste is explicitly included as an aspect of race within the Equality Act 2010, the question as to whether caste discrimination is prohibited will remain a matter for UK courts and tribunals, as it was in the case of discrimination against Sikhs⁷ and Jews⁸.
18. Resolving the question of whether caste discrimination is prohibited as an aspect of race discrimination would involve the great expense and delay in pursuing a test case to the Supreme Court of the United Kingdom. Parliament decided that it was more appropriate to legislate to deal with the problem so as to avoid unnecessary delay and expensive litigation.

LORD LESTER OF HERNE HILL QC

EMMA FENELON

⁷ *Mandla (Sewa Singh) v Dowell Lee* [1982] UKHL 7 (24 March 1982)

⁸ *R (on the application of E) (Respondent) v (1) JFS Governing Body (2) Admissions Panel of JFS (Appellants) : R (on the application of E) (Respondent) v (1) JFS Governing Body (2) Admissions Panel of JFS (Appellants) & ORS (United Synagogue) - [2009] UKSC 15*