

The Rt. Hon. Justine Greening MP
Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

02 May 2017

Dear Justine,

Public consultation on caste in Great Britain and equality law

Such consultations have a deservedly poor reputation, but in my thirty years in Parliament I cannot recall one that is so misleading and biased, as I detail below. The clear intention is to delay – probably for ever – legislative protection against caste discrimination, the sort of disadvantage that the PM spoke about rooting out when she was appointed. As you know, the Government has been directed by Parliament that such legislative protection be enacted, that could be so easily achieved through exercising the Ministerial powers to enact secondary legislation. You will also presumably be aware that the UN has called, more than once, for legislation, and for the Equality Act to be amended as part of our treaty obligations.

The Government's argument against legislating, echoed in the consultation, is that the development of case law is awaited. We fear the Government will use this dysfunctional consultation to justify continuing not to legislate, as it has avoided doing since coming into office. If this happens, the courts will, and indeed should, take this as a signal that they should not develop case law to outlaw caste discrimination. Were they to do so they would risk being accused of usurping Parliament. So, while the Government would have us think it would welcome the development of case law, its deciding not to legislate will ensure there is no case law development either and those suffering caste discrimination will continue not to enjoy legal protection.

Given the General Election and the many shortcomings listed below, I ask that the consultation be withdrawn. But if it is not I ask for an assurance that the consultation is not, for reasons set out below, used to justify not legislating.

The consultation fails all ten of the Government's own Guidance (2016) criteria:

- Clarity
It is incomprehensible to anyone other than a specialist. I am told of those from groups at risk of caste discrimination being shown it and not one of whom has understood it or been able to respond, nor a professor of law who is a QC but who couldn't even answer the first question.

- Purpose
Even the Government's stated purpose is unclear. It doesn't even state in the consultation it wants caste discrimination in the areas covered by the Equality Act to be outlawed, and most reading the consultation could reasonably conclude that it doesn't. It clearly aims to persuade respondents to opt for case law development, which is unlikely to occur, rather than legislation which could be easy, quick and precise.
- Being informative
No mention is made of the UN's recommendations or the ease of passing secondary legislation. There is much misinformation created by omissions and crafty use of qualifying adjectives downplaying the disadvantages of the case law route, craftily labelled Option 1. No statement is made that no one has yet received protection from caste law, nor any objective information about the uncertainties (and I think near-impossibility) of development of case law, far less a time frame, which with legislation could be almost immediate.
- Only part of process
The Government has not made any attempt to reach out to those at risk of being discriminated against on grounds of caste. It is however clear from wording used in the consultation that it has consulted those opposed to caste discrimination; their concerns are referred to.
- Timing (Avoiding unnecessarily delaying policy development)
The consultation was first promised, to UN, in 2014.
- Should be targeted
No attempt is made to reach out to those who suffer such discrimination or those who would like to outlaw it, either in the wording or in a way that would be comprehensible to any significant proportion of them.
- Take account of the groups being consulted/Consult stakeholders in a way that suits them
As above.
- Consultations should be agreed before publication/Seek collective agreement
We know that anti-caste groups have not been consulted and can find no evidence that the EHRC has been consulted, and we know that they favour legislation.
- Should facilitate scrutiny
Being so ill-focussed and misleading, it fails legitimately to facilitate any scrutiny.
- Not be launched during national election periods
I accept actually launched before then and not deliberately, but it has not been suspended because of the election.

Normally I would not make such a letter an open one, but given that the consultation has already been launched and Parliament is about to go into recess, I have reluctantly decided to make this an open letter.

Yours sincerely,

Graham Allen MP

CC: - Charles Ramsden;
Kate Green MP;
Baroness Thornton;
Lord Cashman;
Keith Porteous-Wood.