



Briefing:

## The campaign to outlaw caste discrimination

**The National Secular Society wants caste-based discrimination to be recognised as a form of discrimination under UK equality legislation.**

The caste system is the result of ancient religious and cultural beliefs, most often, though not exclusively, associated with Hinduism. The caste system is imbued with inequality and discrimination, and is in diametric opposition to the Universal Declaration of Human Rights.

Research has estimated there are at least 50,000 (and perhaps in excess of 200,000) people living in the UK who are classified as "low caste" and at risk of caste discrimination, and found that there is caste-based discrimination, harassment and bullying present in employment, education and in the provision of services.

The legislation we advocate for relates only to employment and the provision of services, not to social interaction or religion, as they are matters of personal choice and freedom. The NSS has been closely involved with the introduction of both legislative provisions passed by the UK Parliament concerning caste. A provision in the Equality Act 2010 that enabled secondary legislation to be passed by a Ministerial Order was replaced in 2013 by an instruction by Parliament to the Government to outlaw such discrimination, a move strongly endorsed by the United Nations, most recently in 2016. The Government has not yet complied.

### What is caste?

The caste system is South Asian in origin and is based on a division of labour and the concept of a spectrum of 'purity' and 'impurity'. Caste systems involve the division of people into one of a number of social groups (castes) where assignments of rights are determined by birth, are fixed and hereditary. Caste prescribes the type of occupations a person can pursue and the social interactions that he or she may have, although some try to hide their caste. Those at the greatest disadvantage are called Dalits, or 'untouchables'. The system is maintained through the rigid system of social ostracism (a system of social and economic penalties) often reinforced in India, principally in Hinduism, but also to differing extents by other major religions. Inequality is at the core of the caste system.<sup>1</sup> Caste discrimination is unlawful under India's constitution, but is still widely practised. The plight of so-called lower caste groups

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<sup>1</sup> <http://dsnuk.org/caste-discrimination/what-is-caste-discrimination/>

associated with some religions benefit to an extent in India, however, from statutory employment quotas.

Caste and related discrimination has spread with the diaspora to the UK. Some have managed to hide their so-called low caste with the greater opportunities for anonymity when moving to or living in the UK, but others have been less fortunate.

A report into the prevalence of caste discrimination in the UK was commissioned by the Government Equalities Office and undertaken by the National Institute for Economic and Social Research (NIESR). The report – ‘Caste discrimination and harassment in Great Britain’ – was published in 2010<sup>2</sup>.

The report estimated there are at least 50,000 (and perhaps in excess of 200,000) people living in Great Britain who are classified as “low caste”. It found significant evidence of caste-based discrimination, harassment and bullying in employment, education and in the provision of services, including care.

## Debate over the need to legislate

### **Pro- legislation**

Proponents of anti-caste discrimination legislation point to the inequity of discrimination based on descent and point to the value of declaratory law discouraging caste discrimination and shaping attitudes against it. They also want the clarity of legislation for its deterrent effect and to be able to take action with a minimum of cost. They consider that legislation should not be made conditional on demonstrating high levels of discrimination because one case is one too many, and the NIESR study referred to above demonstrated that discrimination exists. Furthermore, those suffering from discrimination will be reluctant to report it because they would have to reveal their caste with potentially adverse effects. Anecdotally we understand that many feel they have to hide their low caste.

### **Anti- legislation**

Many opponents claim such legislation would be an ‘attack’ on Hindus and say legislation raises caste as an issue when it has not been in the UK. Some opponents of legislation claim to be unaware of caste discrimination and therefore deem it unnecessary without much greater evidence of caste discrimination than has been produced so far. This view appears to be more prevalent among those from so-called higher castes, who would by the very nature of caste be less likely to suffer adversely from discrimination, and in fact be likely to benefit from the status quo. It is unsurprising that some high caste Hindus oppose legislation that they believe to strike at the core of their status, even if they do not actively wish to be free to discriminate. It has also been claimed that legislation would displease the Modi-led Indian Government, which is increasingly identified with Hindus. Opponents claim caste is

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<sup>2</sup> <https://www.gov.uk/government/publications/caste-discrimination-and-harassment-in-great-britain--2>

impossible to define, and that legislation would place an unreasonable burden on businesses including having to defend against baseless malicious accusations.

## What Parliament has done

The outgoing Labour Government's Equality Act 2010 enabled a minister to outlaw caste by Order. Since taking office in 2010, the Conservative Government has opposed caste discrimination being outlawed, claiming that education would suffice. In 2013 Parliament amended the Equality Act 2010 to instruct the Government to outlaw caste discrimination. Since the publication of the NIESR report, the United Nations has repeatedly recommended specific legislation. It stated that supportive case law was inadequate, as seeking redress through case law is much more expensive and uncertain than if caste discrimination were outlawed by statute. However the Government's sole stated reason for not legislating is that is awaiting the "development of case-law"<sup>3</sup>. This is an admission that the case law is not yet clear – and of course may never become so.

The Government issued on 28 March 2017 launched a 16 week consultation<sup>4</sup> on whether there should be legislation. We believe the consultation to be unnecessary given Parliament has expressed its will for legislation and the UN has urged it, something noticeably absent from the consultation.

On the same date the Government released a feasibility study on a quantitative survey to establish the extent of caste discrimination in Britain.

## Caste debates in Parliament, in chronological order

1. Caste was proposed as a protected characteristic in the Equality Bill on 11 Jan 2010<sup>5</sup>, by Lord Harries supported by NSS Honorary Associate Lord Avebury, later taken up by the (Labour) Government as an enabling provision.
2. An amendment in the Enterprise and Regulatory Reform (E&RR) Bill 2013 instructed the Government to make caste a protecting characteristic introduced and debated in the Lords<sup>6</sup>. Lord Avebury refused to accept a rejection of the Lord's amendment by the Commons, so it prevailed as Section 97 of the E&RR Act<sup>7</sup>.
3. The Commons however insisted on the insertion of a "sunset clause"<sup>8</sup> of which the EHRC observed "it was noted that the clause permits, but does not mandate, a review of the caste provision, and that it is unusual for a non-discrimination clause to be treated as a temporary measure." We know of no other instance.<sup>9</sup>

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<sup>3</sup> <http://www.secularism.org.uk/uploads/caste-discrimination-geo-caroline-dinenage-mp-september-2015.pdf>

<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/603675/170328 - Caste condoc - Final PDF.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/603675/170328_-_Caste_condoc_-_Final_PDF.pdf)

<sup>5</sup> <https://www.publications.parliament.uk/pa/ld200910/ldhansrd/text/100111-0008.htm> Col 331

<sup>6</sup> <https://www.publications.parliament.uk/pa/ld201213/ldhansrd/text/130304-0001.htm> here (starting at Col 1295)

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/2013/24/section/97>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2013/24/section/97/enacted>

<sup>9</sup> <https://www.equalityhumanrights.com/sites/default/files/research-report-92-caste-in-britain-experts-seminar-and-stakeholders-workshop.pdf> (p15)

4. Under the sunset clause S.97(7), without further primary legislation “the Minister may [from 25 April 2018] by order repeal or otherwise amend section 9(5) of the Equality Act 2010”. This existing Ministerial power even extends to repealing primary legislation passed subsequently to make caste a protected characteristic.
5. In a Westminster Hall debate of 9 July 2014<sup>10</sup> (Westminster Hall is the supplementary chamber for the Commons), Adam Holloway (Cons) and other Conservatives drew attention to caste discrimination in their constituencies. This includes a contribution by (now) Labour leader Jeremy Corbyn who has been a long-standing supporter of caste discrimination victims.
6. The most comprehensive exploration of the topic was a one hour debate in the House of Lords on 11 July 2016 Lords<sup>11</sup>. Seven peers – covering a wide spectrum of political and religious/belief - advocated legislation, and only one peer, Lord Poptat, a Hindu, opposed it (as did the Government).

## International obligations to outlaw caste discrimination

### United Nations concerns and recommendations

In 2012 the UK Government rejected for the time being the UN Universal Periodic Review recommendation 110.61<sup>12</sup>, to legislate “in conformity with [the UK’s] international human rights obligations, including CERD’s General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism”.

That failure to legislate would breach the UK’s international human rights obligations was confirmed by a legal opinion<sup>13</sup> the NSS obtained in 2013 and delivered to the Government, containing the following passage: “*The UK is obliged in international human rights law to legislate for caste discrimination and further obliged to provide victims of such discrimination with an effective remedy. Their failure to do so, since 2002 and certainly since 2010, is a violation of Article 2 (1) and 6 of the Convention.*”

Employment, equality, diversity and discrimination law specialist Michael Rubenstein said the opinion was “convincing”, and stated: “there seems no convincing justification for the Government not to agree to bring the prohibition on caste discrimination into force.”<sup>14</sup>

However, in a mid-term update in 2014 the HMG response had changed to “The UK Government intends to introduce legislation to make caste discrimination unlawful, as a specific aspect of race discrimination under s.9(5) Equality Act 2010. A public consultation process on the detail of the prospective legislation is expected later in 2014”<sup>15</sup>. The consultation was eventually launched on 28 March 2017.

<sup>10</sup> Westminster Hall debate of 9 July 2014

<sup>11</sup> <https://hansard.parliament.uk/lords/2016-07-11/debates/16071120000176/Caste-BasedDiscrimination>

<sup>12</sup> <https://www.justice.gov.uk/downloads/human-rights/uk-upr-mid-term-report-2014.pdf>

<sup>13</sup> <http://www.secularism.org.uk/uploads/nss-advice-caste-discrimination.pdf>

<sup>14</sup> <http://blog.equalitypublishing.co.uk/2013/02/caste-case-collapses-2/>

<sup>15</sup> <https://www.justice.gov.uk/downloads/human-rights/uk-upr-mid-term-report-2014.pdf>

Ms. Navi Pillay, United Nations High Commissioner for Human Rights, gave a keynote speech<sup>16</sup> in London on 6 November 2013 to a meeting on caste-based discrimination in the United Kingdom organised by the Anti Caste Discrimination Alliance.

Taking the Government at its word that it would introduce legislation, she said: "I would predict that the work still facing this country to tackle caste-based discrimination will be greatly facilitated by your new basis in law, to ban it."

By December 2015 the Government's intention to legislate had all-but evaporated. It informed the UN Committee on the Elimination of Racial Discrimination<sup>17</sup> that it was considering whether the recent Employment Appeal Tribunal case *Chandok v. Tirkey* constitutes an existing "legal remedy for claims of caste-associated discrimination". (This implies the case could preclude the need for the legislation for which the UN has called, and as stated below the Government's 2016 announcement of a consultation was "whether" there should be legislation).

The Committee's Concluding Observations on UK dated 23 August 2016 ref CERD/C/GBR/CO/21-23 (emphasis in original and showing evident frustration) reads as follows:

*C. Concerns and recommendations*

*Implementation of the Convention*

*7. The Committee .... In particular, it expresses concern that several provisions of the Equality Act 2010 have not yet been brought into legal effect, including Section 9(5)(a) on caste-based discrimination. ...*

*8. The Committee recommends that the State party ensure that the principles and the provisions of the Convention are directly and fully applicable under domestic law in England, Northern Ireland, Scotland and Wales, as well as the overseas territories and Crown dependencies. In particular, the State party should:*

*(a) Invoke Section 9(5)(a) of the Equality Act 2010 without further delay to ensure that caste-based discrimination is explicitly prohibited under law and that victims of this form of discrimination have access to effective remedies, taking into account the Committee's general recommendation No. 29 (2002) on descent; ....<sup>18</sup>*

The formal intention to launch a consultation however was only announced by the Government in September 2016<sup>19</sup> and it was on "whether" there should be legislation rather than how it should be implemented. The consultation was eventually launched In April 2017.

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<sup>16</sup> <http://newsarchive.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13973&LangID=E>

<sup>17</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/15/PDF/G1515915.pdf?OpenElement> (CERD/C/GBR/21-23 dated 16 July 2015 paras 8-11)

<sup>18</sup> [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD\\_C\\_GBR\\_CO\\_21-23\\_24985\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/GBR/CERD_C_GBR_CO_21-23_24985_E.pdf)

<sup>19</sup> <https://www.gov.uk/government/news/caste-discrimination-consultation>

## European Union

The most recent EU references to caste came in the European Parliament's *Annual Report on human rights and democracy in the world and the European Union's policy on the matter 2015*<sup>20</sup> prepared by the Committee on Foreign Affairs. It condemned "the continuing human rights violations committed against people suffering from caste hierarchies and caste-based discrimination" and called on the EU institutions "to address caste discrimination on a par with other causes of discrimination".

## Case law on caste and the difficulties posed

The Government has so far declined to legislate because of an appeal court (and therefore potentially precedent-setting) decision in *Tirkey v. Chandok*, the Tribunal appeal judgement of which was handed down on 19 December 2014.<sup>21</sup>

While caste discrimination was alleged, no judgment about it was made, and the case was decided on other aspects. Caste as such was not a protected characteristic under the Equality Act but, dependent on the facts, aspects of it may be. As noted above, however, the Government currently justifies not legislating pending the "development of case-law"<sup>22</sup>, thus admitting that the case law is not clear. There is no guarantee that it will be developed. Indeed given the costs and uncertainties of doing so illustrated below, any development is unlikely and it could not be taken for granted that the development would be to make actions on the grounds of caste easier to bring. It is difficult to escape the conclusion that this state of affairs is one which the Government prefers to the statutory protection it has been so slow to bring and would be so easy to enact, given that the change would not even require primary legislation.

The first case to cite caste discrimination in the UK was brought by Vijay and Amardeep Begraj. In this case the couple claimed that Mr Begraj - from the Dalit caste, deemed to be a "lower" caste than his wife's Jat caste – faced caste-based discrimination, humiliation, victimisation and harassment because of their relationship by Heer Manak Solicitors, for which they both worked.

The Begraj collapsed in highly unusual circumstances for reasons of procedural irregularity<sup>23</sup> having cost the Begraj's their life savings.

### **Further information**

MN Srinivas Memorial Lecture 2016: *Outside Caste?*

Outside caste? The enclosure of caste and claims to castelessness in India and the UK, by Prof David Mosse of SOAS, at KCL 29 November 2016 <https://www.youtube.com/watch?v=ty2R9m-9oLg>

Caste Out of the Shadows Conference that was held at the SOAS South Asia Institute, SOAS University of London on Saturday 5 September 2015. <https://www.youtube.com/watch?v=L98yrfA8gKE>

Equality and Human Rights Commission reading list which contains sources of evidence and relevant information <https://www.equalityhumanrights.com/en/our-research/reading-lists/caste-reading-list>

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<sup>20</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2016-0355+0+DOC+PDF+V0//EN>

<sup>21</sup> [http://www.bailii.org/uk/cases/UKCAT/2014/0190\\_14\\_1912.html](http://www.bailii.org/uk/cases/UKCAT/2014/0190_14_1912.html)

<sup>22</sup> <http://www.secularism.org.uk/uploads/caste-discrimination-geo-caroline-dinenage-mp-september-2015.pdf>

<sup>23</sup> <http://blog.equalitypublishing.co.uk/2013/02/caste-case-collapses-2/>