

## Caste Discrimination

In the interest of upholding the principle of equality and justice, and to ensure the availability of effective and timely redress through the courts, the National Secular Society fully supports the outlawing of discrimination on the grounds of caste.

### What is caste?

The caste system is rooted in religion and based on a division of labour and the concept of who is 'impure' and 'polluting' and who is not. Caste systems involve the division of people into social groups (castes) where assignments of rights are determined by birth, are fixed and hereditary. Caste often dictates the type of occupations a person can pursue and the social interactions that he or she may have. The system is maintained through the rigid enforcement of social ostracism (a system of social and economic penalties) in case of any deviations. Inequality is at the core of the caste system.<sup>1</sup>

The increase in population of those who have arrived in the UK from the Indian Sub-continent means the communities that have settled here have also brought with them their own social habits, norms and religious customs – such as the institution of caste. Despite leaving the Indian subcontinent, many UK citizens from the South Asian diaspora continue to experience the effects of the caste system in their daily lives.

### The need for legislation

The previous Labour Government had incorporated an enabling power in the Equality Act 2010 (Section 9(5)) to include caste as a protected characteristic (as an aspect of race). The intention was to trigger this Ministerial power, provided independent research confirmed evidence of caste-based discrimination in the UK.

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

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

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/85522/caste-discrimination.pdf?view=Binary](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf?view=Binary)

discrimination, harassment and bullying in employment, education and in the provision of services, including care. Such treatment falls outside the existing framework of race and religious discrimination law. The report therefore advocated amending the legislative framework. It stated:

*“Alleged caste discrimination and harassment in the area of work were identified in respect of bullying and harassment, social exclusion, recruitment, promotion, task allocation and dismissal.” (p30)*

*“Cases where caste appeared to have affected the tasks people did in their job or movement to lower level jobs were found in the literature and the case studies.” (p40)*

*“Cases of dismissal because of possible caste discrimination, near dismissal and concealment of caste out of fear of dismissal were found in the case studies and the literature.” and (p41) in the provision of social and health care, in worship and in politics (p49-55)*

Accordingly, the NIESR recommended that "extending the definition of race to include caste would provide further, explicit protection" and that "non-legislative approaches are less likely to be effective in the private sector and do not assist those where the authorities themselves are discriminating. Relying on the Indian community to take action to reduce caste discrimination and harassment is problematic."

Upon publication of the report the Equality and Human Rights Commission (EHRC) stated: *“The Commission notes the findings of the government-commissioned National Institute of Economic and Social Research paper on caste discrimination. In light of this, the Commission would suggest legal protection under the Equality Act 2010 for those experiencing discrimination in Britain should be as comprehensive as possible.”*<sup>3</sup>

## International obligation to outlaw caste discrimination

In 2012, there was further pressure on the government to deal adequately with caste discrimination in the UK, this time it came from the UN Human Rights Council (UNHRC). The UNHRC's Universal Periodic Review (UPR) of the UK, recommended that the Government "develop a national strategy to eliminate caste discrimination, including the immediate adoption of the clause in the Equality Act ... in accordance with its international human rights obligations".<sup>4</sup> A joint submission by the National Secular Society and International Humanist & Ethical Union to the UN UPR process advocated precisely this action.<sup>5</sup>

A legal opinion obtained by the National Secular Society stated:

*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.*

- 1. Further, the violation cannot be justified, either in principle or on the facts, by the necessity of either further evidence gathering or consultation.*
- 2. However, international law does not mandate a specific response from the UK Government. It is a matter for the Government's discretion as to whether they enact domestic legislation through the activation of s. 9 (5) (a) or through another legislative mechanism. It simply*

<sup>3</sup> <http://www.equalityhumanrights.com/legal-and-policy/equality-act/commission-policy-statement-on-caste-discrimination/>

<sup>4</sup> <http://www.secularism.org.uk/uploads/united-nations-upr-recommendation-on-caste.pdf>

<sup>5</sup> <http://www.secularism.org.uk/uploads/nss-briefing-for-the-un-universal-periodic-review-of-uk.pdf>

*matters, as a matter of international law, that legislation prohibiting discrimination on the grounds of caste is enacted without delay.”*

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

## Government position

Despite the Minister for Faith and Communities, Baroness Warsi, having publicly accepted the seriousness of the problem of caste discrimination whilst in opposition<sup>6</sup>, the coalition government originally refused to outlaw caste discrimination through legislation.

In a response to a parliamentary question asking what consideration the Equalities Office had given to the report by the NIESR, the Government said it had given “...full and careful consideration to the correspondence and representations put forward by both those who want the Government to legislate and those who are opposed to such legislation being introduced” (our emphasis).<sup>7</sup>

Whilst the Government accepted the existence of caste discrimination, it refused to outlaw it in the way that other forms of discrimination are outlawed. Instead, it favoured an ‘education programme’ to deal with the issue, claiming that it was an appropriate and targeted way of dealing with incidents related to caste, and advocated a ‘Talk for a Change’ programme<sup>8</sup> to work in partnership with Hindu and Sikh organisations and individuals, to raise awareness of caste by facilitating community dialogue events.

A Ministerial Written Statement from the DCLG stated on 1 March 2013: “*We have decided not to exercise the caste power contained with the Equality Act 2010 at the present time*”. “*We believe that [Talk for a Change] will be an appropriate and targeted way of dealing with incidents relating to caste and which are not already susceptible to criminal law or other remedies. They are going to work with the EHRC which “can usefully contribute to this issue by examining over the next few months the nature of caste prejudice and harassment as evidenced by existing studies, and the extent to which this problem is likely to be addressed by either legislative or other solutions. The Commission will publish its findings later in 2013.”*

The National Secular Society viewed the Government’s proposal of ‘Talk for a Change’ as a very poor substitute for a legal provision. We argued that a failure to legislate would also burden the oppressed with continually challenging caste discrimination wherever and whenever it occurred; pointing out that there is, by definition, an enormous disparity of power between the higher and lower castes which informal, voluntary conciliation simply cannot address. We argued that adding caste as an aspect of race in the UK would establish a clear means to protect people from discrimination on the basis of their caste because we will have the clarity of law required. This in turn would help bring about the change in behaviour required (as Equality Law has done in other areas in the past, for example on race and sex).

The National Secular Society also expressed its concern that the Government’s reluctance to provide important legal protection to vulnerable British citizens from the South Asian communities may have been unduly influenced by Hindu organisations with vested interests.

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<sup>6</sup> Baroness Warsi accused the then Labour Government of putting the issue off “for another day” when it introduced an enabling amendment to the Equality Bill to facilitate future legislation, instead of actually outlawing caste discrimination at the time.

<sup>7</sup> <http://www.theyworkforyou.com/wrans/?id=2012-05-21b.108382.h>

<sup>8</sup> <http://www.talkforachange.co.uk/>

# Legislative Timeline

Despite Government opposition, on 4 March, the House of Lords voted by a majority of 103 to make caste a protected characteristic under equality law (via a New Clause in the Enterprise and Regulatory Reform Bill).

On the 16th April, MPs voted on whether to retain the new clause. The motion was defeated by 307 votes to 243.

During the debate, the government argued that since the issue of caste discrimination is a problem related to Hindu and Sikh communities exclusively, it constitutes a unique form of discrimination different to any other covered by the Equality Act 2010. It also argued that the majority of cases of caste discrimination can be covered by other legislation (such as employment legislation) and few would come under discrimination, although it did concede that some forms could come under race discrimination.

A number of Conservative MPs spoke in opposition to the Government position. Richard Fuller MP argued that the Lords' amendment represented a straightforward issue: "Caste discrimination in the workplace is wrong and the people who suffer from it deserve legal protection. That is the beginning and end of the matter". He suggested that in an enlightened society we should understand "that all people deserve equality of opportunity, protected by law, regardless of their gender, race, sexual orientation, faith and caste".

The House of Commons returned the Bill to the House of Lords, which insisted upon their original amendment being retained.

On 23 April 2013 the Government committed to ensuring that discrimination against caste will enjoy the same statutory protection as other protected characteristics by making caste a protected characteristic (as an aspect of race) under equality law via a clause in the Enterprise and Regulatory Reform Bill. This Bill received royal assent on 25 April 2013.

Maria Miller MP, Secretary of State for Culture, has stated that instead of using primary legislation to make caste an element of "race" in the 2010 Equality Act, the government is looking to use an Affirmative Order. The government is also seeking to include the possibility of a sunset clause of the caste power and regulations made under it, meaning that when it is deemed that caste discrimination in the UK is no longer an issue, caste specified as an aspect of race can then be removed from the Act. The reasoning given for this sunset clause has been a keenness not to entrench the notion of caste in British society beyond the legislative need for it.

The Government and Opposition have agreed that the legislation should be implemented in one to two years, arguing that this time will allow for further consultation on matters such as the definition of caste set out in the guidance – a definition upon which Hindu and Sikh alliances have called for an improvement. These groups, along with the Opposition, have also asked for the guidance to make clear that caste is not religion specific, but is a social and cultural practice extending across different parts of communities. They have argued that it can be subscribed to by, and affects, members of any and no religion and the definition should reflect this. This comes in diametric opposition to what was claimed by Jo Swinson MP, the Parliamentary Under-Secretary of State for Business, Innovation and Skills, during the House of Commons debate on caste in April this year, when she stated that "the problem is entirely contained within Hindu and Sikh communities, which is different from other forms of prejudice and discrimination, which can be much more widespread in society".<sup>9</sup>

## The case of *Begraj v Heer Manak Solicitors*

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<sup>9</sup> <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130416/debtext/130416-0002.htm>

The long-running case of *Begraj v Heer Manak Solicitors*<sup>10</sup> has raised issues of alleged caste discrimination. The case involved a couple in Coventry who claimed they were discriminated against by their employers because they were of different castes and wished to marry. The case collapsed in very unusual circumstances beyond the couple's control.

The couple spent their life savings (and more) on the case in a desperate attempt to create a legal precedent. This case dragged out over several years and put huge financial and psychological pressure on the couple.

Now in considerable debt, and with nothing achieved, it is extremely unlikely that they will have either the resolve or the substantial funds needed to rerun the case. Such a scenario may have been avoided if s 9(5) of the Equality Act had been brought into force and caste discrimination outlawed sooner.

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<sup>10</sup> <http://blog.rubensteinpublishing.com/caste-case-collapses-2/#more-590>