

## Caste – Briefing for debate on 4 March 2013

Amendment 73 to the Enterprise and Regulatory Reform Bill, to be debated on Monday 4 March would trigger the enabling power in the Equality Act 2010 to make caste a protected characteristic.

The Government is strenuously opposing it, and we ask you to support the amendment and consider speaking to it in the debate.

The amendment (text shown in the Appendix) was tabled by Lord Harries of Pentregarth, Lord Avebury, Baroness Thornton and Lord Deben.

### **Why is there an enabling power for caste discrimination?**

Shortly before the last general election, a collection of disparate groups representing those suffering from caste discrimination made a powerful case to Baroness Thornton that caste discrimination was a problem in the UK and pressed her to include caste as a protected characteristic in the Equality Bill then passing through Parliament.

She was convinced by their arguments (as were Lords Avebury and Lester, who were also present). There was, however, insufficient time to formally research the extent and nature of the caste discrimination that would be addressed by the Bill if it were included, so the then Government compromised by commissioning a report (summarised in next section) and including an enabling power in the Bill (in s.9(5)(a), shown in the Appendix).

As shown below, the Government has declined to follow a formal United Nations Human Rights Council recommendation for an “immediate” triggering of the power “in accordance with [our] international human rights obligations”.

## What evidence is there of caste discrimination in the UK?

A [report](#) was commissioned from the National Institute of Economic and Social Research (NIESR). This research uncovered discrimination in employment, social and health care, worship and politics. Here are some extracts:

- The population includes 50,000-200,000 of low caste communities, living in 22 localities. [P19&20]
- “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]

## Experts agree legislation is the best way

The NIESR report concludes: *“Thus, discrimination legislation through the Act with the exercise of the caste power ought to reduce the extent of caste discrimination and harassment which occurs ... make it easier to address caste discrimination within the organisation when it does occur ... and provide an independent means of redress when these approaches are unsatisfactory.”*

As one respondent said: *“Caste law would send out signals (like with drink driving and race). It is not about getting lots of prosecutions, it is about people modifying their behaviour and making it unacceptable.”*

The EHRC endorsed this: *“The Commission notes the findings of the government-commissioned National Institute of Economic and Social Research[1] 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>1</sup> Curiously, the EHRC has suddenly become less sure:

On the same day the Government issued its announcement (1 March), Mark Hammond, the incoming EHRC Chief Executive, said:

*The Commission is aware of the evidence and strongly held views on both sides of the debate. What is clear is that caste is an extremely complex area, and relevant case law and empirical research is limited.*

[Mirroring the DCLG statement] *“The Commission has agreed with the government, that we will look at the existing evidence and provide our expert analysis on the extent to which this problem is likely to be addressed, by either legislative or other solutions. We will publish our findings later this year.”*

(This conveniently provides an excuse for procrastination.)

## HMG's embarrassing refusal to follow the UN's recommendation

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<sup>1</sup> <http://www.equalityhumanrights.com/legal-and-policy/equality-act/commission-policy-statement-on-caste-discrimination/>

Earlier this year, the UN Human Rights Council's Universal Periodic Review of the UK, recommended the Government to "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". (The UN recommendation and HMG's [formal response](#) (pdf) to the UN is shown in this link.)

The National Secular Society (NSS) has obtained from a barrister and an academic lawyer a legal opinion, a copy of which Lord Avebury has, which concludes:

1. *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.*
2. *Further, the violation cannot be justified, either in principle or on the facts, by the necessity of either further evidence gathering or consultation.*
3. *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 matters, as a matter of international law, that legislation prohibiting discrimination on the grounds of caste is enacted without delay." (emphasis added)*

The General Editor of Equality Law Reports<sup>2</sup> has reviewed the opinion and considers it "convincingly argues that such legislation is an obligation under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and that the UK is in breach". He concludes "there seems no convincing justification for the Government not to agree to bring the prohibition on caste discrimination into force".

Earlier, the National Secular Society and International Humanist & Ethical Union made a [submission](#) (pdf) to the UN UPR process advocating precisely this action.

## The Government's opposition and what they want to do

Cutting red tape and regulation has been a Government counter argument – **but caste would not be a new strand, simply clarification of race, and so extra red tape would be minimal.**

A Ministerial Written Statement from the DCLG announced on 1 March 2013 that "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."

**As shown above, the previous time the EHRC looked at this they recommended "comprehensive" legislation. Maybe the Government will keep asking the EHRC until they come up with the "right" answer. We are suspicious of this attempt to kick the question into the long grass, evading this legislative opportunity.**

Revealingly, part of HMG's response to the UN last year was that they were considering evidence and the NIESR report and .... "correspondence and representations put forward by both those who want the Government to legislate and those who are opposed to such legislation being introduced. This latter "reason" had already been alluded to in ministerial

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<sup>2</sup> Michael Rubenstein Publisher, Equal Opportunities Review and General Editor, Equality Law Reports in EQUAL OPPORTUNITIES review, March 2013 at page 234

correspondence from Lynne Featherstone when she was Equalities Minister.

**We think the real reason for the Government's intransigence is opposition primarily coming from extremely influential Hindu organisations (and Hindus?). But to allow their opposition to obstruct the legislation is akin to deferring to sexist men and blocking equalities measures for women.**

## What alternatives are there to legislation and will they work?

**We think that the Government's proposal of *Talk for a Change* is a very poor substitute for a legal provision which also sends a powerful declaratory message.**

We do not disparage *Talk for a Change's* ability to resolve local issues where there is no significant power imbalance and no major cultural clash. But caste is not a local problem and it is a needless imposition to require it to be resolved in numerous locations and probably repeatedly. Furthermore, there is a significant power imbalance between the parties (as in the case of the Leicester couple below) with those wishing to impose caste often being the employers of those wishing to avoid discrimination.

What can happen without protection - A couple in Leicester who were discriminated against by their employers because they were of different castes and wished to marry sank their life savings (and more) into a discrimination case in a desperate attempt to create a legal precedent. This case has dragged out over several years and put huge financial and psychological pressure on the couple. The case has been aborted under curious circumstances <http://www.guardian.co.uk/money/2013/feb/14/caste-discrimination-employment-tribunal-collapses> which we believe are potentially sinister, but not the fault of the couple. Now in considerable debt, and with nothing achieved, it is extremely unlikely that they will have to resolve or be able to find a further £50,000 to rerun the case, which would be unnecessary if Parliament passes this amendment.

**This amendment is an opportunity to use the law to protect the vulnerable, rather than withhold it, and in the process subjecting them to ruining their lives in seeking to fight unjust discrimination.**

**We urge you to support this amendment and support equality and the vulnerable.**

## APPENDIX

<http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0083/amend/ml083-ii.htm>

[Amendment 73] After Clause 57

LORD HARRIES OF PENTREGARTH, LORD AVEBURY, BARONESS THORNTON, LORD DEBEN

Insert the following new Clause—

“Equality Act 2010: caste discrimination

(1) The Equality Act 2010 is amended as follows.

(2) After section 9(1)(c) (race) insert—

“(d) caste;”.

Equality Act extract <http://www.legislation.gov.uk/ukpga/2010/15/section/9>

9(5)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 the not to apply, to caste or to apply, or not to apply, to caste in specified circumstances. END