

## NSS response to public consultation on Caste in Great Britain and Equality Law

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Q.1 To what extent do you agree or disagree that protection against discrimination on grounds of ethnic origin provides an appropriate level of protection against caste discrimination?

“Strongly Disagree”

Q2. Why do you think this? Please explain your answer to Q1.

The Government’s disinclination to legislate in the face of the duty and the UN pressure sends a signal to the judiciary not to develop case law. The Tirkey judge specifically declined to. Such cases can be unpredictable and move in unhelpful directions, e.g. moving towards “descent”. Low caste complainants are unlikely to be wealthy. They could take decades or even never happen. The cases could be ruinously expensive as employers are unlikely to be wealthy can retain top lawyers and appeal up to highest courts. The Begraj’s were bankrupted without any result. Legislating is easy, quick and precise.

Q3. Which types of caste discrimination, if any, do you think would not be covered by the concept of ethnic origin in case-law? Please clearly list the features of caste which you think are not covered by ethnic origin and explain why you think this.

Caste is immensely complex and evolving and straddles numerous ethnic identities and codifying this as ethnic origin is unnecessarily restrictive and problematical. Simply putting caste in a category of its own in legislation obviates this problem and will enable the definitions and any development of them to be developed by the courts. The feasibility study supported there being no need to define caste.

#### Q4. What are the benefits (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination?

There are no benefits. The claimed justification of awaiting case-law development on the grounds that the matter is sensitive, controversial, costly and disproportionate are baseless and only make sense if the expectation is that they will not lead to legal protection. Case law would identify protection with a religion, legislation would not. The cost to victims would be less in employment tribunals; the Government's cost concerns seem more about employers than affording protection. The evidence of discrimination shows it not to be disproportionate, e.g.: the NIESR report and EHRC 92's experts "evidence of discrimination on the basis of caste exists".

#### Q5. What are the disadvantages (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination?

As per response to Qu 6 it is most unlikely that case will develop, there is no control over when this could happen and if it does it may develop unhelpfully. Complainants (likely not to be well-heeled) are unlikely to risk the cost and uncertainty. The result is that legal protection is denied and delayed, perhaps for ever. The opposite applies to legislation. Some lawyers disagree with the GEO position and fear that the order in E&RRA s.97(3) could be repealed before being carried out by the provisions of s.97(7). This would unacceptably frustrate Parliament's expressed will.

#### Q6. What are the benefits (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?

It will declare formally that such discrimination is against public policy, which in itself will be a deterrent. It will enable cases to be brought cheaply and with certainty and that will also be a deterrent. It will also conform to Parliament's will and that of the UN under our treaty obligations. We suggest that caste be neither classified as a subset of race nor ethnic origin.

#### Q 7. What are the disadvantages (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?

There are none.

Q8. There are also two specific provisions in the Equality Act 2010 that we would particularly like to get your opinion on – the Public Sector Equality Duty and positive action. To what extent do you agree or disagree that the following provisions should apply to caste:

## a) Public Sector Equality Duty

“Strongly Agree”

## b) Positive action

“Strongly Disagree”

Q9. Why do you think this? Please explain the reason for your answers to Q8a and/or Q8b

## a) Public Sector Equality Duty

This is a useful method to enhance equality as long as it does not require monitoring or auditing of caste identity. I believe the PSED is applied in the case of other protected characteristics where no monitoring is done, so it should be possible to do the same with caste.

## b) Positive action

This could prompt monitoring of people’s caste and this should never be done. This is agreed by both those in favour of legislation and those opposing it.

Key summary questions for you to consider on options 1 and 2:

Q10. Which is your preferred option to tackle caste discrimination?

- Option 1: Case-law
- Option 2: Using the legislative duty to insert caste into the Equality Act 2010 as an aspect of race
- Option 3: Other

Option 2 - Using the duty to insert caste into the Equality Act 2010 as an aspect of race

Q11. Why do you think this? Please explain the reasons for your answer to Q10.

Legal protection is unlikely to arise from case law for the reasons shown above. Legislation is Parliament's will and the UN's in accordance with our CERD treaty obligations (legal opinion available on request). Sufficient discrimination has been identified by NIESR, the EHRC and academics such as SOAS’s David Mosse for claims that legislation, so easily passed, that it is disproportionate are disingenuous. The Government has a duty to protect the weak but seems intent on listening to those of high caste who are ideologically opposed to legislation. Protection for the oppressed should not be subject to veto by their oppressors.

Q12. Can you provide any data on costs and benefits, including costs and benefits to individuals, of caste becoming an aspect of race in the Equality Act either through:

(A) A specific change to the legislation

Those discriminated against would be much more likely to seek redress if caste were specified in the Equality Act. Doing so through employment tribunals would be much cheaper than through seeking a development in caste law.

(B) Through reliance of case-law following the judgment in *Tirkey v Chandhok*?

No benefits and much higher costs, therefore those suffering discriminated against will not receive legal protection. As above, those discriminated against would be much more likely to seek redress if caste were specified in the Equality Act. Doing so through employment tribunals would be much cheaper than through seeking a development in caste law.

Answer to Qu 6 also applies.

Q13. Apart from the options covered in this document, is there anything else you think Government can do to prevent discrimination on grounds of caste in Britain?

Education is key but not in itself remotely sufficient. Education does not protect the weak against the strong anything like as effectively as protective law. This education would be even more effective if it could be about a law that should exist to outlaw such discrimination.