



General Assembly

Distr.: General
XX January 2020

English only

Human Rights Council

Forty-third session

24 February–20 March 2020

Agenda item 4

Human rights situations that require the Council's attention

Written statement* submitted by National Secular Society, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 January 2020]

* Issued as received, in the language(s) of submission only.

Statement on caste discrimination

Recommendation shown in bold. Underlined emphasis is added.

SUMMARY

The UK Government has failed to comply with the UPR recommendation in 2012 to legislate to outlaw discrimination on the grounds of caste.

It has declined to legislate despite receiving a reminder from the Committee on the Elimination of Racial Discrimination in 2016 and a direction from the UK Parliament to do so.

Instead, it purports to believe that protection should be provided through the evolution of case law, which may never happen and, even if it does, may not be adequate.

We call for the Human Rights Council, the Committee on the Elimination of Racial Discrimination and State Parties to strongly encourage the UK Government to comply with its treaty obligations in respect of caste discrimination by amending the Equality Act to outlaw discrimination on the grounds of caste.

TIMELINE OF FAILURE TO ACT ON IDENTIFIED CASTE-BASED DISCRIMINATION (2010) AND UPR RECOMMENDATIONS (2012)

In 2010, a report commissioned by an outgoing Government¹ found evidence of discrimination on the grounds of caste. Despite not being a quantitative study of discrimination, the report estimated that those of low caste in Britain numbered “50,000 to 200,000 or more”.

The report identified caste-based discrimination in several areas, including employment, to which the Equality Act applies for other protected characteristics. Such caste-based discrimination includes: “work (bullying, recruitment, promotion, task allocation; provision of services; and education (pupil on pupil

The study found examples of the consequences of caste discrimination in its case studies of: “depression, loss of self-esteem, loss of confidence, loss of employment, reduced career prospects, lower earnings, anger, detrimental effects on education, social isolation, reduced provision of personal care services, and reduced access to ... old people’s day centres”.

In 2012, the Universal Periodic Review (UPR) recommended that the UK “[p]ut in practice a national strategy to eliminate discrimination against caste, through the immediate adoption of the Equality Law of 2010 that prohibits such discrimination, in conformity with

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/85522/caste-discrimination.pdf

its international human rights obligations, including CERD's General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism."²

On 23 April 2013, the UK Parliament instructed the Government to amend the Equality Act to outlaw discrimination against caste, in line with the UPR recommendation³.

Also, in 2013, the National Secular Society was so concerned about the new Government's equivocation over the UPR recommendation that we commissioned a legal opinion to confirm whether, as implied in the UPR recommendation, it amounted to a treaty obligation.

The opinion concluded that it did: "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. Further, the violation cannot be justified, either in principle or on the facts, by the necessity of either further evidence gathering or consultation." We delivered the opinion to the Senior Minister of State for Faith and Communities.

On 6 November 2013, Ms. Navi Pillay, United Nations High Commissioner for Human Rights, gave a keynote speech in London to a meeting on caste-based discrimination in the United Kingdom organised by the Anti Caste Discrimination Alliance, having learned that the Government 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."

In 2014, HMG told the UN in the mid-term government UPR report⁴ that "the UK has changed its position to full support of ... Recommendation 110.61 ... Recommendation 110.61 enjoys the support of the UK. 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."

In 2015 the National Secular Society again asked the Government to legislate. They declined to do so by stating in their reply⁵ that: "We see the development of case-law that provides protection against [caste discrimination] as helpful ...".

A counter-argument to this is that there is no guarantee that there will ever be a precedent-setting case providing such protection. There could even be a precedent set that reduced protection against caste discrimination.

² See 110.61 on page 18 of the 2012 UPR recommendation on the UK, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/150/31/PDF/G1215031.pdf?OpenElement>

³ <http://www.legislation.gov.uk/ukpga/2013/24/part/6/crossheading/caste-as-an-aspect-of-race>

⁴ See pages 7 and 78 of the UK Government's mid-term UPR report, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/418272/uk-upr-mid-term-report-2014.pdf

⁵ <https://www.secularism.org.uk/uploads/caste-discrimination-geo-caroline-dinenage-mp-september-2015.pdf>

On 26 August 2016, the Committee on the Elimination of Racial Discrimination's Concluding Observations on the UK⁶ reads as follows (emphasis in original and showing evident frustration):

"C. Concerns and recommendations Implementation of the Convention:

7. In particular, [the Committee] 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. ... 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;"

On 19 September 2016, the National Secular Society raised concerns at the Human Rights Council in a verbal statement under Item 4 that the Government had changed its mind once more and now again opposed legislation⁷. We also alerted the Council to the forthcoming public consultation process now focussing on whether legislation was necessary, rather than how it should be framed.

In 2017, the Government undertook a public consultation, rather later than 2014 which was when it had informed the UN it was anticipated to take place.

More concerning, the Government did not seek views from the consultation on "the detail of the prospective legislation" as the UN had been informed it would. The consultation was instead on "*whether* additional measures are needed to ensure victims of caste discrimination have appropriate legal protection and effective remedies under the 2010 Equality Act"⁸ (emphasis added).

The consultation questions had the effect of encouraging respondents to prefer awaiting the evolution of case law rather than back legislation, which could be quickly passed (as there is enabling legislation) and be precisely drafted. In contrast, evolutions in case law may not achieve the objectives set out in the recommendation 110.61. As noted above, the Government has no control over when case law would evolve in this area, if it ever does. Such cases are notoriously unpredictable and expensive to mount as they need to go to appeal to set a precedent.

Those perceived to be of low caste and therefore the most likely to need protection are unlikely to have the funds to mount such a challenge. It is difficult to escape the conclusion that the Government's stance amounts to a covert refusal to implement recommendation 110.61.

There have been several debates in Parliament in which the Government has been urged to bring forward legislation to outlaw caste discrimination.⁹

⁶ ref CERD/C/GBR/CO/21-23

⁷ <https://www.secularism.org.uk/news/2016/09/nss-intervenues-at-un-human-rights-council-over-uk-failure-to-outlaw-caste-discrimination/>

⁸ <https://www.gov.uk/government/news/caste-discrimination-consultation>

⁹ <https://www.secularism.org.uk/uploads/caste-discrimination-briefing-1.pdf>

We deeply regret that the UK Government has shown so little concern to protect the victimised and ask that it complies with its international obligations by undertaking to immediately insert a provision to outlaw discrimination on the basis of caste into the Equality Act, something which can be achieved almost effortlessly by secondary legislation.

We encourage the HRC, CERD and State Parties to strongly encourage the UK Government to comply with its treaty obligations in respect of caste discrimination by amending the Equality Act to outlaw caste-based discrimination.

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