
CASTE IN GREAT BRITAIN AND EQUALITY LAW: A PUBLIC CONSULTATION

Response from Humanists UK, September 2017

About Humanists UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

Humanists UK is the only national humanist group accredited at the UN Human Rights Council, where we make interventions at each session on global issues of concern, including caste discrimination. We work closely with the International Humanist and Ethical Union (IHEU); the President of which is also the Chief Executive of Humanists UK. IHEU work extensively to highlight all forms of caste discrimination, not only in South Asia but in Nigeria, Yemen, Gambia, Japan, Korea, and their respective diasporas in the UK. It has hosted two World Conferences on Untouchability, the first of which was in London. At the second conference delegates agreed to the Kathmandu Declaration on Untouchability, which called upon governments and policy makers to take up the eradication of caste discrimination as an urgent priority in domestic and international policy.

Our position

At the first IHEU World Conference on Untouchability in London in 2009, the Vice-Chair of the Human Rights Committee of the House of Lords, the late Lord Avebury, called for protection against caste-based discrimination to be added to the Equality Act 2010 (then still going through Parliament)¹. Over the course of the intervening eight years Lord Avebury's case has been greatly strengthened by substantial evidence, put forward by government-commissioned studies and campaign groups, that caste discrimination not only exists in the UK, but could adversely affect between 50,000 and 200,000 people², who through only some accident of birth and parentage are deemed to be of a lower, inferior order of humanity. As humanists, we do not believe that anybody is of a lower, inferior order, as we do not recognise such differences of treatment that have no rational basis at all.

We advocate that caste should be added as a separate aspect of race as a protected

¹ Speech by Lord Avebury. IHEU World Conference on Untouchability, June 2009.

<https://www.secularism.org.uk/uploads/lord-avebury-speech-on-untouchability.pdf>

² Hilary Metcalf and Heather Rolfe, 'Caste discrimination and harassment in Great Britain' *National Institute of Economic and Social Research*, December 2010.

characteristic alongside colour, nationality, and ethnic or national origins in the Equality Act 2010. This approach will not only reduce the extent to which such discrimination and harassment occur and provide an independent means of redress for victims, but make it easier for individuals and organisations affected to recognise the problem. Far from promoting, creating or entrenching ideas of caste, the legislative approach would create a greater awareness and reduce the acceptability of caste discrimination with employers, educators and providers of goods and services as they develop anti-discrimination policies in line with the new provision. This educational effect is necessary in the UK, where caste and caste-based discrimination is not well understood either by law or the population at large.

Today, discrimination on the basis of caste is a global problem. Outside of Asia, it is thought to take place in over 15 African countries and affect 260 million people worldwide.³ Yet in the introductory text to this consultation the Government expresses concerns that legally prohibiting caste discrimination could lead to 'stereotyping... certain ethnic groups creating potential problems in the harmony of the social fabric of modern British society.' We believe that including caste as a separate aspect of race - rather than as part of ethnic or national origins - is the most effective way to alleviate these concerns. As a separate criterion of race, caste would have a broad definition and would not single out one nationality, religion, or ethnic group as the perpetrators of discrimination. As a separate criterion the prohibition on caste discrimination would be able to operate at a global level, encompassing stratified hierarchical systems not associated with South Asian or Indian ethnicity, such as the Osu caste system which originated in Nigeria and Japanese Burakumin system. Discrimination on the basis of caste is a problem that is not associated with one ethnic group or adherents of one religion, but arises in numerous complex forms in many parts of the world and the law in the UK should reflect this. The UK's equality legislation should not shy away from recognising both the scale and complexity of caste.

Response to consultation questions

Q1. 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?

Disagree

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

There have been attempts internationally to define caste discrimination by reference to 'descent', most notably in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965). Although attempting to establish a prohibition in this way is commendable, it puts a great deal of strain upon concepts of caste, which is rightly an aspect of identity distinct from ethnic origins and descent. There are conflicting interpretations as to the origins of the Indian caste system and its status within Hinduism. However, it is not clear that Dalits share the cultural, linguistic, or historical ties that would define them as a distinct ethnic group, such as Jews or Sikhs. Dalits only emerged in India as a distinct political and social entity in the early part of the twentieth century and, despite a shared experience of discrimination, were not linked by geography, location, language, or a wider shared history. They do not share a common sense of descent nor any of the other protected characteristics that currently define race (colour or nationality) in the Equality Act 2010. Caste, although often being a characteristic inherited parent to child, is a not necessarily an aspect of ethnic or

³ International Dalit Solidarity Network. <http://idsn.org/caste-discrimination/>

national identity.

This distinction is recognised by most countries who have legislated to eradicate caste discrimination, where caste is cited as a separate characteristic alongside ethnicity. This is the case in Mauritius where the constitution prohibits discrimination on the grounds of 'race, caste, place of origin, political opinions, colour or creed'⁴ and the Caste Based Discrimination and Untouchability Act 2011 in Nepal, which cites 'caste, race, descent, community or occupation'⁵ as separate characteristics. Most significantly, this is the approach taken by India in its constitution (Article 15) which specifically prohibits caste discrimination. Therefore, to legally define caste as an aspect of descent (in turn an aspect of ethnic origin) would be at odds with how states affected by caste systems have sought to legislate and how caste discrimination is experienced by tens of thousands of people living in the UK and millions internationally. The UK should seek to learn from the experience of these nations and emulate the legislation they have successfully enacted.

When examining caste outside of the South Asian systems, it becomes apparent that the concept of ethnic origin does not capture the type of discrimination that is occurring. For example, in his appraisal of the Osu caste system in Igboland in Nigeria, Francis Onwubuariri defines an Osu, a person of low caste, as a 'slave of the deity dedicated to perform some menial functions which may include sacrificial functions.'⁶ In contrast to the view that caste is an unalterable aspect of descent the 'osu caste system is an inventional, conventional, religious proposition established... through religious ceremonies... to serve a religious purpose' and is bound up with traditions of slavery. Crucially, descent is not the only determining factor in a person being branded an Osu, where the ostracised person's status is determined by the community and confirmed by religious ceremony.⁷ The Osu system is just one of numerous forms of caste discrimination currently in operation around the world and with the potential to affect communities living in the UK. Yet it is hard to see how a victim of the Osu system could find redress under the concept of ethnic origins. The order mandating the Government to include caste in the Equality Act 2010 is a unique opportunity to abolish caste discrimination in all of its forms. It would be a mistake for the Government to limit the scope of the legislation to focus on just those systems, primarily the Indian caste system, which are supposedly based on the concept of descent.

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.

In their socio-legal review of caste in Britain, Meena Dhanda, Annapurna Waughray et al. concluded that 'the complexity of caste may be more readily acknowledged if caste is included as an independent aspect of race, rather than being subsumed under ethnic

⁴ Constitution of Mauritius, article 16.

<http://www.cpaafriicaregion.org/sites/default/files/attachments/pdfs/constitution-mauritius.pdf>

⁵ Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011), Nepal.

http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_190732.pdf

⁶ Francis Onwubuariri, 'Appraising the Osu Caste System in Igbo Land within the Context of Complementary Reflection', *African Philosophy and General Issues in Philosophy*.

<http://www.frasouzu.com/Issues%20and%20Papers/Onwubuariri%20Francis%20on%20OSU%20CASTE%20SYSTEM%20IN%20IGBO%20LAND.pdf>

⁷ Ibid.

origins.⁸ This call for greater clarity arose because it became clear from the employment tribunal cases in the UK and international examples that such a definition of caste was too limited in its scope. For example, caste was dismissed as a grounds for complaint from the Naveed v Aslam case, not only because the law was unclear, but because the complainant recognised that both he and the respondents were of the same Arain caste. The tribunal concluded therefore that his maltreatment could not have originated from his ethnic origin. What the tribunal failed to recognise was the complexity of caste identity, where sub-castes or *jatis* can exist within a caste and could lead to discrimination. This led to the court dismissing his claim as a matter of class differences rather than rightly as an incidence of caste discrimination. It is likely that if caste is left as an aspect of ethnic origins this will lead through case law to a very narrow definition of caste in which complexities, such as sub-castes and sub-groups, including those within the Dalit caste, will not be covered. It will create a legal situation where victims can seek legal redress only against members of distinctly separate castes, when this is not how discrimination is actually experienced by the victim.

It is also clear from the Naveed v Aslam case that the concept of caste based on descent does not take into account the possibility of social mobility within a particular caste. In dismissing caste as a grounds for complaint, the employment tribunal stated 'we consider that it is quite impossible for the Claimant's caste to fall under the existing definition of ethnic origins because of the Claimant's clear acceptance that movement within the Arain caste is possible.'⁹ The concept of ethnic origins fails to appreciate the nuance of the caste identity, that discrimination may be experienced differently by different groups, or that social structures may evolve over time and place. A person might be able to improve their social standing within a caste without this nullifying the concept of caste being part of their identity. They could still experience discrimination from members of higher castes or subcastes within their own and therefore have legitimate grounds for redress. Currently the concept of caste as part of ethnic origins has been shown to not cover cases involving a degree of social mobility.

This case illustrates one of the main problems with the case law approach. Both parties shared a common sense of ethnic identity and descent. Yet there was evidence that caste remained a dividing aspect between them. It is a characteristic unique and apart from ethnicity. It is clear that caste cannot be adequately covered within ethnic origin.

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, either social or economic, for using case-law to establish a legal ban on caste discrimination over that of including a specific prohibition on the face of the Act. The Government has cited two benefits to the case-law approach which appear to be mutually contradictory and should also be dismissed on matter of principle.

The first argument put forward in support of case-law is that it is the Government's opinion that case-law has already established that caste discrimination is prohibited and that no further legislation is required. However, a careful examination of the state of current case-law shows that this is not the case - as described in detail in Q5. The second argument put forward in support of case-law is that - in contrast to adding it as a characteristic in its own right - it will not be prohibitively expensive to employers to

⁸ Meena Dhanda, Annapurna Waughray et al. Caste in Britain: Socio-legal Review. *Equality and Human Rights Commission Research report 91*, p14.

<https://www.equalityhumanrights.com/sites/default/files/research-report-91-caste-in-britain-socio-legal-review.pdf>

⁹ Ibid.

implement. Taken together these two arguments are contradictory. If the law already covers caste, that is a cost to employers anyway. If putting 'caste' into the Equality Act merely clarifies matters it does not increase the cost at all. An increase in cost would only be incurred if adding 'caste' specifically to the Act added something new which was not covered elsewhere. So by saying that the legislative route would be too expensive for employers, they admit that caste is not already covered by case-law.

Moreover, the cost argument should be dismissed on principle. Lord Deben made this point very succinctly in the House of Lords, 'I really hope we hear no more about the cost argument. If we do, we should be saying that people cannot be discriminated against unfairly, wrongly and wickedly but that because it is expensive to deal with it, we are not going to deal with it.'¹⁰ On principle the Government has committed to eradicating caste discrimination, regardless of the cost involved.

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

Since the addition of caste to the Equality Act 2010 was first proposed, there has been a dearth of cases brought before UK courts relating to caste discrimination and not a single piece of binding case-law that has satisfactorily established that caste discrimination falls under the auspices of ethnic or national origins. The lack of cases is surprising when such discrimination is estimated to affect such a large group within the population - more than those affected by other protected characteristics such as gender reassignment. This suggests that the lack of clarity in the law is a deterrent to bringing cases and so relying on case law to establish that caste falls under ethnic origin is not sufficient to provide protection. A greater clarification of the law is required and this could only meaningfully be achieved through the addition of caste as a specific subsection of race, with a clear definition that recognises aspects of caste that do not arise as a result of a person's descent: such as the concept of 'clan', the practice of slavery, the role of occupation in determining caste, and the interplay of caste and religious beliefs.

There are only three legal cases in the UK (Naveed v Aslam (2012), Begraj v Heer Manak Solicitors (2014) and Tirkey v Chandhok (2014)) where caste discrimination has been included in the grounds of complaint and in which there has been an attempt to interpret the current prohibition on discrimination on the basis of ethnic origin as including caste. The outcome of these cases was contradictory and unhelpful in establishing this interpretation.

Firstly, all three cases were taken before employment tribunals and not the High Court. Although employment tribunals (or industrial tribunals in Northern Ireland) are a formal part of the legal system, and deal with most legal employment matters, a judgment from a tribunal is not binding on another tribunal or court.¹¹ Crucially, judgments made by an employment tribunal do not form case law. Therefore, there has been no legally binding example of case law to suggest that currently legislation on ethnic origin is adequate. Any flexibility the tribunal finds in the law could be overruled in a later case that reaches the appeal stage. Clarification would be better sought in statutory legal provision. No other issue of discrimination, such as gender, race, or religion, has been left to the judgment of employment tribunals to resolve without statutory legal backing. There seems no valid argument that caste should be treated differently from any other form of discrimination which we deem unacceptable in our society.

¹⁰ Lord Deben (HL Deb 22 April 2013).

¹¹ Employment Law Clinic, About Employment Tribunals.

<http://employmentlawclinic.com/employment-tribunals/about-employment-tribunals/>

Secondly, the *Naveed v Aslam* and *Tirkey v Chandok* cases produced contradictory judgments on this matter. Although the Tribunal in the latter concluded that ethnic origin is a 'wide concept... It can therefore be argued that "caste" is already part of the protected characteristic of race, purely by reference to section 9(1),'¹² the Tribunal in the former case found the opposite to be the case. The judge stated that 'no order has yet been made extending section 9 of the Equality Act 2010 so as to provide for caste to amount of itself to an aspect of race' nor could it adequately fall under ethnic origins as this was not clearly defined in relation to caste.¹³ So it was dismissed as a ground of complaint. Moreover, the judge in *Tirkey v Chandok* made it clear that he was dealing only with the facts of the case and not making a more general point about the law.¹⁴ The judgment was not intended to remedy caste discrimination more widely. The Equality and Human Rights Commission commented that the judgment 'means not all victims of caste discrimination will find remedy under the existing law... Thus, the legal position remains unclear'¹⁵ and thereby inadequate. Although it is possible that a further case could be taken to firmly establish a precedent in case law, this could bring further complexity to an already complicated issue (as described below), which could be better solved by legislation. In a joint statement to the Coalition Government in 2014 over 50 groups working for racial equality perfectly summarised the position of the ethnic origin approach. They stated that 'what has happened so far in *Tirkey v Chandok* is the beginning, not the end. The Government should not use this case as an excuse not to implement the law agreed by Parliament in April 2013 and make clear on the face of the legislation that caste is one of the protected characteristics.'¹⁶

Thirdly, it is clear that a case law approach would fall short of our international obligations to the UN Committee on the Elimination of Racial Discrimination (CERD) Recommendation 29 on caste. As Lord Cashman commented, it clearly obligates the UK to 'put into 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 its international human rights obligations.'¹⁷ The fact that this strategy implied the specific inclusion of caste as a separate aspect of race was underlined by Navi Pillay, UN High Commissioner for Human Rights, in a 2013 speech before the House of Lords. She stated that 'in 2003, CERD, while welcoming the strides taken in the United Kingdom to combat discrimination, called for the inclusion of a *specific* prohibition of discrimination on the basis of caste in UK legislation... making the United Kingdom the first country in Europe – and the first outside South Asia – that will stipulate *explicitly* in law that caste based discrimination is banned.'¹⁸ It is clear that waiting for case law to fully establish whether caste can be construed under ethnic origins does not constitute a national strategy and falls short of what the Government is mandated by the UN to do.

Finally, there is a concern that if the prohibition was established through case-law, it is

¹² Meena Dhanda, Annapurna Waughray et al. *Caste in Britain: Socio-legal Review. Equality and Human Rights Commission Research report 91*, p15.

¹³ *Ibid.*, p14.

¹⁴ Lord Harries of Pentregrath (HL Deb 11 July 2016)

¹⁵ *Ibid.*

¹⁶ 'Joint Statement to the Coalition Government that strongly calls on the Government to implement the law on Caste-based discrimination in the UK without further delay', 10 June 2014. <http://acdauk.org.uk/pdf/Joint%20Statement%20-%2010%20June%202014.pdf>

¹⁷ Lord Cashman (HL Deb 11 July 2016)

¹⁸ Keynote speech by Ms. Navi Pillay United Nations High Commissioner for Human Rights, London, 6 November 2013, <http://www.secularism.org.uk/uploads/keynote-speech-on-caste-discrimination-the-uk-by-un-high-commissioner.pdf>

likely that the definition of caste would only be specific to the type of discrimination brought forward by the case. It is likely to only refer to cases based on the South Asian system. Not only would this fail to eradicate all forms of caste discrimination within Britain: it could lead to the impression of Indian and South Asian communities being unduly targeted. This problem would not arise if caste was added to the Equality Act in its own right, giving the Government greater control over the definition and scope of the prohibition.

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

In addition to those benefits cited elsewhere, adding caste to the face of the Equality Act 2010 is likely to have a positive educational impact. It will raise awareness of the existence of caste discrimination, offer a meaningful means of redress for victims and underscore the Government's position that discrimination on the basis of caste is unacceptable in British society. The failure to insert caste into the Equality Act will send a strong message that as far as the Government is concerned, and despite its protestations, victims of caste discrimination are seen as less worthy of protection than other protected groups. Lord Harries of Pentregarth has commented on this issue:

*'As we know with all other protected characteristics - gender, race, religion and sexuality - the law has had a hugely educative effect. It cannot completely change what goes on in people's minds and we still get instances of sexist, racist or homophobic abuse, but no one would deny that the law has brought about a fundamental change for the good in this area.'*¹⁹

Such an educational effect on caste discrimination has not been shown to have occurred either through a community-based approach or through reliance on case-law. In 2010, the Government commissioned research into the prevalence of caste prejudice and discrimination, which was carried out by the National Institute of Economic and Social Research. The study found no clear evidence that the extent of caste discrimination and harassment was changing over time, suggesting that educational approaches, touted as an alternative to legislation, have not been effective in addressing the issue. This study recommended that:

*'To reduce caste discrimination and harassment the Government might take educative or legislative approaches. Either would be useful in the public sector. However, 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.'*²⁰

Despite this recommendation, in 2013 the Coalition Government unveiled plans to roll out a pilot educational programme led by the Talk for a Change organisation to address caste in Hindu and Sikh communities.²¹ However, it seems that this pilot never got off the ground. It has been 'paused' since 2013 and has published no evaluation of its work

¹⁹ Lord Harries of Pentregarth (HL Deb 11 July 2016).

²⁰ Hilary Metcalf and Heather Rolfe, 'Caste discrimination and harassment in Great Britain' *National Institute of Economic and Social Research*, December 2010, vi.

²¹ Department of Culture, Media and Sport, 'New education package to help stamp out caste discrimination in communities' 4 March 2013.

<https://www.gov.uk/government/news/new-education-package-to-help-stamp-out-caste-discrimination-in-communities>

to date.²² When contacted by Humanists UK about this programme Talk for Change Director Nicola Sugden commented, 'due to very complex issues surrounding different perspectives on the nature of caste this did not in the end come to fruition.' This suggests that without statutory backing caste remains too contentious an issue to be resolved in this way, even in the light of the *Tirkey v Chandhok* case.

Furthermore, although the aim of fostering conversations about caste between affected parties is commendable, it is hard to see how this approach could address discrimination in employment as it does not involve employers directly but only organisations that are either for or against legislation. The Government's hope that caste is somehow unique in being susceptible to treatment merely by education and conciliation seems to run counter to the history of racial discrimination in the UK and has been abandoned by other caste-afflicted nations including India. It is time for a legislation, which has been shown to have an educative impact in other areas of discrimination.

Q7. What are the disadvantages (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?

In debating this issue in the House of Lords, Lord Popat listed several disadvantages to amending the Equality Act 2010 to include caste as a specific aspect of race including: reaching a consensus on the definition of caste; questions over the actual level of caste discrimination in the UK; and whether it would have an adverse effect upon the British Hindu community who might be stigmatised by being associated with caste. We would like to address and dismiss these concerns and demonstrate that legislation is the best course of action.

Firstly, finding a workable definition of caste is possible and, as cited above, has been done in other countries such as Nepal, Mauritius, and indeed in India. In a UK context, such a definition should include different caste systems across the world, including those of African, Japanese, and other Asian origin, and take account of sub-castes and the degree to which a person may experience social mobility within a caste. Ultimately, it is the responsibility of government to find a working definition that meets these criteria. The lack of consensus - or a perceived lack of consensus - on this issue is not a valid reason for not trying at all to solve the issue by taking action to legislate. Not even trying is, surely, even more problematic.

There are two issues that need to be raised in regards to the number of people in the UK who could potentially be affected by caste discrimination and legislation to outlaw it. Firstly, it cannot be argued that the decision to legislate should be taken on the basis of the number of individuals affected. This is a moot point. The Government, on principle, has committed to eliminating discrimination in all of its forms, whether the individuals affected belong to a small or wide section of the community. As Lord Singh of Wimbledon stated: 'in this debate we have had some widely improbable figures on the number of Dalits in the UK. No such playing with figures is necessary. Whatever the numbers, that which is evil remains evil and Dalits are fully entitled to protection against discrimination, whatever their number.'²³ This argument was not made about any other protected characteristic in the Equality Act, such as gender reassignment, and there is no compelling reason why caste discrimination should be treated differently.

Secondly, not only is this argument besides the point, it is also untrue in point of fact. The 2010 government study cited above identified evidence that caste discrimination

²² Talk for Change, Caste Education Projects.

<http://www.talkforachange.co.uk/our-work/case-studies/caste-educational-projects/>

²³ Lord Singh of Wimbledon (HL Deb 22 April 2013)

was occurring in the workplace, in the provision of services and with how schools dealt with pupil on pupil bullying. It estimated that there is a minimum of 50,000 to 200,000 people deemed to be from lower castes living in the UK, including 35,000 Shri Guru Ravidass, a caste that contains Sikh members, and 5,000 Ambedkarites, a caste that has both Buddhist and Christian members.²⁴ There are also thought to be 200 Dalits of Nepalese descent resident in the UK, of whom 100 are in the British Gurkha regiment.²⁵ These figures are broadly similar to those produced by the Dalit Solidarity Network UK (DSUK), who believe that there are approximately 250,000 Dalits living in the UK. DSUK states 'while individuals of Dalit origin and their descendants no longer pursue the culture-specific menial ('polluting') occupations traditionally associated with their caste status in the UK, the 'untouchability mindset' persists in the form of direct and indirect discrimination... Therefore it is of little surprise that such a deeply entrenched form of discrimination also exists within the diaspora communities in the UK.'²⁶

One of the main arguments against legislating on caste is that the Hindu community feels deeply insulted by the accusation that caste, which remains endemic in South Asia, has been imported by their community to the UK and that attempting to legislate against it would not only stigmatise their community but entrench the notion that caste exists in the UK. As stated above there are numerous caste systems in operation around the world which have diasporas in the UK, many that do not share a history with Hinduism. Caste is thought to affect 260 million people worldwide.²⁷ The International Dalit Solidarity Network states that caste-affected countries include 'Bangladesh, India, Japan, Nepal, Pakistan, Sri Lanka, Senegal and Yemen and [it] has solidarity networks in Denmark, Finland, Germany, Netherlands, Sweden and the UK.'²⁸ If the Government is committed to eliminating all forms of discrimination, as it claims, the scope of the Equality Act should cover and be seen to cover all victims of caste discrimination.

Moreover, even the South Asian caste system is not associated with one particular religion. It is significant that this proposal is to add caste under the auspices of race rather than religion in the Equality Act. Caste is a distinct social and cultural phenomenon which cuts across the religious divides between Hindus, Muslims, Sikhs, Christians, and Buddhists. In 1986, Pope John Paul II called upon Roman Catholic Bishops in India to reject caste divisions within their churches, a call he repeated during a visit to India in 2003.²⁹ The same plea was made this year during the London Dalit Conference to Pope Francis to end caste discrimination in the Catholic Church within his reign. Such divisions have existed in the Christian communities in India since the first churches were founded there shortly after the time of Christ. In fact the Loyola College in Chennai, which trains Jesuit priests, reserves 30 percent of its places for Christian Dalits. Caste divisions among Muslims in India can be traced back to the 14th century when Ziauddin Barani, who was the official cleric of the Tughlaqs, issued a decree formally dividing the Muslim population into two distinct castes. Despite Guru

²⁴ Hilary Metcalf and Heather Rolfe, 'Caste discrimination and harassment in Great Britain' *National Institute of Economic and Social Research*, December 2010, p19-20.

²⁵ Ibid.

²⁶ Dalit Solidarity Network UK and International Dalit Solidarity Network, 'Caste-based discrimination in the United Kingdom' July 2011.
http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/UN/TB/CERD79_UKreport.pdf

²⁷ Joint declaration and global call Action to Eliminate Caste-based discrimination, International Consultation on Caste-Consultation Discrimination. 29 November - 1 December 2011. Kathmandu, Nepal.

http://idsn.org/wp-content/uploads/user_folder/pdf/New_files/IDSN/Consultations/IC_Declaration_and_Recommendations.pdf

²⁸ Ibid.

²⁹ 'Pope condemns caste system' *The Christian Post*, 25 November 2003.

<http://www.christianpost.com/news/pope-condemns-caste-system-930/>

Gobind Singh officially abolishing caste-based inequality between Sikhs in the 17th century, discrimination and caste-based identity still persists within Sikh communities. Caste is a phenomenon separate from, and transcending religion. This distinction is understood in other countries that suffer from caste discrimination. Lord Deben made this point forcefully in 2013,

*'The idea that passing this law would in some way be insulting to Hindus seems to me to be absolutely outwith sense, and we have to make that clear. All we are saying is that we would do in this country what other countries have already done. It has not been seen as an insult to religion there, so that is not a reasonable argument.'*³⁰

Finally, the argument has been put forward that enacting this law would entrench the notion that caste exists in the UK and would undermine work that has already occurred to remove caste from all aspects of life. There is concern that some people would not wish to disclose their caste identity in any monitoring. In the absence of effective educational or legal redress it is hard to see how further progress can be made without statutory backing. This line of argument greatly resembles those put forward against legislation on racial discrimination in the 1950s and 1960s, which no one would now argue has had a detrimental effect on eradicating discrimination. There is no reason to assume that caste legislation would have a different effect. Adding caste to the face of the Act will clarify that caste discrimination is against the law and offer a legal means of redress for victims. It will not of itself require anyone to disclose their caste identity in any wider monitoring of caste. The guidance to the Act or secondary legislation could be used to clarify any misunderstanding about what counts as caste discrimination and that employers and public bodies will not seek information about an individual's caste, and that no one will be required to disclose it. These arguments warrant careful consideration of how legislation is enacted, especially with regard to the Public Sector Equality Duty (PSED), but is not a valid reason not to legislate.

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

Humanists UK believes that only section 149(1)(a) of the general duty within PSED should apply automatically to caste. That is the requirement for public bodies to give due regard to 'the elimination of discrimination harassment, victimisation and any other conduct that is prohibited by or under the Act.' We would recommend that sections 149(1)(b) and (c) should not automatically apply to caste. However, a specific duty should be added to the Act which would allow the Equality and Human Rights Commission (EHRC) to undertake enquiries when it has reason (which might include complaints from employees, service users etc.) to believe there may be problems relating to caste and for sections 149(1)(b) and (c) to apply only when the EHRC so requires.

b) Positive action

As above, Humanists UK recommends that the specific provision for positive action should not automatically be applied to caste, as it does to the characteristic of race as a whole. However, we recommend that a specific duty is added to the Act which would

³⁰ Lord Deben (HL Deb 22 April 2013).

allow the EHRC to undertake enquiries when it has reason to believe that a group is underrepresented because of being associated with a particular caste. In these instances the EHRC could require employers and public bodies to take positive action steps to redress caste underrepresentation.

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

a) Public Sector Equality Duty

Throughout this consultation, Humanists UK has argued that victims of caste discrimination should enjoy equal protection under the law as victims from other forms of racial abuse and this is the primary reason for choosing to legislate. However, we recognise that once inserted in the Equality Act, there are exceptions and provisions in the Act that will need to be adjusted to best tackle the problem of caste.

We would not wish to entirely remove caste from the PSED, in particular the mandate for public bodies to specifically take account of the need to eliminate caste, for this would set caste at odds with nearly every other protected characteristic. However, we recognise that there is a general consensus of opinion that it would be counter-productive towards the ultimate aim of eradicating caste to begin systematically collecting data on caste identity in order to fulfil the terms of the PSED. Therefore, we recommend a compromise should be reached. Section 149(1)(a) should apply in relation to caste. The advantage of this is public bodies would have to pay due regard to eliminating caste but would not require them to seek information about an individual's caste. This approach has been taken with marriage and civil partnerships.

Sections 149(1)(b) and (c) - namely to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it - would require collection of caste related data. The Government has made clear that it sees no reason why employees or service recipients should be required or encouraged to disclose their caste. Therefore, we recommend that these sections should not automatically apply to caste, but could be applied at the behest of the EHRC in instances where, in its judgment, there is sufficient reason to believe that caste discrimination is a problem, such as when complaints have been brought to its attention. Under such limited circumstances, the collecting of caste data could be justified.

b) Positive action

As with the PSED, a compromise needs to be struck between the advantages of positive action in eliminating caste and the danger that caste will become entrenched if people are required to disclose data on it. Therefore, we recommend that the positive action provisions do not automatically apply to caste. However, as above, provision should be made for the EHRC to enact positive action where there is evidence that caste discrimination is occurring. Again, under these limited circumstances it may be justified to collect this data.

Humanists UK also recommends that none of the service and public functions, work, or education exemptions that currently apply to race as a protected characteristic as a whole should apply to caste. As caste is a characteristic without basis in biology, nationality, language, or greater sense of cultural identity, it is hard to see how exceptions - such as refusal to accept blood donation or provide foster care - could constitute a proportionate means of achieving a legitimate aim. Therefore, these

exceptions would be inappropriate when applied to caste.

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

Humanists UK recommends that caste, as a distinct aspect of race, is added to the Equality Act 2010 section 9. This section would thereby read:

9 Race

(1) Race includes -

- (a) colour;
- (b) nationality;
- (c) ethnic or national origins
- (d) caste

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

As discussed in detail above, Humanists UK supports the specific inclusion of caste as an aspect of race in the Equality Act because it is the most effective action for the Government to take to eliminate caste discrimination. It has become clear from the few cases that have been brought before employment tribunals that the law as it stands is unclear. These cases have failed to establish whether caste is already prohibited under the ethnic or national origins provision of the Act and of themselves do not form binding case law on this subject. Therefore the main alternative to the legislative route we are recommending has been shown to be inadequate. The legislative route is required to bring clarity to the current situation.

We believe that all forms of discrimination on the basis of an indelible, or perceived indelible, characteristic is fundamentally unjust and should be prohibited by law. Making caste discrimination illegal, and seen to be illegal, on the face of the Equality Act will have a positive normative effect. This has been the case with other protected characteristics already covered by the Act, including racist, sexist, and homophobic behaviour. We believe that a provision for caste will have a similar effect.

For more details, information and evidence, contact Humanists UK:

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