

FREQUENTLY ASKED QUESTIONS

'Caste in Great Britain and Equality Law' Consultation questionnaire (March 2017)

(The FAQs and answers are assembled by a group of concerned organisations and academics committed to removing caste related discrimination in the UK. Please read these along with the [Guidelines](#) to completing the public consultation.)

Introduction

In March 2017, the Government Equalities Office (GEO) released a public consultation on Caste in Great Britain and the Equality Act, which asks: "what is your preferred option to tackle caste discrimination – case law or legislative duty?" By asking this question the Government is implicitly acknowledging that caste discrimination is a problem in the UK. In April 2013, with the passage of the Enterprise and Regulatory Reform Act 2013, a duty was imposed on the Government to include caste as an aspect of race in the Equality Act 2010, but to date the Government has not complied with this duty. Consequently, the Equality Act 2010 still does not expressly prohibit discrimination on grounds of caste.

In July 2013, the Government announced that it would consult on how the duty to add caste to the Equality Act 2010 should be complied with; but the consultation was not issued. Instead, the Government is now consulting on whether caste should be explicitly added to the Equality Act 2010. The public consultation is open until **18th September 2017**. This is the first opportunity for the public to feed back to the Government on the two options they have outlined for legal protection against caste-based discrimination in the UK.

Anyone concerned with the defence of human rights and the protection of British citizens against caste-based discrimination should convey to the Government that the best choice is to add caste to the Equality Act 2010, thus reminding the Government of its 'duty' to make caste-based discrimination, clearly and firmly, unlawful in the UK.

1. What is Caste?

In the recent report [Caste in Britain: Experts' Seminar and Stakeholders' Workshop](#)¹, commissioned by the Equality and Human Rights Commission (EHRC), caste in Britain is described as having both positive and negative features. "In the UK, caste is positively a form of association and social capital among communities of South Asian origin, but negatively a form of social separation, distinction and ranking, that excludes certain groups historically regarded as "untouchable". Caste involves endogamy (marriage within the group) and inherited status, and as a form of social identification is distinct from class, race, and various forms of ethnicity."

2. What is Caste Discrimination? How do we know it is a problem in Britain?

It is discrimination against someone because of their actual or perceived caste identity and/or caste status. Caste discrimination takes many forms in Britain. Research by academics and community organisations in support of those who suffer discrimination shows that services may be denied, rental accommodation withheld and complaints of harassment in the workplace and educational institutions remain unaddressed.

We know that it is a problem because in 2010 the Government commissioned independent research into Caste Discrimination in the UK by the National Institute for Economic and Social Research (NIESR).

¹ <https://www.equalityhumanrights.com/sites/default/files/research-report-92-caste-in-britain-experts-seminar-and-stakeholders-workshop.pdf>

They found strong evidence of caste-based discrimination in the areas covered by the Equality Act 2010. (See [Caste discrimination and harassment in Great Britain](#)). On 28 February 2014, the EHRC published two independent research reports from the project [Caste in Britain](#) confirming the undeniable existence of caste discrimination in the UK in areas covered by the Equality Act 2010.

3. What is ‘Case law’? When and how does case law create legal precedent?

Case law is one of the three principal sources of law in the UK. The other sources are legislation or statutes (Acts of Parliament), and European Union law. Case law refers to the legal principles and rules made and developed by judges in cases that they hear (rather than rules created by Parliament via legislation). Case law is also known as common law or judge-made law.

Precedent: the system whereby a statement of law, or a principle or rule used by the judge or judges to decide a case and which was the reason for their decision, must be followed in all later cases involving similar facts or issues. Judgments in the lowest courts do not establish binding precedents. Lower courts must follow precedent (i.e. apply the legal principles) established by the higher courts in previous cases: this is the “system of precedent”. Decisions of the Supreme Court (the highest court in the land) establish precedents that must be followed by lower courts in all future cases involving similar facts or issues, and can only be overruled by the Supreme Court itself. It is also important to note that legislation can be passed which trumps judicial precedent.

4. Does case law provide sufficient protection for sufferers of caste discrimination?

Case law does **not** provide sufficient protection for sufferers of caste-based discrimination in the UK because at present it provides no guarantee that courts will always interpret the Equality Act as extending to caste. Referring to the case of *Tirkey v Chandhok*, the Government itself acknowledges in paras 3.6 to 3.9 of the public consultation that: “[*The Tirkey v. Chandhok*] judgment was **not** a definitive assessment of whether caste is or is not within the scope of the Equality Act” and “the Employment Appeal Tribunal recognises that some cases where caste is a reason for less favourable treatment may fall outside the current scope of protection of the Equality Act”. Also paras 3.11 and 3.12: “Any claim would need to show that discrimination had been because of the claimant’s descent (and thus their ethnic origins). ... A claim of poor treatment because of caste might fail if a court found it was not related to descent.” The Employment Appeal Tribunal judgment in *Chandhok v Tirkey* does not provide a sufficiently secure precedent. No claimant has yet succeeded in a claim for discrimination specifically on grounds of caste under the Equality Act 2010.

5. If caste discrimination is a problem to be addressed in the U.K., why are there not more legal cases?

The most important factor is that caste-based discrimination is not expressly prohibited in UK law and therefore also unlikely to be addressed through other mechanisms, such as workplace grievance procedures, contributing to the impression that there is no legal basis for a complaint about it. Sufferers may be reluctant to lodge complaints due to fear of revealing previously hidden identities, or due to likely reprisals and community pressure against raising the “caste issue”. Another fundamental factor is the cost of bringing a discrimination claim. In the absence of clear and explicit mention of caste, more time is taken in establishing it as a ground of discrimination in the initial stages of a claim.

6. Why do some people disagree with adding caste to the Equality Act 2010?

There is ignorance about the experience of victims of caste-based discrimination, no doubt because dominant groups are not generally mindful of their dominance. It is when one is victimised and one shares that experience with other victims of discrimination that the truth of group-based discrimination strikes one. The denial of discrimination is difficult to sustain when face-to-face with claimants reporting

their personal experience of caste-based discrimination. There is confusion and misguided fear about monitoring caste. The inclusion of caste in the Equality Act 2010 would not require declaration of caste, if one does not want to disclose it. (Also see answer to FAQs 7, 8, 9, 19 and 20)

7. What aspects of life does the legislation cover?

The Equality Act 2010 protects you from discrimination “by employers; businesses and organisations which provide goods or services like banks, shops and utility companies; health and care providers like hospitals and care homes; someone you rent or buy a property from like housing associations and estate agents; schools, colleges and other education providers; transport services like buses, trains and taxis; public bodies like government departments and local authorities.”

8. If caste is explicitly mentioned in the Equality Act 2010, would it mean that I must disclose my caste when I seek a job, or rent accommodation, or provide services?

No. There would be no need to disclose caste. Those lobbying against the inclusion of caste in the Equality Act 2010 have been misleading on this point. Just as, for example, in the case of age, sexual orientation, religion and belief, maternity and pregnancy, amongst areas covered by the Equality Act 2010, disclosure is voluntary, so too in the case of caste, disclosure would not be a legal obligation when seeking a job, renting accommodation or providing services.

9. If caste is explicitly mentioned in the Equality Act 2010, would the Public Sector Equality Duty in the Act require declaration of caste?

The application of the Public Sector Equality Duty (PSED) is sometimes offered as an example of where monitoring of caste may be needed. But this is not necessary. For example, such monitoring is not done in the area of maternity and pregnancy, even though they are covered by the PSED. The PSED requires public authorities to “have due regard to the need to eliminate discrimination, harassment, and victimisation; to advance equality of opportunity between people sharing a relevant protected characteristic (e.g. race) and those who do not; and to foster good relations between persons sharing a relevant protected characteristic and those who do not”. There is no obligation to monitor people’s characteristics in order to do this. For example, under the PSED public bodies are obliged to create an ethos of good relations and safe environment for pregnant women without having to do a survey of who is or is not pregnant. The same norm can be followed for caste. Public bodies would be obliged to create an environment in which no one is discriminated against because of their caste, without expecting a declaration of caste. The PSED does not require that we should find out who belongs to which caste.

10. In the context of the legislation, what is ‘Positive action’?

A ‘Positive action’ is a measure an employer is permitted (but not required) to use in order to respond to particular needs of disadvantaged and under-represented groups in the workplace. This is different from positive discrimination or quotas which are prohibited by the Equality Act 2010 (section 158). An employer is permitted to favour a candidate (out of two equally qualified candidates) with a protected characteristic when deciding whom to recruit or promote, with the aim of encouraging disadvantaged and under-represented groups in the workforce (section 159 of the EA 2010).

11. I am not of South Asian origin, so why should the legislation on caste concern me?

You may be an employer, service provider or a teacher and have interaction or responsibility for people of South Asian origin. You may either witness caste-based discrimination or have to deal with a case of this form of discrimination. You may be concerned about social justice, equality of opportunity, and the elimination of all forms of discrimination, therefore, the legislation is relevant to you.

12. I am of South Asian origin, why is it good for me that caste be explicitly mentioned in the Equality Act 2010?

If you are discriminated against because of your caste in the workplace, in your access to public services, or at school or further education, you should be entitled to the same level of legal protection against caste-based discrimination by a perpetrator no matter what their caste.

You may either witness caste-based discrimination or have to deal with a case of this form of discrimination. You may be concerned about social justice, equality of opportunity, and the elimination of all forms of discrimination, therefore, the legislation must matter to you.

13. I am an employer; what does addition of caste to the Equality Act 2010 mean for me? For example: will I have to keep a record of the caste of my employees?

If you are an employer, you are responsible for preventing discriminatory practices in any workplace under your control. You may also want to provide comprehensive internal policies and procedures for employees to use in case of grievance or disciplinary action. The Equality Act 2010 provides a legal framework for employers to do this effectively. You may, therefore, agree that it should recognise all characteristics on the basis of which people may face discrimination or abuse. You will *not* need to keep a record of your employees' caste. All you will need is to be aware of the Equality Act 2010 and that you may on occasion have to deal with a case of caste-related discrimination at some point, if you have a workforce which includes people who identify with caste identities and/or caste status.

14. I am Vice Chancellor of a university (Principal of a college/school): does addition of caste to the Equality Act 2010 mean that I have to follow Positive Action with respect to caste?

On the question of the application of s159 of the Equality Act 2010 (positive action), it is common knowledge that the opinion of both sides, supporters and opponents of the addition of caste to the Equality Act 2010, is to disagree with the use of positive action. Therefore, if the government legal drafters follow the mandate of the public consultation, which is a political decision in the end, there should be no requirement to follow positive action with respect to caste.

15. I am an employee: do I have to declare my 'caste' to the HR department/employer?

No. There will be no requirement to declare your caste. It is only if you find yourself subjected to caste-based discrimination and report this to your HR department that you may need to mention the perceived caste status or identity which you believe is the reason why you have been subjected to discriminatory behaviour.

16. I am a student; do I have to declare my 'caste'?

No. There will be no requirement to declare your caste. It is only if you find yourself subjected to caste-based discrimination and report this (to your school or college or university authorities) that you may need to mention the perceived caste status or identity which you believe is the reason why you have been subjected to discriminatory behaviour.

17. I am a finance manager; will Public Sector Equality Duty with respect to caste mean that there will be additional costs for meeting the requirement?

There is no legal requirement to set aside a specific budget, any more than there is for "equal opportunities" training on race, gender etc. There will be some costs, e.g. for preparing training materials and including a paragraph on caste discrimination.

18. What does having an Exception to Equality Act 2010 mean? (Refer to Q. 6,7 and 11)

An "exception" means that in particular contexts even though discrimination occurs, it is allowed, and therefore, not illegal. The Equality Act 2010 has some exceptions which allow employers or organisations, in certain circumstances, to discriminate i.e. where a difference in treatment may be

lawful. For example, a religious organisation can sometimes restrict employment to one sex if the role is for religious purposes; a religion or belief organisation can ask people to sign up to a statement of beliefs in order to become a member; a charity might be able to restrict its activities or its benefits to people with a particular protected characteristic e.g. women, people with a visual impairment. Exceptions applicable to the inclusion of caste in the EA 2010 are described in detail in the [EHRC Report 91](#).

19. What is a ‘genuine occupational requirement’ (GOR)?

A “genuine occupational requirement” means that it may be lawful in limited circumstances to treat people differently when recruiting for certain jobs where the duties of the particular job require it.

20. Why are separate Exceptions or GORs suggested for caste, when it is supposed to be an aspect of race?

Separate Exceptions or GORs could be used to avoid making certain types of caste-based discriminations unlawful. For example, exceptions and occupational requirements could be used when religious practices of a group require that certain rituals be performed by a person or persons of a status/identity in common understanding associated with a caste group. These are matters to be considered when the Equality Act 2010 is amended by adding caste. Disagreement about the exact scope or interpretation of any new exceptions and occupational requirements would be a matter for the courts and/or Parliament to resolve. If you have areas in mind that you believe should be exempt from application of Equality Act 2010, include these in your response to the consultation.

21. Will adding caste to the Equality Act 2010 criminalise activities using caste (for example, organising caste associations)?

No. The Equality Act 2010 is civil legislation, not criminal legislation. It does not criminalise any activities. It makes certain types of discriminatory behaviour unlawful leading to the possibility of a claim for compensation by the victim, but it does not make any behaviour criminal and it does not impose criminal sanctions.

22. We are members of a faith-based (religious) organisation; what would be the impact of adding caste to the Equality Act 2010 on our activities?

None. If caste is inserted into the Equality Act 2010 as an aspect of race, the following exception, which already exists, in the government guidance on the Equality Act will apply: “An association whose main purpose is to bring together people who share a particular characteristic may restrict membership and invitations as a guest to such people.” Therefore, you should be able to carry on unhindered with your culture and traditions. Religious rituals of Hindu, Sikh, Jain, Buddhist, Christian, Muslim or any other religious organisation, for example, forms of worship, choice of religious texts, and choice of food shared should not be affected by the inclusion of caste in the EA 2010, because they would be covered by the exception. The aim of the legislation is not to interfere with religious freedom, protected by the Human Rights Act.

23. How can I participate in the government’s public consultation on caste?

The [Guidelines](#) to the public consultation, which you must read alongside these FAQs, contain a link, which will take you to the online questionnaire. You can also print the questionnaire and email it to the address provided in the link.

Further information

These FAQs have been produced by seven leading UK organisations and academics involved in securing legal protection against caste-based discrimination. For further articles and research or to contact us, visit us at www.casteintheuk.org and email at info@casteintheuk.org.