

ALTERNATIVE REPORT
to the UN Committee on the Elimination of Racial
Discrimination in review of the 21-23 periodic reports of the
United Kingdom

CASTE-BASED DISCRIMINATION IN THE UK

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1. Introduction

1.1 The report is submitted jointly by Dalit Solidarity Network UK (DSN-UK) and International Dalit Solidarity Network (IDSN) to the UN Committee on Elimination of Racial Discrimination (CERD) in response to the United Kingdom (UK) 21-23 reports due for review in August 2016. This report focuses specifically on the issue of caste discrimination in the UK; an issue which was addressed by the Committee in the Concluding Observations from 2011 and mentioned briefly by the UK Government in its report from 2010.

1.2 The report urges the UK Government to take immediate action to adopt the proposed amendment to outlaw caste discrimination in the UK Equality Act 2010. Furthermore, DSN-UK and IDSN call on the UK Government to take specific measures, in accordance with CERD General Recommendation 29, to eliminate this form of discrimination, including adopting a national strategy, undertaking further research, and promoting public awareness of the issue, as recommended in the last section of this report.

1.3 DSN-UK is a network of nearly 100 individuals, Dalit community organisations, faith bodies and international NGOs. Our members include CasteWatch UK in Coventry, Association for Community Cohesion in London and the Federation of Ambedkarite and Buddhist Organisations UK (FABO).¹ Our international NGO supporters include Minority Rights Group International and Anti-Slavery International. DSN-UK works alongside the Anti Caste Discrimination Alliance (ACDA) who submitted a report to Parliament on caste discrimination in the UK in 2009.²

1.4 In 2006, DSN-UK published 'No Escape: Caste Discrimination in the UK' a report on the existence and impact of caste discrimination in the UK.³ It was the first national study that explored this issue and outlined recommendations for further research to develop, capture and understand the complex and wide canvas of caste discrimination in the UK. The study found that Dalits face discrimination in the sectors of employment, healthcare, education and politics. The significance of the report was that it identified the existence of the caste based discrimination in UK for the first time, which gave grounding and impetus to tackle caste based discrimination in the UK.⁴

2. Caste-based discrimination in the UK

2.1 Caste and its ensuing discrimination tend to stay with the South Asian Diaspora, despite people having left their home countries. Exact figures on the numbers of Dalits in the UK are unknown due to issues around identification as a 'Dalit', lack of detailed research, and the

¹ In January 2009 FABO's report 'The Evil of Caste' by the late Mr. Chanan Chahal, Chairman FABO, UK was published in association with DSN-UK and launched in the House of Commons.

² Roger Green & Stephen Whittle, 'Hidden Apartheid – Voice of the Community A Scoping Study into Caste and Caste Discrimination in the UK', Anti Caste Discrimination Alliance (ACDA) 2009

³ Savio Lourdu Mahimaidass & Dr Nidhi Sadana, *No Escape: Caste Discrimination in the UK, Dalit Solidarity Network UK Report*. Dalit Solidarity Network UK, London, 2006.pp.1-24.

⁴ Evidence of Caste Discrimination in the form of case studies and testimonies have been presented to Government by a number of organisations since 2004 in the UK including ACDA, CasteWatchUK, Federation of Ambedkarites & Buddhists Organisations UK, British Asian Christian Council, Shri Guru Valmiki Sabha International, Central Valmiki Sabha International, Association for Community Cohesion, Shri Guru Ravidass Sabha UK (SGRS-UK), the voice for all Shri Guru Ravidass Temples in the UK, Voice of Dalits International, and Dalit Solidarity Network UK.

absence of caste data in the census. However, it is accepted that there is a significant 'population pool' of people of Dalit origin numbering 150,000 to 500,000 and spanning the various sub-continental countries and religions. People of South Asian origin in the UK number 2.3 million or 4% of the total population. Some religious groups are almost wholly from the lowest castes, for example Ravidassia, Valmiki, Ramdasis and Ambedkarite Buddhists. Christians with roots in the Indian sub-continent are also often low caste or Dalit. Unofficial sources claim that the number of Sikhs in Britain is more likely to be around 500,000, and that one third of this number traditionally belongs to the Dalit category.⁵ It has been conservatively estimated that at least 250,000 Dalits live in the UK. This proves the necessity for the Government to include caste-based data in any future census.

2.2 In the UK, the 'untouchability mindset' persists in the form of direct and indirect discrimination. Ancestry is identified in a number of ways, including on the basis of name (although names may be changed), place of origin, former occupation, family members' occupations, place of worship, education, social circle and on the basis of community knowledge. Therefore it is of little surprise that such a deeply entrenched form of discrimination also exists within the Diaspora communities in the UK.

2.3 More recently, Rita Izsák-Ndiaye, the Special Rapporteur on Minority Issues, expressed her concerns about the incidents of caste-based discrimination in her latest annual report, presented to the Human Rights Council in March 2016. She confirmed that caste-based discrimination exists within the diaspora communities⁶, including in the UK, and specifically referred to the amendment in the UK Equality Act 2010, 'instrumental to criminalize discriminatory practices'⁷ in the UK.

3. The CERD observations on caste discrimination and the UK Government's response

3.1 After the last examination of the UK under the CERD in August 2011, the Committee expressed its concerns in relation to caste-based discrimination in the UK in its Concluding Observations⁸ and recommended:

"30. While noting the assertion of the State party that there is no evidence in the State party of the existence of caste-based discrimination to any significant extent in the fields covered by the Convention, the Committee has received information from nongovernmental organizations and from recent research studies commissioned by State party institutions that such discrimination and harassment in violation of the rights to work, to education and to the supply of goods and services does exist in the State party (article 2).

Recalling its previous concluding observations (CERD/C/63/CO/11 para. 25) and its General Recommendation 29 (2002) on descent, the Committee *recommends that the Minister responsible in the State party invoke section 9(5)(a) of the Equality Act 2010 to provide for "caste to be an aspect of race" in order to provide remedies to victims of this form of discrimination.* The Committee further requests the State party to inform the Committee of developments on this matter in its next periodic report."

⁵ "Hidden Apartheid – Voice of the Community", (ACDA), 2009

⁶ Report of the Special Rapporteur on minority issues, A/HRC/31/56, 10.

⁷ Ibid., 22, para 113-116.

⁸ [CERD/C/GBR/CO/18-20](#), pp. 7-8, para 30.

3.2 The UK government did not respond to these recommendations in the follow up communications with the CERD but in its combined 21st to 23rd reports submitted in 2015⁹:

“8. The Government notes the Committee’s recommendation that the Government should invoke the power contained in the Equality Act 2010 to provide for caste to be “an aspect of race”. The Government has agreed that legal protection against caste discrimination is appropriate. A duty now exists within the Enterprise and Regulatory Reform Act requiring the relevant Government Minister to make caste an aspect of race for the purposes of the Equality Act 2010. In Northern Ireland, “caste as an aspect of race” will be considered as part of any review of the Race Relations (Northern Ireland) Order 1997.

9. In May 2013, the UK Government issued its timetable for the introduction of such legislation and preparatory research was commissioned to the EHRC. The reports from that research helped inform government thinking with regard to the legislation.

10. The next scheduled step in that timetable was to conduct a full public consultation seeking views on a possible legal definition of caste itself and identifying what exceptions within the Equality Act should or should not apply to caste. However, the publication of a consultation was delayed pending the outcome of an employment case, *Chandhok v. Tirkey*, that was going through the domestic courts during 2014.

11. In December 2014, the Employment Appeal Tribunal’s judgment in the case opened the possibility that there was an existing legal remedy for claims of caste-associated discrimination under current domestic legislation, namely through the “ethnic origins” element of section 9 of the Equality Act 2010. The Government is carefully considering the implications of that judgment for caste legislation before determining how best to proceed.”

4. UPR recommendation on caste discrimination and the Government’s response

4.1 In 2012 the UPR recommendation 110.61 to the UK stated:

‘Put 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 its international human rights obligations, including CERD’s General Recommendation 29 and recommendations of the Special Rapporteur on Contemporary Forms of Racism’.

4.2 The UK Government’s response was:

‘The recommendation does not enjoy the support of the United Kingdom. The UK Government are currently considering the evidence available to them, such as the report by the National Institute for Economic and Social Research (NIESR), together with the correspondence and representations put forward by both those who want the Government to legislate and those who are opposed to such legislation being introduced before reaching any conclusion on whether or not to prohibit caste discrimination as a specific aspect of race discrimination under the Equality Act 2010’.

4.3 The 2014 mid-term government report for the UPR. UK Government stated that:

‘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

⁹ [CERD/C/GBR/21-23](#), pp.4, para 8-11.

discrimination under s.9(5) Equality Act 2010¹³. A public consultation process on the detail of the prospective legislation is expected later in 2014¹⁴.

4.4 The UK Government has yet to issue the public consultation and the results of its feasibility study undertaken in 2014 have not been published.

5. Compliance with the ICERD Articles 1 and 2

5.1 Article 1, Paragraph 1 (DESCENT)

According to Article 1(1) of the International Convention on the Elimination of Racial Discrimination, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

In 2002, CERD issued General Recommendation 29 (hereafter "CERD GR 29") which confirmed that the term "descent" does not solely refer to "race" and has a meaning and application which complement the other prohibited grounds of discrimination. The Committee also strongly reaffirmed that discrimination based on "descent" includes discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.

5.2 Article 2 (NON-DISCRIMINATION)

According to Article 2 of the Convention, States Parties must condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

In CERD General Recommendation 29, the Committee furthermore calls on States Parties to review and enact or amend legislation in order to outlaw all forms of discrimination based on descent, including discrimination on the basis of caste and analogous systems of inherited status. The Committee also recommends governments to take several special measures and affirmative action to prevent and eliminate this form of discrimination.

6. The journey: caste as a discriminatory factor in the UK's Equality Act 2010

6.1 The Equality Act 2010 was to consolidate and include a complex raft of equality legislation prohibiting discrimination on various grounds.¹⁰

6.2 Since 2005, DSN-UK and other UK Dalit organisations have campaigned for the inclusion of 'caste' as a discriminatory characteristic. Despite this campaign, discrimination on grounds of caste remains outside the existing anti-discrimination provisions. Nowhere is caste explicitly identified as grounds for discrimination. Furthermore, caste is not directly synonymous with race or religion and therefore does not easily fall within existing 'race' or 'religious belief' categories as currently formulated. In relation to criminal law, where the

¹⁰ A table of the protected characteristics and issues covered by the Equality Act can be found on: http://www.equality.salford.ac.uk/cms/resources/uploads/File/equality_act/equality-act-2010-briefing%20just%20table.pdf

burden of proof must be proved 'beyond reasonable doubt', assault, violations and discrimination on the basis of caste are not recognised as an aggravated offence, nor is hostility on grounds of caste recognised as an aggravating feature for sentence as is the case with racially or religiously motivated assault or homophobic or transphobic crime.¹¹

6.3 In 2010 the National Institute of Economic and Social Research (NIESR), commissioned by the UK government, reported that 'Equality Act 2010 provisions on religious discrimination cannot cover caste discrimination and harassment as effectively as caste-specific provisions would'. This is supported by the NIESR report which states: "*Relying on the Indian community to take action to reduce caste discrimination and harassment is problematic*".¹²

6.4 Due to DSN-UK and other Dalit organisations' continued lobbying in the UK through the House of Lords, the Enterprise and Regulatory Reform Act¹³ 2013, amended section 9 of the Equality Act 2010. Originally section 9 provided a discretionary power: "A Minister of the Crown may by order...". The amendment changed "may" to "**must**", thereby requiring the Government to introduce secondary legislation that would make caste an aspect of race, although did not specify a time by which the power must be exercised.

6.5 In July 2013 the government published an indicative timetable setting out the process of evidence-gathering and consultation it intended to undertake prior to legislating, and anticipated that a Draft Order would be introduced to Parliament during summer 2015. The timetable was not put into action and a feasibility study completed in 2014 was never published.

6.6 The government states that its position is now under review in light of the Employment Appeal Tribunal's decision in *Chandhok & Anor v Tirkey* [2014] UKEAT 0190_14_1912, which found that caste discrimination may in certain cases already be unlawful under the Equality Act 2010¹⁴. In response to a Parliamentary Question submitted on 14 December 2015 Baroness Williams of Trafford answered on behalf of the government, explaining that the government is 'currently considering the conclusions and recommendations of the caste feasibility study as part of our wider consideration of the implications of the *Tirkey v Chandok* tribunal judgments'¹⁵.

6.7 The government claims that the case implies there is an existing legal remedy for caste discrimination cases under the "ethnic origin" protected characteristic. However, this assertion is misleading and incorrect. Employment tribunal cases do not create authoritative precedents - they only decide the case on the merits for the individual claimant. There is no guarantee that individual suffering caste discrimination will achieve the same outcome in a future case. Moreover, *Tirkey* was not determined on grounds of race discrimination (with the "ethnic origins" component incorporating caste), but on grounds of indirect religious discrimination. It cannot be said to have created a precedent by which caste discrimination is protected in UK law'¹⁶.

¹¹ Annapurna Waughray, '*Caste: invisible discrimination?*', New Law Journal, Vol. 157, issue 7263, pp. 348 349

¹² Summary- Research findings: Caste discrimination and harassment in Great Britain: Government Equalities Office (GEO) in December 2010. No. 2011 / X.

¹³ [Enterprise and Regulatory Reform Act 2013](#), Section 97

¹⁴ See briefing paper: [The Equality Act 2010: caste discrimination](#), 2015, pp. 5

¹⁵ Question by Lord Lester of Herne Hill on 14 Dec 2015, answer by Baroness Williams of Trafford on 21 Dec 2015.

¹⁶ [CERD, Call for Evidence](#), The Odysseus Trust, 2015, pp.3, para 14 .

6.8 Furthermore, the Equality and Human Rights Commission's (EHRC) research in 2014 highlighted that:

'although it has been ruled by the Employment Tribunal in one case that caste is already incorporated within the protected characteristic of race, the interpretative approach is at present not established. A lower court or tribunal decision is not binding precedent, consistency of outcome in future cases would not be guaranteed, and the principle will remain somewhat precarious. Even a binding precedent can be overturned until a decision is made at the Supreme Court'¹⁷.

6.9 In December 2015, the Odysseus Trust, directed by Lord Lester QC, submitted the following in its CERD Call for Evidence.

'It would be inordinately costly and create years of delay to seek an authoritative ruling by the Supreme Court of the UK. That is why it is important for the Government to perform the duty required by Parliament and the rule of law. Currently equality legislation fails to protect victims of discrimination on the basis of caste or absence of caste, and to meet the obligations imposed by the Convention on the Elimination of All Forms of Racial Discrimination ("the Convention") and International Covenant on Civil and Political Rights.'¹⁸

6.10 At present, section 9 of the Equality Act 2010, as amended in 2013, imposes a duty on the Government to prohibit at some future point caste discrimination by way of secondary legislation. The *Tirkey v Chandok* case does not set legally binding precedent, and therefore anti-caste discrimination legislation in the UK remains a necessity.

7. RECOMMENDATIONS AND QUESTIONS

The UK Government has had eighteen months to assess the implications of the of the *Tirkey v Chandok* case. DSN-UK and IDSN therefore call on the UK Government to take immediate action to adopt the proposed amendment to outlaw caste discrimination. Moreover, we recommend that the UK Government take specific measures, in accordance with CERD General Recommendation 29, to eliminate this form of discrimination, undertaking further research to document and assess the scale and nature of this human rights concern in the UK, and promote public awareness of the issue.

7.1 Immediate implementation of provision to prohibit caste discrimination

Recommendation:

- The UK Government should, without any further delay, activate the caste clause in the Equality Act 2010, thereby taking action to introduce the required secondary legislation in order to outlaw caste discrimination in accordance with CERD GR 29 (para. 1.3 and 1.4).

Question:

- What concrete steps does the Government plan to take to resolutely implement this legislation?

¹⁷ EHRC, [Caste in Britain: Socio-legal review](#), 2014, pp. 25.

¹⁸ Odysseus Trust CERD Call for Evidence <http://www.odysseustrust.org/CERD/CERD.pdf> 2015 pp 2-3

7.2 National strategy and special measures to eliminate caste discrimination

Recommendations:

- The UK Government should formulate and put into action a comprehensive national strategy with the participation of members of affected communities, including special measures in accordance with articles 1 and 2 of the Convention, to eliminate discrimination against members of descent-based groups, as recommended in CERD GR 29 (para. 1.5).
- In this process, the UK Government should consider endorsing the Draft UN Principles and Guidelines on the effective elimination of discrimination based on work and descent as a guiding framework on how to comprehensively address caste discrimination.¹⁹

7.3 Further research and disaggregated data on caste discrimination in the UK

Recommendations:

- The UK Government should conduct periodic surveys on the reality of descent-based discrimination and provide disaggregated information in their reports to the Committee on the geographical distribution and economic and social conditions of descent-based communities, including a gender perspective, in accordance with CERD GR 29 (para. 1.10).

Question:

- How does the UK Government intend to use, follow up, and disseminate information on the findings and conclusions of the Government-commissioned EHRC study published in 2014²⁰?

7.4 Public awareness raising and dialogue with affected communities

Recommendation:

- The UK Government should carry out programmes to educate the general public on the situation of victims of descent-based discrimination, including the prohibition of discrimination on the basis of caste in the UK when adopted, in accordance with the recommendations contained in CERD GR 29 (para. 1.8). Such awareness campaigns could target schools, work places, the public sector, etc.

Questions:

- Which organisations and stakeholders has the UK Government had subsequent representations and/or meetings with to discuss caste-based discrimination in the UK since the ERR Act 2013?
- How does the UK Government intend to ensure a regular and meaningful dialogue with stakeholders in the future?

¹⁹ The draft UN Principles and Guidelines is an outcome of a Sub-Commission study on discrimination based on work and descent, the UN terminology for caste-based discrimination. They were published by the Human Rights Council in May 2009 (A/HRC/11/CRP.3). Although still a draft, DSN-UK and IDSN recommend that governments endorse them as a guiding framework to comprehensively eliminate discrimination based on work and descent.

²⁰ EHRC, [Caste in Britain: Socio-legal review](#), 2014.