

Clause 9 : Race

Amendment 10

Moved by Lord Avebury

10: Clause 9, page 6, line 7, at end insert-

"(5) A Minister of the Crown may by order-

(a) amend this section so as to provide for caste to be an aspect of race;

(b) amend this Act so as to provide for an exception to a provision of this Act to apply, or not to apply, to caste or to apply, or not to apply, to caste in specified circumstances.

(6) The power under section 205(4)(b), in its application to subsection (5), includes power to amend this Act."

Lord Avebury: My Lords, I am not going to repeat the arguments for recognising the existence of caste discrimination here in Britain that were so thoroughly canvassed in Committee. I simply remind your Lordships that the Committee on the Elimination of All Forms of Racial Discrimination found in 2002 that descent includes caste and called on member states of the parent convention, including the UK, to enact domestic legislation to combat such discrimination. When we discussed in Committee a number of different ways of bringing caste into the protected characteristics, my noble friend Lord Lester asked whether the Government were of the opinion that discrimination on the grounds of caste was capable of falling within the concept of race under the law as it stands. He said that if there were to be litigation, the courts would have regard to the fact that caste comes into the definition of racial discrimination under Article 1 of the convention.

We understand that the Equality and Human Rights Commission took that view and therefore concluded initially that the legislation we proposed was unnecessary. But since there is no specific mention of caste in our law, it would be a chancy and expensive business for anybody to try this out in the courts. The EHRC has, I am pleased to say, now agreed to back a suitable case with legal advice and funding, and the Anti Caste Discrimination Alliance and others are actively trawling for an example which fits within the parameters of employment, education, and the provision of goods and services. The EHRC welcomes the amendment as enabling steps to be taken to prevent caste discrimination if the evidence demonstrates a necessity to do so.

Meanwhile, the Government have commissioned further research building on the scoping study published by the ACDA last November to establish the extent of discrimination by caste here in Britain. We are convinced that it will put beyond doubt the necessity for exercising the power in the amendment. That makes sense, and

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we look forward to hearing from the Minister details as to who is being given the job of conducting the research and what its terms of reference and timing will be.

After we considered bringing caste into the Bill in Committee, the Minister invited representatives of some 17 anti-caste organisations in the UK, representing several hundred thousand people, to give their point of view to her and her officials. I think that she will agree with me that this was a totally unprecedented gathering, at which all those organisations spoke with a single voice on the need to seize the opportunity presented by Bill for action against caste discrimination by treating caste as a subset of race. The Minister told us later that she was minded to accept an amendment along these lines. We were very grateful to her for listening for nearly two hours to those organisations in the Committee Room upstairs.

The Leader of the House wrote last week to the chairman of the Delegated Powers and Regulatory Reform Committee saying that the Government were minded to accept the amendment and explaining how proposed subsection (6) might be needed to make exceptions for a provision such as in paragraph 2 of Schedule 2, which limits the definition of race in the public sector equality duty in Clause 148. The reference to "specified circumstances" is required to enable consideration to be given to single-characteristic associations, exempting those associations from the application of the discrimination provisions in Clause 101 but not in terms of colour.

The note accompanying the letter to my noble friend Lord Goodhart also says that when the research shows that there is evidence of caste discrimination occurring in Great Britain, the Government will consider whether exercising the power in the amendment is a proportionate response to the problem. We are content to leave this problem to be resolved when the research becomes available and would ask only for an undertaking from the Minister that she will discuss it with the anti-discrimination organisations at the time, as she has done on this occasion.

This is a textbook example of how democracy should work. At first, the Government were reluctant to put any reference to caste in the Bill, but they listened to the voices of those who were at the receiving end of caste discrimination, and so did the EHRC. There is now the hope that a test case will be taken through the courts under existing legislation. In parallel, the Government have commissioned the research that we believe will demonstrate the proportionality of adding caste to the Bill using these powers. These are important steps towards ending caste discrimination, which is as pernicious as discrimination against persons having any of the protected characteristics already in the Bill. I beg to move.

Lord Harries of Pentregarth: In rising to support the amendment, I join the noble Lord, Lord Avebury, in thanking the Minister for listening carefully for two hours to 17 of the most affected communities in Britain. The noble Lord, Lord Lester, said that such was the sense of passion and momentum at that remarkable meeting that it was like the early days of race relations legislation. There was an extraordinary

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sense of conviction, united passion and momentum. That said, I have to express on behalf of the affected organisations a sense of disappointment that there is not an amendment before us today which puts in the Bill discrimination on the grounds of caste.

I shall make only one point. Everybody has recognised that there is social discrimination on the grounds of caste, but the Government have argued that there is no clear evidence that discrimination is being exercised in the spheres of education, employment and the provision of goods and services. The affected organisations have presented a wealth of evidence to the Government which they maintain shows this, but the Government have so far remained unconvinced; they are therefore commissioning more research, for which we are grateful.

Because of this uncertainty on the part of the Government, it was arranged for me to meet personally and to talk with somebody who claimed that they had been discriminated against on the grounds of caste. This was an extremely well educated person who had been recruited to work in the NHS. He had obtained a good job here, and was well educated, intelligent and very sensible. All was going extremely well until he applied for leave to go back to India for a family event. In the questioning around where he came from and his background, it emerged that he was a Dalit, and he said that the relationship between him and his supervisor immediately changed for the worse in a most dramatic way. His position in the job was made extremely uncomfortable; eventually he was suspended and for a whole year, he was off work. His case was taken up by the union, which managed to obtain £12,000 compensation for him, but it said that it was unable to take it further—and this is the key point—because there was nothing in the law at the moment which made discrimination on the grounds of caste illegal.

I was absolutely convinced that this was a clear case of discrimination. An intelligent, well educated, sensible person, who I am glad to say has now gone on to another job, been promoted, and is doing extremely well, had a most devastating experience. Just one case of discrimination on the grounds of caste is surely enough to make it into the Bill, and of course, there is far more than that.

Like the noble Lord, Lord, Avebury, we look forward to the results of the research commissioned by the Government, and we hope that when they see that research, they will, as he has said, consult the affected organisations. We believe that at that point, the order-making power will be triggered.

4.30 pm

Baroness Flather: My Lords, I want to add a few words and to thank the Government for adding caste to this Bill. This is an enabling amendment, and while it is not exactly what people would have liked, to have got this far is a big thing. I personally am very grateful. I am also looking forward to the research, not only because it will help us to do the right things in the future, but also because it will tell us what exactly is happening in

this field. This is because so far, research has been mentioned on every occasion, but none has been done by any government agency. We look forward to that, and once again, I am very pleased to see such a provision in the Bill.

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The Earl of Sandwich: My Lords, I supported my noble and right reverend friend Lord Harries in the earlier stages of this Bill. I am also grateful to the Government for recognising that this is a major problem. I extend thanks, as the noble Lord, Lord Avebury, has, to the noble Baroness for sitting through what was a momentous meeting of the organisations. I can see that the phrasing of subsection (5)(a) in the amendment is a cunning means of introducing the measure by order, yet I remain uncomfortable with the wording. My noble and right reverend friend Lord Harries has made a powerful case for continuing in this battle for the right legislation. There is still a lot to be done, and I look forward to seeing the issue revived in a more developed form, perhaps in the next Session.

Baroness Warsi: My Lords, I hope that the Minister will excuse me. I am suffering from a migraine; hence I may sound slurred as well, unfortunately. I wish to make one point only in relation to this. I had a lengthy meeting with the Anti Caste Discrimination Alliance. It attended along with CasteWatch, the Dalit Solidarity Network, and the Voice of Dalit. As noble Lords around the House have said, they make an extremely compelling case. The case studies that they have put forward are extremely moving. I agree with the noble and right reverend Lord, Lord Harries of Pentregarth, that it brings back those sentiments from when lobbying was being done in relation to race discrimination. These very sad and moving case studies have been tracked now for a number of years. What came out of that meeting is that this issue has been raised for many years at a national and a European level. Indeed, the Government have been lobbied for many years to try to identify this area of discrimination.

This flagship Bill has been many years in gestation, but now, at the eleventh hour, the Government effectively are having to accept this amendment by way of delay until another day. I am concerned that unfortunately we now have a position where the Government are not saying that this is such an important issue that we accept it and that therefore it should be in the Bill; nor are they saying that they have done the necessary research and inquiries and feel that it is not an issue and therefore should not be in the Bill. They are putting the matter off for another day. We should not be in this position on such an important Bill.

Baroness Thornton: My Lords, this amendment contains a power to add caste to the definition of race in Clause 9. The power, if used, would prohibit unlawful discrimination and harassment because of caste in the same way as for colour, nationality and ethnic or

national origins. The amendment also contains a power to make exceptions to provisions on caste and consequential amendments.

In Committee, I undertook in our debate on caste to come back on Report with more developed thinking. The case for legislating against caste discrimination has been made repeatedly during the Bill's passage with much passion by the noble and right reverend Lord, Lord Harries, and the noble Lords, Lord Avebury, Lord Lester and others, and by many people in the other place. At all stages, we have said that discrimination because of a person's identity or personal characteristics

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is unacceptable in modern Britain. The Government take this issue seriously and are always willing to consider whether there is a case for legislating against caste discrimination.

We have also made it clear that we are not persuaded of the need to legislate immediately on this as matters stand. The evidence to date, including the recent report of the Anti Caste Discrimination Alliance, suggests that caste prejudice tends to occur predominantly in areas such as marriage and social and personal interactions, rather than in areas covered by this Bill such as employment and the provision of goods and services. While the ACDA's study did not in our view warrant amending the Bill, it clearly suggested that there could usefully be more in-depth research in this area. As I said in Committee, the Government are taking this forward.

I am therefore pleased to announce that the Government have commissioned the National Institute of Economic and Social Research to conduct this research. It will be wide-ranging and will go beyond the relatively narrow area covered by discrimination law to examine caste-based prejudice and discrimination more broadly. It will involve structured discussions with stakeholders and individuals. The aims of the study will explore the nature, extent and severity of caste prejudice and discrimination in Britain, and its associated implications for future government policy. I would be very happy to share the other parts of the brief with noble Lords. It will report in July or August of this year.

The findings of the research will inform and shape the Government's thinking on caste discrimination. We accept that the outcome of the research will come too late for the inclusion in the Bill of specific provision prohibiting caste discrimination. But legislating now is not the only option. At the meeting I was privileged to attend on 4 February with the noble Lords, Lord Avebury and Lord Lester, and the noble and right reverend Lord, Lord Harries, and a large and passionate gathering of caste interest groups-indeed, I believe that the noble Baroness, Lady Northover, was there-a strong case was made for taking a power in the Bill now. This amendment contains such a power. It was a privilege to take part in that meeting.

I take the point made by the noble and right reverend Lord, Lord Harries, about the sense of disappointment at not putting caste in the Bill at this point. To the noble Baroness,

Lady Warsi, I would say that at every stage of this Bill we have looked for evidence about discrimination. We now think that that evidence may exist, which is why we have commissioned the research. The appropriate and proportionate approach is to take the power to deal with this if and when that evidence is produced. Therefore, we have concluded that this is the proportionate approach. We place a high value on evidence-based policy making. This amendment will allow us to act in an appropriate way in response to the research evidence and any subsequent public consultation. I am happy to indicate to the noble Lord that that consultation will take place at every stage as we move forward. I am therefore happy to indicate to the House the Government's acceptance of the noble Lord's amendment.

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Lord Avebury: My Lords, I am grateful to all who have spoken on this amendment, particularly to the noble Baroness, Lady Warsi. It may well be that when the research is received she is one of the Ministers who has to consider it. I am not prejudging the outcome of events likely to take place within the next few weeks but everyone will concede that there is at least that possibility. The favourable remarks of the noble Baroness this afternoon give me optimism that once this research is available we will proceed rapidly to legislation.

I must acknowledge the disappointment, expressed first by the noble and right reverend Lord, Lord Harries, but also by the noble Baroness, Lady Flather, that this is not, as she said, exactly what we were asking for. We would like to have seen something in the Bill. If people will be a little patient, we shall have the ingredients which conclusively prove, as we believe, that caste discrimination occurs in the fields covered by the Bill. We welcome what the Minister told us about the NIESR research being undertaken.

I conclude by saying how grateful we are to the Minister. She has listened. We would expect that of Ministers normally but that does not always happen to the extent that we have seen from the noble Baroness. With her help we have arrived at a satisfactory intermediate solution.

Amendment 10 agreed.

Clause 13 : Direct discrimination

Amendments 11 and 12 not moved.

Clause 19 : Indirect discrimination

Amendment 13 not moved.

Clause 20 : Duty to make adjustments

Amendment 14

Moved by Baroness Thornton

14: Clause 20, page 10, line 41, at end insert-

"() Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format."

Amendment 14 agreed.

Clause 25 : References to particular strands of discrimination

Amendments 15 to 17 not moved.