



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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1.1 ACDA's request to the UN CERD 90th Session

The recommendations to CERD in respect of Caste Discrimination law in this submission by the Anti Caste Discrimination Alliance is supported by numerous Dalit organisations in the UK that we work closely with. Amongst these organisations are the Federation of Ambedkarites and Buddhist Organisations UK, Shri Guru Ravidass Sabha UK, and the Bhagwan Valmik Sabhas.

We request that The Committee for the Elimination of Racial Discrimination in line with its August 2011, CERD 79 Recommendation para 30, *its previous concluding observations (CERD/C/63/CO/11 para. 25) and its General Recommendation 29 (2002) on descent*, strongly recommends that the UK Government:

A. implements without further delay the law agreed by the UK Parliament on 23 April 2013 and implements Section 9(5) a of the Equality Act 2010 and makes Caste an aspect of Race as one of the protected characteristics.

B. publishes the Feasibility Study completed by the UK Government-commissioned independent researchers in January 2015. This study looked into the practicalities and issues around conducting the research into the extent of Caste-based discrimination in UK.

We also request that CERD questions the UK Government's stance that it would rather monitor litigation in the UK courts that may test or support the *Tirkey v Chandhok Employment Tribunal Judgment* (September 2015) than provide the clarification in the law by implementing the law already agreed. The *Tirkey Judgment* highlighted the need for clarification of the law.

ACDA's assessment of the reasons for the UK Government's delays are set out in the Introduction and the chapters that follow in this submission.

Introduction

1.2 Delays to Caste-based Discrimination law in the UK

1. On 23 April 2013, the UK Parliament agreed that Section 9(5)a of the Equality Act 2010 *must* be implemented and Caste made an aspect of Race as one of the protected characteristics. Over three years on, we are still waiting for the UK Government to implement the law first made over six years ago and that has had robust domestic and international calls for implementation.
2. The UK Government's latest position is that it is considering the outcome of the *Tirkey v Chandhok* Employment Tribunal and it is "*monitoring litigation in the courts and tribunals for any case that would appear to test—or, for that matter, support—the Tirkey judgment*" [Column 95 Hansard House of Lords, 11 July 2016 Debate on Caste Discrimination¹].
3. We are concerned that the UK Government would rather monitor litigation in the UK courts that may test or support the *Tirkey* judgment rather than provide clarification in the law using the Act of Parliament (Section 93 of the Enterprise and Regulatory Reform Act 2013) already agreed by Parliament in April 2013.
4. We believe the UK Government's resistance to implementing the law on Caste is that some Hindus are opposing the law. In practice, this is as if you were to say, "We're not going to introduce legislation against race discrimination because the whites might object to it." Or, "We're not going to have legislation on gender because men didn't like it."
5. During the 2015 General Election campaign a number of Hindu organisations openly advised their community to vote for the Conservative Party because they believed they would repeal the law on Caste-based discrimination. The Hindu

¹ <https://hansard.parliament.uk/lords/2016-07-11/debates/16071120000176/Caste-BasedDiscrimination>

organisations involved were forced to remove the defamatory publicity by the Charities Commission².

6. Lord Desai during a recent Debate on Caste Discrimination in the House of Lords on 11 July 2016 made the following potent points that are in line with ACDA's assessment of the reasons for the Government's delays with implementing the law that would outlaw Caste-discrimination in the UK:

“The Conservative Party obviously wants to win votes and seats. I do not blame them for that; who does not? However, they have to explain to the people who are objecting that the Government's programme is a minimal programme of preventing discrimination and bringing our law into line with our UN obligations. They should also say that that is the law in India. They are not passing a law which is un-Indian. They are passing a law which is entirely in coherence with India's constitution and law. To the extent that the Government are being reluctant to challenge the lobby, they are playing a vote-bank game. They ought to ask themselves whether it is worth however many seats there are to persist with an injustice for which there is evidence and which will give us a bad name in international law. The law having been passed by Parliament, the Government are definitely in breach of their obligations under the law”

[Colum 91] <https://hansard.parliament.uk/lords/2016-07-11/debates/16071120000176/Caste-BasedDiscrimination>

² <http://liberalconspiracy.org/2015/07/08/hindu-charity-that-broke-charity-commission-rules-by-supporting-tories-before-election-does-it-again/>

1.3 Outlawing Caste-based discrimination in the UK - Summary of key milestones and events

1. After years of lobbying and reports and testimonies by Dalit organisations that victims of Caste-based discrimination in the UK must be entitled to the same levels of legal protection as victims of the other forms of discrimination in the UK, the UK Labour Government inserted a clause in Section 9(5)a in the Equality Act 2010 on Caste. This power in the Act could be used by a Minister to add Caste to the list of ‘protected characteristics’. It commissioned the National Institute of Economic and Social Research (NIESR) to conduct independent research into Caste discrimination in the UK
2. In December 2010, NIESR published its report [*Caste discrimination and harassment in Great Britain*](#).³ This research found strong evidence of Caste-based discrimination in the areas covered by the Equality Act 2010. NIESR’s research confirmed the findings of research conducted by the ACDA in its report [*Hidden Apartheid – Voice of the Community - Caste and Caste Discrimination in the UK*](#)⁴ (October 2009) and various case studies, reports and testimonies presented to Government in the previous years by the Federation of Ambedkarite and Buddhist Organisations⁵, Dalit Solidarity Network⁶, and testimonies by a number of organisations including CasteWatchUK, the Shri Guru Ravidass Sabah UK, the Valmik organisations, the Association of Community Cohesion and Voice of Dalit International UK.
3. In May 2011, the 13th Universal Periodic Review in May 2011 in its final report made the following recommendation to the UK *“Put in practice a national strategy to eliminate discrimination against caste, through the immediate*

³ <https://www.gov.uk/government/publications/caste-discrimination-and-harassment-in-great-britain--2>

⁴ <http://acdauk.org.uk/pdf/Hidden%20Apartheid%20-%20Voice%20of%20the%20Community%20-%20ACDA%20Report.pdf>

⁵ ‘The Evils of Caste’ Chanan Chahal- <http://ambedkar.nspire.in/fabouk-publications.html>

⁶ ‘No Escape Caste Discrimination in the UK <http://dsnuk.org/wp-content/uploads/2011/08/No-Escape-Report-Caste-in-the-UK.pdf>

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 (Nicaragua) ”.

4. August 2011, one of the first Tribunal cases of alleged Caste-based discrimination (*Begraj v Heer Manak Solicitors*) was heard in the UK courts. The couple spent their life savings and more on this case that dragged on for years and collapsed in February 2013 after information handed to the judge by police led the judge to excuse herself from the case.
5. In September 2012, [The Equality and Human Rights Commission \(EHRC\)](#) made a public announcement that it agreed to the enactment of Section 9(5)a of the Equality Act 2010.
6. ACDA attended and presented at the meeting in August 2011, when the CERD 79 Recommendation was made, “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 non-governmental 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.”

7. On 23 May 2012 the Enterprise and Regulatory Reform Bill (ERR Bill) was introduced in the UK House of Commons. During the passage of the Bill, Amendment Clauses on Caste were tabled in the Lords in December 2012. This followed an ACDA led meeting in Parliament on 28 November 2012 at which, a joint statement on behalf of organisations representing victims of Caste-based discrimination was submitted to Government calling on the Government to accept NIESR's evidence and outlaw Caste-discrimination. Two of the amendments to the Bill came to a vote and the Government lost both votes. On 23 April 2013 the Government introduced a slightly re-worked amendment on Caste and this was agreed by Parliament. **The ERR Bill received Royal Assent on 25 April 2013 and the provision (Section 97) in the Enterprise and Regulatory Reform Act 2013 that provides that the Government must legislate to outlaw Caste discrimination came into force on 25 June 2013.**

8. On 29 July 2014, the UK Government announced the [Caste discrimination legislation timetable](#)⁷.

9. On 6 November 2013, the United Nations High Commissioner for Human Rights Ms Navi Pillay attended a meeting about caste-based discrimination at the UK Parliament's House of Lords at the invitation of the ACDA⁸. In a [powerful speech](#) the High Commissioner stressed the need to act on the "*insidious stain*" of caste discrimination and urged the UK not to tarnish their excellent record on human rights, by delaying implementation of UK anti-caste discrimination legislation. Ms Pillay further added that there was a need for "*strong, swift implementation*" of the amended Equality Act 2010 to protect the tens of thousands of people in the UK from low caste backgrounds.

10. On 28 February 2014, The UK's Equality and Human Rights Commission published (on time) the two independent research reports it had commissioned in

⁷ <https://www.gov.uk/government/publications/caste-discrimination-legislation-timetable>

⁸ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13973&LangID=E>

September 2013 [Caste in Britain](#)⁹. These two reports confirmed that caste discrimination “*cannot be tolerated and should be included in the protections against discrimination and harassment provided in the Equality Act 2010*”. The reports also question the proposed *sunset clause* : “*for a non-discrimination ground is legally without precedent and goes against this key differential*”.

11. In July 2014 the UK in its Mid Term UN Periodic Review Report stated “ it [the UPR May 2011 recommendation] **enjoys** the support of the UK. The UK Government intends to introduce legislation to make caste discrimination unlawful, as a specific aspect of race discrimination under s.9(5) Equality Act 2010¹⁰. A public consultation process on the detail of the prospective legislation is expected later in 2014¹¹.
12. In July 2014, announced that it would delay the consultation on the law on Caste discrimination until Autumn 2014.
13. In September 2014, the UK Government announced it would conduct a Feasibility Study to look into the practicalities and issues around conducting the research into the extent of Caste-based discrimination. ACDA fed into this study¹². The report of the study’s findings were submitted to the Government by the independent researchers in December 2014. Despite various requests by ACDA and others, including a Freedom of Information request, the Government has refused to publish the report’s findings.
14. During 2015, the Government said it will await the outcome of the judgment of a Caste legislation related Employment Tribunal – the *Chandhok v Tirkey* case. The Judgement for [Chandhok v Tirkey](#) ET was published on 17 September 2015. [The](#)

⁹ <https://www.equalityhumanrights.com/en/publication-download/research-report-91-caste-britain-socio-legal-review>

¹⁰ <http://www.legislation.gov.uk/ukpga/2010/15/section/9>

¹¹ <https://www.gov.uk/government/publications/caste-discrimination-legislation-timetable>

¹² <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-09-10/209041/>

[Odysseus Trust's Legal opinion](#)¹³ on this case's judgement is set out in paragraphs 12-15 and concludes:

that this ET “was decided on the ground of indirect religious discrimination and caste was not taken any further” and “The Government’s assertion that the law now provides for a legal remedy for caste discrimination is misleading and incorrect” “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”

15. What is absolutely clear is that we need legal clarity and certainty under the law in the UK. Only when ‘Caste’ is added as an aspect of ‘Race’ in the Equality Act 2010 can organisations such as the police force, local government, employers, schools be equipped to provide justice – legal or arbitration – to victims.

1.4 Campaign to outlaw Caste-based Discrimination in the UK

In 2009 when we invited people to tell us about their experiences of discrimination in the UK, two cases out of the many stand out that we published in our report [Hidden Apartheid – Voice of the Community - Caste and Caste Discrimination in the UK](#) (October 2009). The first was the case of a vulnerable elderly Indian woman in the East Midlands of England. She had faced discrimination and, as a result, neglect at the hands of her carer. The second had been a personal secretary mistreated in the office of a radio station broadcasting to the Indian, particularly Punjabi (Indian’s from Punjab in India) diaspora. Both cases had one feature in common – the Caste of the people concerned. If either of these cases had been related to, say, Race or Gender, the victims would have had access to a form of redress, legal or otherwise on the grounds that Race and Gender are ‘Protected Characteristics’ in the Equality Act 2010. Yet despite the fact that Parliament agreed in April 2013 that the 2010 law *must* be implemented and the various international calls for the legislation to be implemented, Caste is still not included.

¹³ <http://www.odysseustrust.org/CERD/CERD.pdf>

1.5 The UK Government's reasons for the delay for not implementing the law

The UK Government has given a number of reasons since 2010 about *not* implementing the law.

First, they said “Caste is complex and hard to define”. They claimed “there is no consensus for the law”. It has to be stated that there is no definition of *Race* in law. There is however, a definition of Caste in the Equality Act 2010 notes:

Explanatory Notes to the Equality Act 2010 provide the following:

The term “caste” denotes a hereditary, endogamous (marrying within the group) community associated with a traditional occupation and ranked accordingly on a perceived scale of ritual purity. It is generally (but not exclusively) associated with South Asia, particularly India, and its diaspora. It can encompass the four classes (varnas) of Hindu tradition (the Brahmin, Kshatriya, Vaishya and Shudra communities); the thousands of regional Hindu, Sikh, Christian, Muslim or other religious groups known as jatis; and groups amongst South Asian Muslims called biradaris. Some jatis regarded as below the varna hierarchy (once termed “untouchable”) are known as Dalit.²

Books like Sue Penny's 1999 [*Hinduism – Foundation Edition*](#), in the *Discovering Religions* series, are available for UK schools. Penny explains Caste, the Caste system and Untouchability in plain English (see Annex A) to UK school children.

On the ‘consensus’ point, essentially we believe the Government meant that some Hindus are opposing the law. In practice, this is as if you were to say, “We’re not going to introduce legislation against race discrimination because the whites might object to it.” Or, “We’re not going to have legislation on gender because men didn’t like it.” During the 2015 General Election campaign a number of Hindu organisations openly advised their community to vote for the Conservative Party because they believed they would repeal the law on Caste-based discrimination. The Hindu

organisations involved were forced to remove the defamatory publicity by the Charities Commission.

Second, the Employment Tribunal – the *Tirkey v Chandhok* – was under way. It was an Employment Tribunal case and concluded in September 2015. The judgement made neither a general nor a definitive statement that Caste is covered by ethnic origins in British law. If anything, the judgement called for clarity in the law.

Third, the Government does not want to institutionalise Caste. We do not want that either. That was why a sunset clause to review the impact of law when implemented was inserted. It must be stressed that no sunset clauses exist or any for the other protected characteristics in Equality and Human Rights law in the UK. Many people came to the UK country to escape Caste. The ACDA has always made it clear that we do not want Government to interfere with who people wish to be friends with, marry or socialise with in private, according to their culture or faith. If the first of the consultations in December 2014 had not been halted by Government, exemptions to the law that could be applied would have been aired and considered. Nor has ACDA called for affirmative measures in terms of employment on Caste grounds or government returns. All we ask for is legal redress and access to justice should the remedy for the discrimination have to go that far. That applies to victims no matter what their Caste is or who is, doing the discrimination. It protects both ways. Like other equality and justice measures, the law will help bring about a change in behaviours in respect of Caste discrimination in the UK.

1.6 The potential numbers of people affected by Caste in the UK

The potential numbers of people affected by Caste are enormous. Various studies and research¹⁴ have confirmed that Caste affects mainly the South Asian diaspora (defined people who have their origins in India, Pakistan, Bangladesh, and Sri Lanka) in the UK. However, Caste is not exclusively confined to that group.

¹⁴ Caste discrimination and harassment in Great Britain, December 2010, Annapurna Waughray, (2009) Modern Law Review

The 2010 report by the National Institute of Economic Research (NIESR)¹⁵, and the reports by the ACDA¹⁶ a year before it, and by DSN and FABOUK found that it is generally the so-called Dalits who are discriminated on because their Caste.

The 2011 Census reported that there are 3,078,374¹⁷ British South Asians (total of Indian, Pakistani and Bangladeshi census categories) living in the UK. If we use an indicative 20%¹⁸ to establish the potential numbers of Dalits living in the UK we estimate that there are at least about 615,000 Dalits living in the UK. If the British Sri Lankan and British Nepali population were to be factored into the equation, the numbers of Dalits would be higher.

We estimate that if just 5% of the estimated 615,000 Dalits are discriminated against in the UK, we are looking at least 30,750 potential victims.

¹⁵ [Caste discrimination and Harassment in Great Britain](#)'

¹⁶ [Hidden Apartheid – Voice of the Community](#), Professor Whittle, Dr Roger Green, Annapurna Waughray

¹⁷ https://en.wikipedia.org/wiki/British_Asian

¹⁸ Dr Gurharpal Singh's assessment in his book *Sikhs in Britain*¹⁸ 2006, that at least a third of Sikhs in Britain are so-called Dalits. Singh and Tatla, states that there were around 500000 Sikhs in Britain and that 33% of this total are likely to be so-called Dalits.

- The numbers of Dalits in the India, Pakistan, Bangladesh and Sri Lanka as per the percentage of the total populations (See Annex C) are as follows:

India 25% .

(India has 22.5% reservation for Scheduled Castes / Scheduled Tribes (SC/STs) Along with this 27% reservation is given to Backward and other backward communities who are also victims of caste based discrimination .Annex C)

Pakistan 0.25 – 1.2%

Bangladesh - 3.4%

Sri Lanka 20-30%

ANNEX A – Text Book on Hinduism available as a resource for UK school children

[http://www.pearsonschoolsandfecolleges.co.uk/Secondary/ReligiousEducationandCitizenship/11-14/DiscoveringReligions/ISBN/FoundationStudentBook\(s\)/DiscoveringReligionsHinduismFoundationEdition.aspx](http://www.pearsonschoolsandfecolleges.co.uk/Secondary/ReligiousEducationandCitizenship/11-14/DiscoveringReligions/ISBN/FoundationStudentBook(s)/DiscoveringReligionsHinduismFoundationEdition.aspx)

The caste system

This section tells you about the different groups of people in India.

Different people are good at different things. Hinduism teaches that this is mainly because of their previous lives. The teaching about dharma tells Hindus that they should make the most of their abilities. This led to the idea that some groups of people were

good at particular things. For hundreds of years, Hindus have been divided into groups, according to their job. These groups are called varnas.

The four varnas

There are four groups or varnas. The most important group are Brahmins. They are priests. The second group are Kshatriyas. They are soldiers. The third group are Vaishyas. They are shop-keepers and farmers. The fourth group are Shudras. They are servants for the other three groups. Below these four groups are the Harijans, the untouchables.

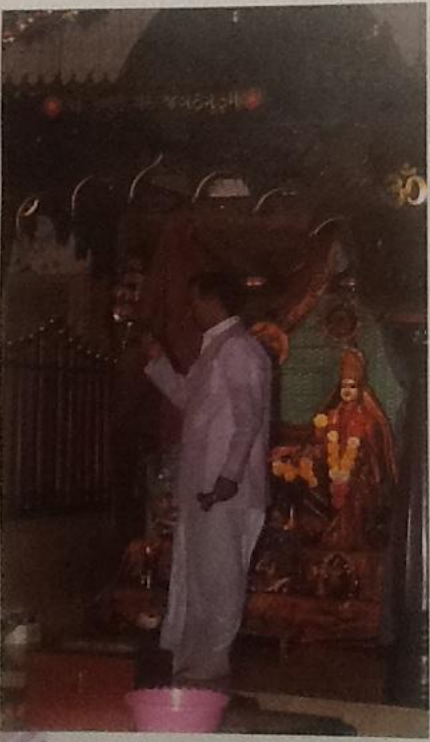
These four main groups gradually divided into many smaller groups. The smaller groups are called jatis or castes. Your jati depends on the jati of your family. Some jatis are 'higher' or 'lower' than other jatis. People used to be very strict about not having anything to do with people who came from a lower jati than their own. For example, people would only marry someone from the same jati, and they would not eat food prepared by someone from a lower jati. Some people are still very strict about this.

Harijans

The lowest group of people in Hinduism are the Harijans. They are below the other four groups. They do the dirtiest jobs.

For hundreds of years, other Hindus would not have anything to do with Harijans. They

Priests are usually Brahmins



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called them 'untouchables'. In the early years of the twentieth century, the Hindu leader Gandhi worked hard to improve the lives of untouchables. He gave them the name Harijans. This means 'children of God'.

Changing the caste system

This way of dividing people into groups is called the caste system. It is the way that people in India have lived for hundreds of years. In the last 50 years, things have changed. People do jobs outside their varna. People who live and work in cities cannot be so careful about who they meet or talk to. In factories and shops, they have to meet and talk to people who are not from their own group. The rules about jatis cannot be kept so strictly.

Now many Brahmins are not priests, and not everyone in the army is a Kshatriya. Many people who own shops are not Vaishyas. Brahmins and Harijans are most likely to be interested in what varna they

belong to. However, most people still know what jati they belong to, and what this means to other people. Since 1947, it has been against the law in India to treat former untouchables differently. However, it takes a long time to change the way people think. In many villages in India, the caste system is still kept very strictly.

New words

Brahmins first varna

Castes another name for jatis

Harijans 'children of God' – untouchables

Jatis parts of a varna

Kshatriyas second varna

Shudras fourth varna

Untouchables lowest group of people

Vaishyas third varna

Varnas the four main groups of Hindu people

Test yourself

What are the four varnas?

What is the first varna?

What is the fourth varna?

What is a jati?

What does Harijan mean?

Think it through

1 Why do you think Gandhi chose to call untouchables 'children of God'? What do you think he was trying to achieve?

2 Why do you think Brahmins and Harijans are likely to be the most aware of which varna they belong to?

3 What do you think about people being treated differently because of their background? Work in pairs to discuss what you would do if you felt that this was happening to a friend of yours.

ANNEX B Background

1.7 About the Anti Caste Discrimination Alliance

The Anti Caste Discrimination Alliance (ACDA) is an independent, non-profit making voluntary organisation registered with the UK's Charity Commission (Registration number 1138012). The ACDA is an alliance of like-minded organisations and people sharing a common goal and similar values. The work of ACDA is carried out by a team of dedicated volunteers.

ACDA was formed in 2008 to promote an environment that respects and values individuals in society, irrespective of their colour, Caste, creed, gender, background, age, sexual orientation, race, and other criteria encompassed within the Equality Legislation promoting and enforcing equality of rights and treatment in the United Kingdom (UK).

In 2009 the ACDA published its pivotal report [*Hidden Apartheid – Voice of the Community - Caste and Caste Discrimination in the UK*](#) . The report was published during the passage of the Single Equality Bill in the UK. It was instrumental in securing a clause on Caste in Section 9(5)a of the Equality Act 2010.

The ACDA has led on numerous of critical meetings in Parliament since 2009, public protests, and media campaigns and coordinated Joint Statements to the UK Government on the need to outlaw Caste-based discrimination in the UK on behalf of Dalits organisations.

On 6 November 2013, the United Nations High Commissioner for Human Rights Ms Navi Pillay attended a meeting about caste-based discrimination at the House of Lords at the invitation of the ACDA. The meeting was chaired by Lord Eric Avebury.

1.8 ACDA's Aims and Objectives

ACDA's specific aims and objectives enshrined in our Constitution are:

- To monitor and oppose Caste discrimination practices or policies, which result in and perpetuate Caste prejudice in the UK and abroad
- To raise awareness of Caste discrimination and its causes
- To take steps to involve all interested people in uniting against Caste discrimination, including but not limited to provision of relevant education to those who need it.
- To plan strategies and help support groups to remove Caste discrimination in the UK and elsewhere and work with them to achieve common goals for its eradication
- To provide moral relief through education to those who are victims of Casteism
- To lobby stakeholders, opinion formers and influencers in keeping with these objectives