



**Further submission by **DALIT SOLIDARITY NETWORK** UK in response to the  
Equalities Review Interim Report for Consultation**

**EXECUTIVE SUMMARY**

1. An initial response to the Equalities Review Interim Report for Consultation was submitted by DSN in November 2005 drawing attention to the existence of caste-based discrimination in the UK and proposing that this form of discrimination, which is not addressed by the existing equality framework in the UK, be addressed in the new equality legislation.
2. This further submission makes a case for recognition of caste as an independent characteristic or strand of inequality, or as a “additional indicator” classification, and suggests approaches to a statutory definition of caste discrimination.
3. Caste discrimination is a reality in the UK. The name ‘Dalit’, a collective term of empowerment, is used by some of those of South Asian origin discriminated against on grounds of caste in the UK, but not by all.
4. It is estimated that at least 50,000 Dalits and people of Dalit origin live in the UK. The number is probably much higher but exact figures are unknown due to issues around identification as a ‘Dalit’, and the changing of names. Despite the numbers involved, caste is not currently recognised as a form of discrimination in UK legislation.
5. Given the reality of caste discrimination in many countries, with Dalits in South Asia historically constituting the majority of the poor and excluded, it is of little surprise that such a deeply entrenched form of discrimination also exists within Diaspora communities in the UK. Caste-affected countries such as India have taken a variety of Constitutional, legislative and administrative measures to address caste discrimination, although in India the government itself recognises that there is still discrimination against Dalits in many parts of the country. This issue must be tackled in the UK too. Discrimination on the basis of caste must be incorporated into UK equality legislation.
7. The appended report ‘*No Escape - Caste Discrimination in the UK*’ clearly illustrates that caste discrimination exists in the UK. DSN believes that it is as unacceptable as any other form of discrimination and that policy makers, civil society and the judiciary must work together to ensure its eradication. It is argued that caste as ground of discrimination should be included in the proposed new equality legislation.

***Recommendations:***

- (i) By ratifying the International Convention for the Elimination of all Forms of Racial Discrimination in 1969 the UK undertook, within its jurisdiction, to prohibit and punish those forms of discrimination covered by the Convention**
- (ii) The CERD (the Convention's Monitoring Committee) has held that caste-based discrimination and other analogous forms of discrimination based on inherited status fall within the ambit of the Convention.**
- (iii) The UK therefore has an obligation under international law to prohibit within its jurisdiction discrimination on the basis of caste and to enforce such prohibition by appropriate means**
- (iv) However caste-based discrimination does not fall within the ambit of the UK's existing equality framework and is not identified as such in existing discrimination legislation in the UK.**
- (v) The Discrimination Law Review offers an opportunity to update domestic equality legislation by recognising and addressing the problem of discrimination on the basis of caste.**



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## **The Equalities Review and caste-based discrimination**

1. Dalit Solidarity Network UK (DSN) submitted an initial response in November 2005 to the Equalities Review Call for Evidence. The key points of the initial DSN submission were as follows:
  - (a) Caste and discrimination on the basis of caste status (“caste-based discrimination”) is typically associated with South Asia, where this form of discrimination has been prevalent for centuries. However caste-type systems and forms of caste-based discrimination exist throughout the world, for example in certain South East Asian countries and in parts of Africa and South America as well as South Asia. Furthermore, it is well-documented that caste-based discrimination has been exported to diasporic communities, for example in European countries such as the UK, and the United States.
  - (b) Caste-based discrimination has been recognised by the United Nations since the mid-1990s as a form of human rights violation. Specifically:
    - i. Caste-based discrimination has been held by the Monitoring Committee of the International Convention for the Elimination of all Forms of Racial Discrimination (ICERD) to fall within the ambit of the Convention. ICERD is one of the seven key international human rights treaties which make up the UN human rights treaty regime. Caste-based discrimination thus amounts to a human rights violation under international law.
    - ii. Caste discrimination was also declared in 2000 by the UN Sub-Commission on the Promotion and Protection of Human Rights to be a form of discrimination prohibited by international human rights law. The Sub-Commission used the broader term ‘discrimination based on work and descent’ to encompass caste and caste-type systems, and in 2004 appointed two UN Special Rapporteurs to investigate the phenomenon of discrimination based on work and descent, its nature, extent and how to challenge it.
  - (c) By ratifying ICERD in 1969 the UK undertook, within its jurisdiction, to outlaw and to punish those forms of discrimination covered by the Convention. The UK therefore has an obligation under international law to prohibit within its jurisdiction discrimination on the basis of caste and to enforce such prohibition by appropriate means.
  - (d) Caste-based discrimination does not fall within the ambit of the UK’s existing equality legislative framework. Caste-based discrimination is not identified as such in any existing anti-discrimination legislation in the UK.
    - i. The UN Racial Discrimination Convention (ICERD) prohibits discrimination on five grounds – race, colour, national or ethnic origin or descent. The UN Committee for the Elimination of all Forms of Racial Discrimination has held that caste-based

discrimination falls within the ambit of the ICERD under the ‘descent’ ground of the definition of racial discrimination.

- ii. However ‘descent’ does not feature in the UK’s Race Relations Act 1976 (‘RRA’) which prohibits discrimination on racial grounds, meaning colour, race, or ethnic or national origins (RRA s.3(1)).
- iii. Caste status is not directly synonymous with colour, race, or ethnic or national origins; discrimination on the basis of caste status is practised by, among and against people of the same colour and/ or race and/ or ethnic or national origins.
- iv. The Commission for Racial Equality has maintained that discrimination on grounds of caste does not fall within the ambit of the RRA, or within the remit of the CRE.
- v. The Equalities Review Interim Report for Consultation, in presenting its findings on inequality by ‘domain’ (the traditional approach based on the six key “characteristics” of race, gender, disability, age and so on) refers to Indians as an ethnic minority category, yet Indians are a far from homogenous group. The category ‘Indians’ conceals the reality of caste as a divisive and discriminatory system mechanism for identifying and locating people along a hierarchical scale, with Dalits (formerly known as ‘untouchables’) at the bottom. Likewise within the domain of religion or belief Hindus, Christians and Sikhs are not homogenous communities and such categorisations do not begin to address the experience of sub-groups such as Dalits. However the Interim Report does talk of ‘other classifications’ which could reveal significantly disadvantaged sub-groups across all six key characteristics.

2. A preliminary study by DSN on caste discrimination in the UK (July 2006) highlights the extent of discriminatory behaviour and practices within the South Asian community in the UK on grounds of caste status, a form of discrimination at present not recognised under anti-discrimination law and hence not amenable to legal action. A number of BBC radio programmes have also highlighted the existence of caste discrimination in the UK:

*“Our Indian people have come to England, they go to America, they go to Canada, they go to all over Europe, but unfortunately, wherever they go they take caste system with them as well”.*

*“The Caste Divide” by Naresh Puri, BBC Radio 4, April 2003 (see Appendix 2)*

3. Yet caste and caste discrimination have little visibility in the UK, and there is no legal recognition of the concept of caste in UK law:

*“Caste has caused division and it does cause social devastation. The problem is that nobody has accepted the problem within this country. Caste is one area which is totally swept under the carpet”.*

*“The Caste Divide,” BBC Radio 4, April 2003*

It is clear from the interviews undertaken for Naresh Puri's 2003 BBC Radio 4 programme and DSN's July 2006 Report that discrimination based on caste and analogous forms of inherited status does occur in the UK, yet little formal research has taken place on the specificity of caste in the UK. In order to clarify the nature of the situation for those of oppressed caste background in the UK, government-commissioned, funded research on the nature and extent of caste discrimination in the UK is urgently required.

### **Caste and caste-based discrimination**

4. Caste and caste-based discrimination are not widely familiar concepts in the UK although UK courts, including the Privy Council, have addressed questions relating to caste - particularly in the context of family and immigration cases - for many years. Discrimination and oppression on grounds of caste affects over 300 million people worldwide, including over 167 million people in India alone (17% or 1 in 6 of the population). Caste discrimination is a *sui generis* form of discrimination based on a person's hereditary (descent-based) membership of a particular caste group within society, historically linked to occupation, and ranked within a strict hierarchical framework. Castes are closed groups characterised by separation. Marriage between castes (and traditionally the sharing of food and drink) is prohibited. Caste membership is ascribed by birth. One's caste of birth cannot be lost or exchanged; it is retained irrespective of success or failure in education or employment or the acquisition of material wealth or political power. One's caste is thus akin to a 'physical' attribute.
5. Unlike class, beliefs relating to purity and pollution are central to an understanding of caste. Historically, members of the 'lowest'<sup>1</sup> castes were considered polluted and polluting to those of higher status, hence 'untouchable,' people to be physically avoided and excluded in all areas of life (the term 'pariah' - as in 'pariah state' - derives from the name of an untouchable group in India, the Pariahs). 'Untouchability' is intrinsically linked to the concept of menial, 'polluting' work traditionally performed exclusively by those of the 'lowest' castes who were constrained to engage in such occupations and effectively barred from higher status work. Within the framework of Hinduism 'untouchables' are those people falling outside the four Varnas, or castes, who have no caste and are hence 'outcastes.' In South Asia such people are now known as *Dalits*, a collective term of empowerment meaning oppressed, crushed or broken.
6. Untouchability practices persist in caste-affected countries, sometimes defying efforts by the State to abolish such behaviour, for example in India where the government recognises that untouchability is still a worrying reality in many areas despite its abolition in the 1950

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<sup>1</sup> The concepts of 'high' and 'low' castes and the term 'untouchable' are rejected by Dalits and those working for Dalit rights. The preferable terminology in the South Asian context is 'dominant' or 'oppressive' castes and Dalits.

Constitution and legislation prohibiting various types of untouchability practices. Addressing the *Dalit-Minority International Conference* in Delhi on December 27 2006, the Prime Minister of India, Manmohan Singh said: “in studying the problems captured by this theme, *it is necessary to make a distinction between the problems faced by Dalits in India and the problems faced by “minorities” in all societies. Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of ‘untouchability’ was apartheid in South Africa. Untouchability is not just social discrimination. It is a blot on humanity*” (italics and underlining added) (full text of the Prime Minister’s speech available from the Government of India Press Information Bureau at [http://pib.nic.in/release/rel\\_print\\_page.asp?relid=23633](http://pib.nic.in/release/rel_print_page.asp?relid=23633)).

7. In many caste-affected countries caste discrimination blurs into caste oppression. A high correlation exists in caste-affected countries between low caste status and social exclusion in the form of socio-economic deprivation, lack of access to educational opportunities and political inequality. Members of those castes considered to be at the bottom of the purity-pollution hierarchy are subject to well-documented violations of their economic, social, civil and political rights across all spheres of human activity including gross human rights abuses and atrocities. The Prime Minister of India again, speaking on 9<sup>th</sup> December 2006 at the 10th meeting of the Inter-State Council, said that “[this] meeting has been called specifically to discuss issues relating to a deep malaise involving atrocities committed on the most underprivileged segments of our society, i.e. Scheduled Castes and Scheduled Tribes. This is a scourge which demands the formulation and articulation of our Nation’s collective will and a determined effort to fight it and root it out of our society without any loss of further time. “[C]ontinuing atrocities against the weaker sections are a matter of national disgrace in a civilized society” (full text of the Prime Minister’s speech available from the Government of India Press Information Bureau at [http://pib.nic.in/release/rel\\_print\\_page.asp?relid=23081](http://pib.nic.in/release/rel_print_page.asp?relid=23081)).
8. In popular understanding caste is commonly associated with Hinduism (‘the Hindu caste system’). While the religious origins of caste and the exact nature of its relationship with Hinduism continue to be the subject of debate, in practice caste distinctions and discrimination on the basis of caste are found not just among Hindus but also in other religious communities, and in South Asia conversion to another religion does not automatically free one of one’s caste. Thus South Asian Christians from formerly ‘untouchable’ backgrounds, including second, third or even fourth-generation Christian converts, are known as Dalit Christians. Likewise variants of caste are practised among Sikhs and Muslims. Conversely, former ‘untouchables’ in India who converted to Buddhism following the 1956 conversion of Dr B.R. Ambedkar, the foremost Indian intellectual and political leader of the twentieth century (a lawyer, Chair of the Drafting Committee of the 1950 Indian Constitution and himself from an ‘untouchable’ background), identify and are known simply as Buddhists, rather than as Dalits or Dalit Buddhists (attempts to impose the term ‘neo-Buddhists’ are strongly rebuffed as an implied reference to the very caste origins which were rejected on conversion ).

## **Caste discrimination in the UK**

9. In the UK, while individuals of Dalit origin and their descendents no longer pursue the culture-specific menial ('polluting') occupations traditionally associated with their caste status, the 'untouchability mindset' - the consequences of which are described so eloquently by the Indian Prime Minister (see para. 5 above) - persists in the form of direct and indirect discrimination by those who enjoyed dominant caste status in the shared country of origin or heritage, or whose ancestors traditionally enjoyed dominant caste status. In the UK 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. The preliminary research carried out by DSN (which focused exclusively on members of the South Asian diaspora in the UK) has revealed significant experience of caste discrimination among South Asians of Dalit ancestry in the inter-personal, cultural, social and religious spheres, in the spheres of employment and education, and in the political sphere. These preliminary findings are borne out by research carried out by the BBC for various radio programmes investigating the nature and extent of caste discrimination in the UK among South Asian communities:

*"I became first a councillor in 1989. My name was put forward by the Labour Party and members of the Labour Party but there was a lot of resentment on my selection. One of the relatives came to tell me in the pub when we were having a pint. He came to tell me that such and such person came to say 'Why are you going to vote for him because he is a chamar'. So there was some kind of whispering campaign within the membership and though I got through the first time, they increased the Labour Party membership. It was unfair the way it was put in. Members didn't know they were members. They were brought in to vote me out. They did the next year. They could not stomach that a person like me should be a community leader for them when they are from a so-called high caste. They had to wage a campaign to get me out. And I was out".*

*Were you bitter?*

*"I was bitter. It is natural. But I knew that if I just keep showing the bitterness, that's what they want. So I found another ward where there were no Indians and that's where I came in and there was not a single member of Indian. I succeeded from there. I am still there from a long time".*

*"The Caste Divide" by Naresh Puri, BBC Radio 4, April 2003 (see Appendix 2)*

10. Nearly 85% of those interviewed for the DSN Report said they believed that Asians in the UK followed the caste system and over 50% of respondents said they could give examples in employment, health care and education of discrimination based on caste experienced first-hand or by relatives and friends:

*'My daughter – who is 14 years old and attends a local school with largely Asian students – was called a chamar (derogatory term referring to their caste-designated job of dealing with the dead) by one of her classmates. I told her to respond by saying that all Sikhs are equal. However, if you think I am lower than you, then it follows that you are not a Sikh.'*

*"No Escape: Caste Discrimination in the UK", DSN UK, July 2006 (see Appendix 1)*

11. Caste has also gained increased visibility in the UK as a result of the ‘globalisation’ process which has seen a revival of UK business and trade involvement with India. According to the House of Commons Trade and Industry Joint Select Committee, Third Report, “Trade and Investment Opportunities with India”, dated 22 June 2006, the UK as of 2005 remains the second largest European Union supplier of goods to India after Belgium if diamonds are included, and after Germany if they are excluded. In its report the Trade and Industry Select Committee noted that “despite legislation and provisions in the Constitution of India, [Dalits] still face tremendous discrimination” and describes the issue of caste as “a trap for the unwary.” UK companies are urged in the Report “not to break the letter or spirit of these laws”, to “look carefully at their recruitment and employment policies in India” and preferably to take note of the “Ambedkar Principles” on economic and social exclusion (available at [www.indianet.nl/ambedkarprinciples](http://www.indianet.nl/ambedkarprinciples)), named after Dr. B.R. Ambedkar, India’s foremost Dalit emancipator and drafter of the Indian Constitution. These guidelines, albeit non-legally binding, were formulated to assist foreign investors in South Asia to address caste discrimination and to help companies develop affirmative action plans to increase access to employment for Dalits.

### **The international response**

12. Until the mid 1990s caste barely featured in the international human rights environment. There were various reasons for this lack of visibility – a historical lack of awareness, knowledge and understanding of the nature, scale and severity of the caste issue within the international community; the UN focus in the early years on de-colonisation, apartheid, and self determination; the position of governments of affected states that caste was strictly an internal matter and their reluctance to publicly acknowledge the nature of the problem; and the difficulties and hostility faced by grass-roots activists and NGOs in caste-affected countries in raising the issue. However from the mid 1990s, partly as a result of concerted efforts by grass-roots activists, the CERD (the expert monitoring body of the International Convention on the Elimination of all Forms of Racial Discrimination) and other treaty monitoring bodies such as CEDAW (Committee for the Elimination of Discrimination against Women) started raising the issue of caste in their examination of state reports. The UN World Conference on Racism in Durban in September 2001 was a key catalyst for the internationalization of caste. Focused campaigning by activists in the run-up to, during and following Durban resulted in greatly increased international visibility of caste as a human rights issue.
13. In 2000 the UN Sub-Commission for the Promotion and Protection of Human Rights passed a Resolution declaring discrimination based on work and descent, including discrimination on the basis of caste, to be a form of discrimination prohibited by international human rights law. The broader term “work and descent” was deliberately used to encompass caste and caste-type systems. Three working papers on the issue were commissioned, in 2001, 2003 and 2004. In 2004 two UN Special Rapporteurs were appointed to prepare a comprehensive study on discrimination based on work and descent and to finalise a draft set of principles and guidelines for the effective elimination of such discrimination. To date the Special Rapporteurs have

produced two interim reports including a draft definition of discrimination on the basis of work and descent.

14. The International Convention on the Elimination of all Forms of Racial Discrimination came into force in January 1969 and was ratified by the UK in April of that year. Implementation of the Convention by its States parties is monitored by a body of independent experts, the Committee on the Elimination of Racial Discrimination (CERD). The CERD is empowered to issue authoritative interpretations of the content of Convention provisions and the nature of the obligations associated with the various Convention rights. These are known as General Recommendations.
15. In 2002 the CERD issued a General Recommendation to all States parties to the Convention, confirming the Committee's view that the term 'descent' in Article 1(1) of the Convention does not solely refer to 'race' and has a meaning and application which complements the other prohibited grounds of discrimination, 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, and condemning descent-based discrimination, such as discrimination on the basis of caste and analogous systems of inherited status, as a violation of the Convention. The General Recommendation called on States parties to take steps to identify those descent-based communities under their jurisdiction suffering from discrimination on the basis of caste and analogous systems of inherited status, and to review and enact or amend legislation in order to outlaw all forms of discrimination based on descent in accordance with the Convention.

### **Gap in domestic anti-discrimination legislation**

16. As a State party to ICERD the UK has an obligation to implement the Convention fully. General Recommendations of the treaty monitoring bodies constitute authoritative interpretations of the content of treaty provisions and the nature of States parties' obligations under the treaty. The Committee for the Elimination of Racial Discrimination has categorically held that discrimination based on work and descent, including caste-based discrimination, falls within the 'descent' ground of ICERD. The absence of the 'descent' ground or any analogous ground in the RRA 1976 and the absence of specific cognisance of caste-based discrimination elsewhere in UK anti-discrimination legislation means that our obligations under ICERD are not fully reflected in our domestic race discrimination legislation.
17. This point was specifically picked up by the CERD in 2003 in its Concluding Observations on the UK's 2002 periodic report, submitted pursuant to its reporting obligations under the Convention, when the Committee specifically queried the lack of, and recommended the inclusion of, a prohibition against caste discrimination and analogous systems of inherited status in domestic legislation.

## **The Discrimination Law Review and the Single Equality Bill: a streamlined equality legislation framework**

### **Defining equality**

18. The stated objective of the Government’s Discrimination Law Review is to provide a clearer and more streamlined equality legislation framework which achieves greater consistency in the protection afforded to different groups while taking into account evidence that different legal approaches may be appropriate for different groups. To this end the Equalities Review Interim Report focuses on ‘analysis and understanding of the complex and interwoven aspects of [equality]’ while the Final Report will concentrate on concrete proposals to increase equality and fairness and to tackle institutional complacency and bias.
19. The Interim Report proposes a move away from a conceptualisation of inequality on the basis of groups defined by domain (the “strand” approach) to a conceptualisation of inequality as a product of a combination of three non-socio-economic factors (i) vulnerability, distinguished by membership of a particular social group (ii) coupled with a specific life event or “trigger episode” (iii) in specific fields such as employment or education.
20. In defining and measuring equality the Review Panel favours a ‘capabilities’ approach – “*a version of equality of opportunity which focuses less on the assets of an individual (income, socio-economic status) or special characteristics such as race or gender and concentrates more..... on the context in which they live – the economic, political, legal, social, cultural and even physical conditions which shape the freedom an individual has to pursue his or her goals in life*” and which acknowledges that “*people can be held back from fulfilling their potential by the prejudice of others.*” :

#### Example 1:

*“They include second and third generation Indians many of them who don’t want to categorise themselves as Untouchables, but find that others do. Brother and sister Rama and Parveen are one such example.*

*“There’s trouble everywhere. You can go to Derby; you can go to Birmingham. Go to the student nights and you see it. Someone will get called a name and it will all kick off from there, and then get what you will call a ruck on your hands”. [Rama]*

*“Yah. I wasn’t aware that this caste thing existed in my community. It meant nothing to me until I went to university, and then suddenly my caste was more important than the degree I was doing and the person I was. It wasn’t what are you doing? What sort of person are you? It was what caste are you and then I’ll decide if I want to be friends with you”. [Parveen]*

*So basically even in this day and age you still got abuse?*

*“We get treated like lower class. They believe they are the tractor drivers and we are their farm workers, we pull out the potatoes while they eat”. [Rama]*

Example 2:

*“I met [???] and just like started meeting each other and started falling in love slowly. Then we just thought we should get married. Her parents didn’t agree. I’m quite educated. I had a good job, worked in a bank. They would only oppose us because they thought they were of a higher creed or caste than myself. Nothing else. Her parents started beating her up. One day her dad beat her up so much that I had to take her away from that house. Her back was like full of bruises and everything and I took her to the doctors. I was like under so much stress that how could people do this to their own daughter. They are like willing to hurt their daughter. They are willing to throw her away just because they think the person she loves is lower than them”.*

Both examples taken from “*The Caste Divide*” by Naresh Puri, BBC Radio 4, April 2003 (see Appendix 2)

### **Group identity and caste**

21. In relation to group identity, the Report acknowledges that “analysis of equality by characteristics such as gender and ethnicity can conceal considerable variations within sub-groups,” and proposes four additional indicators: variance around the average for each main classification (such as income), breakdowns specific to the characteristic in question (such as type and severity of disability), interactions between different key characteristics (such as comparison by gender and ethnicity jointly), and “*other classifications [such as region] which could reveal significantly disadvantaged sub-groups across all six key characteristics.*”
22. Caste and analogous systems of inherited status are wholly arbitrary and unfounded bases of discrimination and as such should be addressed explicitly within our domestic legal framework. Given the stated objectives of the Discrimination Law Review, it is essential that the proposed Single Equality Act be capable of embracing new or previously unacknowledged vulnerable groups or individuals rather than being constrained in its ambit by existing understandings of the six key characteristics or “strands” of inequality.  
  
In this context it is submitted that caste should be recognised (i) preferably as a new characteristic or strand, or (ii) as a classification within the ‘other classifications’ category of additional indicators applicable to all six key characteristics or groups.

### **Caste discrimination in the UK: the challenge for legislators**

23. Caste discrimination operates between groups of people with a shared country or region of origin and/ or a shared racial or ethnic background and/ or shared nationality. Caste is not synonymous with class or with a particular religion, nor is caste status readily discernible on the basis of colour, ethnic or racial background, country or region of origin or nationality.

Rather, caste discrimination is based on a deeply internalised concept of inherited, ascribed social status and worth, related to current or ancestral occupation and largely irrespective of actual income and economic status

### **Fields or spheres of discrimination**

24. In the UK, caste-based discrimination has been found to occur in direct and indirect forms in all spheres of activity or fields identified in existing anti-discrimination legislation, including the public spheres of employment, education, housing and provision of goods, services and facilities:

#### Example 3:

*Indrajit of CasteWatch UK was born and brought up in Kenya and was not aware of caste till he got to the UK. The Indian community in Coventry identified who he was by asking him where his ancestors were from in India. Not only was his identity established, he faced discrimination at his work place (a church social service centre for the elderly), where he was a manager. When the Asians in the staff realized that Indrajit was a Dalit, they started complaining about him and brought disciplinary action against him saying he was inefficient. They also organized the old people to protest, upon which the management closed down the centre. After a month they restarted it, only this time they did not hire him!"*

#### Example 4:

*The General Secretary of Buddha Dhama, a religious association in Southall, faced opposition from non-Dalits when he was promoted at his workplace. 'The non-Dalits in my community objected to my promotion and did not support me in my work. They did not like me in the position as a supervisor.' His job was in dispute as he was not accepted by his colleagues and this caused concern to his English boss as the work was suffering. 'In the end I proved my leadership qualities and proved to be a successful supervisor. However, it took significantly longer because of the caste-based opposition. The non-Dalits presume that 'Chamars' are good for nothing but they don't know that, given the opportunity, Dalits will rise. It is only because of non-availability of resources, suppression and lack of opportunity that Dalits have been pushed down.'*

25. However, and more problematically, caste discrimination also occurs in the political sphere, for example refusal to endorse or support low-caste candidates; in the socio-cultural sphere, for example restricted access to places of worship and religious or cultural events; in the inter-personal sphere, for example the conscious maintaining of social 'separateness,' social exclusion or boycotting, the refusal by dominant castes to use the services of low-caste professionals such as lawyers or doctors; and in the private or intimate sphere as exemplified by the prohibition of inter-caste marriage and the sometimes drastic consequences for couples who violate this prohibition:

#### Example 5:

*The Mayor of Coventry, Ram Lakha, a Labour Councillor who is a Dalit, faced intense discrimination from the 'upper caste' when he stood for election in a largely Indian ward. He said, "During campaigning I was often told that I would not get people's vote as I was a chamar (a derogatory name of Dalits). So I*

*filed my nomination in a non-Asian constituency and was able to win!” He went on to say further, “The Indian Community in Coventry always felicitates every new Mayor; however, till today they have not done this for me.” Davinder Prasad of CasteWatch UK reiterated this point and said, “Being a Dalit is a disadvantage – it is very hard for a Dalit to become a Mayor.”*

26. Caste also retains a strong hold in the private sphere of marriage and intimate relationships. 82% of those interviewed for the DSN Report responded that people did not marry outside their caste group in the UK; most knew of only a handful of inter-caste marriages and these often resulted in negative repercussions for the couple concerned. 64% of respondents thought that the caste system destroyed the development of both the individual and the wider society: ‘You are judged by your birth and not your worth.’
27. If recognition of caste discrimination by the new equality framework is to be meaningful, consideration must be given as to whether it is desirable that the new legislation be capable of addressing these fields of discrimination, and if so, how.

### **Caste-aggravated crimes and caste-ist incidents**

28. As with other types of prejudice, in extreme circumstances caste prejudice may also give rise to crimes of violence. It may therefore be appropriate to revisit the law on “hate crimes”, specifically racially and religiously aggravated offences and to ask whether, for example, a further amendment to the Crime and Disorder Act 1998 is called for to extend the scope of the Act by creating new specific caste-aggravated crimes and applying the same sentencing duty to offences where there is evidence of aggravation on grounds of caste status as applies to racially and religiously aggravated offences. Under s.28 Crime and Disorder Act 1998 an offence will be racially or religiously aggravated if at the time of the offence (or shortly before or after) the offender demonstrates to the victim hostility based on the victim’s membership (or presumed membership) of a racial or religious group, or if the offence is motivated wholly or partly by hostility towards members of a racial or religious group based on their membership (or presumed membership) of that group.
29. Alternatively a similar policy to that adopted by the CPS in respect of incidents with a homophobic or transphobic element could be considered. Unlike racially and religiously aggravated offences, there is no statutory definition of a homophobic or transphobic incident. The definition adopted by the CPS is “any incident which is perceived to be homophobic or transphobic by the victim or by any other person,” a definition which adopts the approach generally accepted for defining other types of hate incidents such as racist incidents (the Stephen Lawrence Report defined a racist incident as ‘... *any incident which is perceived to be racist by the victim or any other person*’). The definition includes those affected by such incidents because they are thought to be a member of a specific community (whether or not that is correct) and those who defend, support, or protect members of such communities. The definition also includes incidents which the perpetrator alone may perceive as homophobic or transphobic, and the policy applies equally to people who may not consider themselves members of such communities providing any incident they are involved in is perceived by someone as homophobic or transphobic.

## **Towards a working definition of caste discrimination**

### **Preliminary issues**

30. A number of preliminary issues present themselves should the Review Panel decide to consider caste either as a potential new, independent characteristic or strand, or as an ‘additional indicator’ classification in the context of the proposed new equality legislation.

### **Amendment of the existing definition of racial discrimination**

31. The first issue is whether it is sufficient simply to amend the definition of racial discrimination in the RRA 1976 and/ or to incorporate an amended definition of racial discrimination into the new Single Equality Act to include the ‘descent’ limb in accordance with the ICERD definition of racial discrimination, as this is the limb under which the CERD has held caste to fall. The RRA 1976 defines racial discrimination by reference to ‘racial grounds’ and membership of a ‘racial group’. ‘Racial grounds’ is defined in the RRA 1976 as ‘colour, race, nationality or ethnic or national origin.’ Similarly ‘racial group’ means a group of persons defined by reference to ‘colour, race, nationality or ethnic or national origin.’ While the ‘ethnic or national origins’ limb of ‘racial group’ was broadly construed by the House of Lords in *Mandla v Dowell Lee 1983 [1983] 2 AC 548* to include Sikhs (as well as Jews), it is submitted that it would require an extremely elastic interpretation of the term ‘race’ to capture caste, particularly given that at the international level it is the ‘descent’ limb of the definition of racial discrimination (which does not appear in the RRA 1976), not the ‘race’ limb, which has been deemed to include caste.
32. In contrast to the UK’s provisions on racial discrimination, Australia’s Racial Discrimination Act 1975, designed to implement the ICERD, defines racial discrimination as any act involving a distinction, exclusion, restriction or preference based on race, colour, *descent* (italics added) or national or ethnic origin. The State of Queensland Anti-Discrimination Act 1991 goes further in defining race as including ‘colour and *descent or ancestry* (italics added), and ethnicity or ethnic origin, and nationality or national origin’.
33. **Amendment of the UK’s existing definition of racial discrimination to include discrimination on grounds of “descent or ancestry” would allow for greater possibility of interpreting domestic legislation to capture caste discrimination.**

### **Caste discrimination or discrimination based on work and descent?**

34. Both the UN Sub-Commission and the CERD have rolled caste discrimination into the wider category of ‘discrimination based on work and descent.’ If caste is to be recognised in new legislation either as a new independent characteristic or strand in its own right, as distinct from race, or as an ‘additional indicator’ classification, the question to be addressed is how widely the proposed characteristic or classification should be defined. The UN Sub-Commission and the

CERD favour a broad category, ‘discrimination based on work and descent’, which is not limited to caste discrimination *per se* but which is capable of encompassing caste and other analagous forms of discrimination based on inherited status. The advantage of such an approach is its flexibility. From a UK perspective, consideration needs to be given as to whether the formulation is constructed in such a way as to include, potentially, discrimination on the basis of descent / birth/ inherited status which does not fall 100% within the South Asian understanding of caste. While the word ‘caste’ should appear in any UK formulation as it is the ultimate form – the *‘ne plus ultra’* of discrimination based on descent, a broader category would capture discrimination on the basis of actual or ancestral hereditary membership of clans, tribes or *biraderi* groupings as well as caste, concepts already familiar to UK immigration tribunals. Reported Immigration Appeal Tribunal “risk of return” cases on grounds of ‘caste’ concern, predominantly, African countries such as Somalia or Yemen, where the understanding and meaning of ‘caste’ exactly the same as the understanding and meaning of ‘caste’ in the South Asian context. It could be argued that a more accurate term would be ‘clan’ or ‘tribe’. But whatever term is used, the issue nevertheless in these cases is discrimination on the basis of descent/ birth/ inherited status.

**Discrimination based on Work and Descent: the definition proposed by the UN Sub-Commission on the Promotion and Protection of Human Rights**

35. The definition of discrimination based on work and descent proposed by the UN Special Rapporteurs on Discrimination based on Work and Descent is:

*“any distinction, exclusion, restriction or unfavorable treatment based on occupation, present or ancestral, and family or community origin, or any other related factors such as name, birth place, place of residence, and language, including dialect and accent.”*

36. The Special Rapporteurs acknowledge that this is not a perfect description and have elaborated common features of this type of discrimination to aid a better understand of the nature of the issue (below). While these common features are not necessarily all observable in the UK in the forms described, preliminary research among South Asian diasporic communities indicates that some of these features or variants on them do exist in the UK:

(a) Discrimination based on work and descent often accompanies a notion of impurity or pollution. The association of impurity or pollution in the concept of discrimination based on work and descent seems to be linked closely to the nature of one’s or one’s ancestors’ occupation. Generally, occupation connected with dead bodies and funerals, religious rituals, animal hunting and killing or making products using animal bodies such as meat, skin or bone, metal works or cleaning toilets and streets has been considered as impure or polluting and people in this sort of occupation, or persons regarded as descendants of such people, are considered as impure or polluted and thus become the targets of discrimination.

(b) The forms of discrimination based on work and descent commonly include: prohibition of inter-marriage (marriage outside of one’s own caste), physical segregation, social ostracism and excommunication, discriminatory practices in the employment and promotion, prohibitions or restrictions on access to public places such as restaurants, hospitals, buses and trains, water springs and common land, untouchability such as prohibition of physical contact and sharing of food or utensils, restrictions on access to educational facilities, religious buildings and sites, and religious ceremonies and verbal humiliation as well as physical attacks.

(c) Discrimination based on work and descent is most notably practiced in South Asia but further studies have revealed that such discrimination widely exists in other parts of Asia and Africa. Such practices are also found in North and South Americas and Europe, particularly among the diasporas (sic) communities.

### **Capturing caste and caste discrimination in legislation**

37. The UN Special Rapporteurs have found that the national Constitutions of caste-affected countries in South Asia specifically prohibit caste-based discrimination, although in some cases the necessary additional legal and administrative measures are lacking.
38. The Constitution of India 1950 abolishes untouchability practices (although not the caste system *per se*) and authorises affirmative action policies in the fields of education, public sector employment and political representation in favour of *inter alia* the Scheduled Castes, the official term for Dalits which refers to those castes listed in a Schedule to the Constitution (the concept of a Schedule, or list, of castes and groups known at the time as ‘depressed classes’ originated in the Government of India Act 1935, passed by the British to afford the Indian provinces a limited amount of self-rule; the term ‘Scheduled Castes’ dates from this time and from the subsequent Government of India (Scheduled Castes) Order 1936 which contained the first list, or Schedule, of castes).
39. Scheduled Caste (‘SC’) status is the ‘passport’ to entitlement to the benefit of affirmative action policies and is established by means of a Caste Certificate. A raft of legislation for the promotion and protection of the human rights of Dalits, including criminal provisions for the prohibition and punishment of atrocities against Dalits, and a variety of constitutional and statutory bodies refer similarly to ‘Scheduled Castes’, and proof of Scheduled Caste status via the production of a Caste Certificate is required in order to invoke and/or benefit from such mechanisms. A similar approach is adopted *vis a vis* tribals, or *adivasis*, via the mechanism of certified ‘Scheduled Tribe’ (‘ST’) status.
40. While the term ‘SC’ will have resonance for members of Indian-origin Dalit communities in the UK, identification of members of socially excluded groups by means of an official Schedule and certification process represents a particularly context-specific approach to the problem of upliftment of groups historically disadvantaged on grounds of caste. In India the need to formulate statutory definitions and meanings in legislation is obviated by the use of the Constitutional term ‘Scheduled Caste’ without need of further explanation.
41. Notwithstanding the origins of the concept, this approach would be inappropriate in the present-day UK context. What is required is the formulation of a statutory definition of discrimination on grounds of caste and analogous forms inherited status. The issue of what is meant by ‘descent’ can, and should, be clarified in law.

### **Prohibition of discrimination on grounds of work and descent – a UK formulation**

42. Protection against discrimination on grounds of descent, including caste, thus requires a formulation of the meaning of “on grounds of descent.” A successful formulation needs to recognise that discrimination may occur on the basis of *actual* or *presumed* or *perceived* or *imputed* caste status, or membership of a particular community, or descent or ancestry or community of origin, or historical or cultural identity, or name, or former, ancestral or hereditary occupation, whether or not such presumptions or perceptions are correct; that such features are very likely to be *hereditary* and may be either *ancestral* or *present*. Western Australia’s Equal Opportunity Act 1984 defines racial discrimination as less favourable treatment or segregation on grounds of (a) race (b) a characteristic that appertains generally to persons of the race of the aggrieved person (c) a characteristic that is *generally imputed* (italics added) to persons of the race of the aggrieved person.
43. In the case of occupation, while it is highly unlikely that an individual would be engaged in the UK in a context-specific menial or ‘polluting’ occupation, it is conceivable that the individual formerly performed such occupation in their country of origin, therefore the word ‘former’ is relevant in relation to occupation.
44. A starting point for a UK formulation is proposed below.

#### **Meaning of discrimination on grounds of descent:**

**“actual or presumed or perceived or imputed or caste membership, or descent or ancestry, or family or community origin, or occupation (whether hereditary, ancestral, former or present), or inherited status, or historical or cultural identity, or any other related factors such as name, birth place, place of residence, religion or language, whether hereditary, ancestral or present.”**

### **Conclusion**

45. (a) Caste-based discrimination and other analogous forms of discrimination based on inherited status are a reality in the UK, yet such discrimination is neither recognised nor prohibited under existing discrimination law.
- (b) Arbitrary and unfounded discrimination, whatever its source, should be prohibited by law. Caste and analogous forms of discrimination based on inherited status are arbitrary and unfounded bases of discrimination and as such should be explicitly addressed within the domestic legal system.
- (c) By ratifying the International Convention for the Elimination of all Forms of Racial Discrimination in 1969 the UK undertook, within its jurisdiction, to prohibit and punish those forms of discrimination covered by the Convention
- (d) The CERD (the Convention’s expert Monitoring Committee) has held that caste-based discrimination and other analogous forms of discrimination based on inherited status fall within the ambit of the Convention.

- (e) The UK therefore has an obligation under international law to prohibit within its jurisdiction discrimination on the basis of caste and to enforce such prohibition by appropriate means
- (f) However caste-based discrimination does not fall within the ambit of the UK's existing equality legislative framework and is not identified as such in any existing anti-discrimination legislation in the UK.
- (g) The Discrimination Law Review offers an opportunity to update our equality framework by recognising and addressing the problem of discrimination on the basis of caste.

## Appendices

1. ***“No Escape: Caste Discrimination in the UK”*** ; DSN July 2006
2. ***“The Caste Divide”*** by Naresh Puri, BBC Radio 4, broadcast April 2003
3. **Testimonies submitted by Caste Watch UK**
4. ***“Despair of the Discriminated Dalits*** by Monica Chadha, BBC News, Nagpur, 5 December 2006
5. ***“Escaping Caste”*** by Dan Isaacs, BBC Radio 4, broadcast 28 December 2006

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