

## Transitional justice measures and the legacy of human rights violations in colonial contexts

A submission from the National Secular Society to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

7 May 2021

### Introduction

The National Secular Society works for the separation of religion and state and equal respect for everyone's human rights so that no one is either advantaged or disadvantaged on account of their beliefs. We advocate for secularism as the best means of fostering a free and fair society in which people of all religions or none can live together peacefully as equal citizens. The NSS has been in special consultative status with the United Nations Economic and Social Council since 2016.

This input/submission concerns discrimination on grounds of caste, principally in the United Kingdom (UK). While the United Kingdom was the former colonial power in India, the diaspora of those of Indian origin form a significant proportion of the population in the UK. Unfortunately, that diaspora have been demonstrated to practise caste discrimination, as indicated in 2. below. The UK therefore becomes a “concerned country” in this respect. As shown below, caste discrimination in the UK has already being the subject of concern by the United Nations. The unwillingness of the Conservative-led Government over the last decade to incorporate legislation to outlaw caste discrimination, as the UN and other international bodies have called for, is set out in the NSS's comprehensive and comprehensively referenced briefing paper.<sup>1</sup>

Responses to the questionnaire<sup>2</sup> are shown below by questionnaire number.

### 1. Holding Accountable

Repeated attempts over the last decade by Parliament to hold the Government to account and bring into effect enabling legislation to outlaw discrimination on the grounds of caste have failed. The NSS has resorted to raising the matter at the UN, most recently in our

<sup>1</sup> <https://www.secularism.org.uk/uploads/caste-discrimination-briefing-1.pdf>

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[http://r20.rs6.net/tn.jsp?f=001avbQ7yV80AI2kBTyJnebhylcZqtiNvRFwKbVWvbGgyKknziW\\_IDuNPTqJ1C7AZU0FwEkfPf7DylFcvxLhEUHGLykX1YXO8asLlrgV7VEanc\\_SXtCbeaE5GykiBQTJKV6LUXkbbDA9tKlr43Dr5094wgOIdAJaOx82D1PmpPfHtg-rGLtwkcoWqTNQGqhvY52mg9xjaahuZj7DS4xK0J\\_clvX4aTdf2vA6\\_CjvtRx66C-0uvxmLeVgcCl590kXxUYzIl4\\_qpfl4=&c=E8FJlwhcjKY5iaPgjPExxn2lYBoJfhvxeH9jCx80v3YfojfeX3T15Q==&ch=83rYLS5DoYMc1dUdX6ReavZtpPzO2cl1qWS0ixj1609gUBvmwww3BQ==](http://r20.rs6.net/tn.jsp?f=001avbQ7yV80AI2kBTyJnebhylcZqtiNvRFwKbVWvbGgyKknziW_IDuNPTqJ1C7AZU0FwEkfPf7DylFcvxLhEUHGLykX1YXO8asLlrgV7VEanc_SXtCbeaE5GykiBQTJKV6LUXkbbDA9tKlr43Dr5094wgOIdAJaOx82D1PmpPfHtg-rGLtwkcoWqTNQGqhvY52mg9xjaahuZj7DS4xK0J_clvX4aTdf2vA6_CjvtRx66C-0uvxmLeVgcCl590kXxUYzIl4_qpfl4=&c=E8FJlwhcjKY5iaPgjPExxn2lYBoJfhvxeH9jCx80v3YfojfeX3T15Q==&ch=83rYLS5DoYMc1dUdX6ReavZtpPzO2cl1qWS0ixj1609gUBvmwww3BQ==)

Written Statement to the Human Rights Council's Forty-third session (2020)<sup>3</sup>, extracts from which are shown below:

*(page 4) "In 2017, the Government undertook a public consultation ...[but] the Government did not seek views from the consultation on "the detail of the prospective legislation" as the UN had been informed it would. The consultation was instead on "whether additional measures are needed to ensure victims of caste discrimination have appropriate legal protection and effective remedies under the 2010 Equality Act"*<sup>4</sup>

*"The consultation questions had the effect of encouraging respondents to prefer awaiting the evolution of case law rather than back legislation ....[but] evolutions in case law may not achieve the objectives set out in the recommendation 110.61.*

*"Those perceived to be of low caste and therefore the most likely to need protection are unlikely to have the funds to mount [a case law] challenge. It is difficult to escape the conclusion that the Government's stance amounts to a covert refusal to implement recommendation 110.61."*

## 2. Establishment of Truth

A previous government commissioned a survey<sup>5</sup> to inform it about caste discrimination as a prospective ground for anti-discrimination law.

"The [2010] study identified evidence suggesting caste discrimination and harassment" "by higher castes against the lowest castes" "in relation to:

- work (bullying, recruitment, promotion, task allocation);
- provision of services; and
- education (pupil on pupil bullying)

The survey was qualitative rather than quantitative, so it neither constitutes evidence of "gross violations", or that there were none. It did however identify that 50,000 (and perhaps in excess of 200,000) people living in the UK are regarded by some as 'low caste' and at risk of caste discrimination.

While we are not aware that victims or affected communities were consulted in the design of the (desktop) survey, but it was conducted by a neutral organisation and we have no reason to believe that it was biased or incomplete.

The survey was published<sup>6</sup>. It did not deal thematically with additional problems faced by women, but they were referred to in several examples.

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<sup>3</sup> <https://www.secularism.org.uk/uploads/submission-to-un-on-caste-discrimination.pdf> and news piece <https://www.secularism.org.uk/news/2020/03/nss-urges-un-to-push-government-to-pass-law-on-caste-discrimination>

<sup>4</sup> <https://www.gov.uk/government/news/caste-discrimination-consultation>

<sup>5</sup> <https://www.niesr.ac.uk/sites/default/files/publications/caste-discrimination.pdf>

<sup>6</sup> <https://www.niesr.ac.uk/sites/default/files/publications/caste-discrimination.pdf>

### **3. Reparations**

In the briefing section on “Case law on caste and the difficulties posed” we describe how, in the absence of the legislation called for by the UN, none of the (few) attempts to obtain justice through case law have succeeded. In one case the judge refused to rule on caste discrimination and in another the case was abandoned through no fault of the claimant and even cost him his life savings without receiving any recompense.

### **4. Memorials recognising victims of caste discrimination**

There are none.

### **5. Guarantee of non-recurrence**

Without legislation, there is no such guarantee.

### **Suggested reasons for failure to legislate**

The underlying reasons for the failure to legislate are explained by UK-based Meena Varma, Executive Director, International Dalit Solidarity Network: “The opposition to legislation in the UK is from those who continue to deny the existence of caste-based discrimination, and who regard themselves as from so-called 'higher' castes, as well as from the Government which includes such people and is keen, especially post-Brexit, to improve relations with the Indian Government led by Narendra Modi. Trade with India is front and centre, despite commitments to human rights - including in business supply chains, where caste-based discrimination is a real concern.” We concur.

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## Annex

We recommend Prof David Mosse's article<sup>7</sup> *Caste and development: Contemporary perspectives on a structure of discrimination and advantage*. We draw attention to his statement that "There is no specific mention of caste in [Sustainable Development Goals]. Maybe this omission could be reconsidered.

This group campaigns for legislation in the UK <https://dsnuk.org/caste-discrimination/> and <https://dsnuk.org/caste-in-the-uk/>

The following article relates to India.

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ANISH KAPOOR

### **Covid must force India to face up to its secret shame**

Anish Kapoor

May 03 2021, 12.00 am, The [London] Times

[Covid must force India to face up to its secret shame | Comment | The Times](#)

There is a reality about India that remains wilfully undeclared. It is that India today is the most unequal society there has ever been. I speak not only of economic difference but of social disdain. This is for reasons that are deeply ingrained and wrapped up in every aspect of Indian life and have withstood the emergence of India as the sixth-largest economy in the world.

Sixty per cent of the population — 800 million people — live, or more accurately survive, in abject poverty and are forced into invisibility. The harshness of caste boundaries and endemic social segregation means they are the downtrodden of the earth and it matters not if they live or die.

In this context the BJP government, led by the prime minister's arrogant and foolish insistence on Hindu superiority, is to be seen as reinforcing an age-old disregard for those among his own people who were born "inferior" and whose karmic lot is deemed to be that of something less than human. It is no exaggeration to think of India's low-caste poor as living in concentration-camp degradation and squalor.

Narendra Modi's lack of concern about the spread of Covid-19 is linked to the perceived racial superiority of high-caste Indians who will survive the crisis relatively unscathed, while

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<sup>7</sup> <https://www.sciencedirect.com/science/article/pii/S0305750X18301943>

the poor and low caste are left to fend for themselves with little or no help or medical assistance.

Modi's ignorant claims that India shows to the world the way of spiritual advancement are shallow words of self-aggrandisement. This fraudulent and even criminal misreading of the Indian tradition reinforces, for political ends, the racial superiority of the few.

Callous disregard of the signs of Covid-19 by his cronies, advisers and Modi himself leaves the greater Indian population exposed to rampant infection rates. They are seen as contributing neither to the economic nor the spiritual future of the nation, and as such are dispensable. It may be that their drag on the nation is such that it were better if they were dispensed with.

While I shout blame at the horror that is BJP Hindu superiority, I lament that all Indians are guilty of allowing their fellow citizens to live in such horrific poverty that it robs people of all dignity and makes for a necessary invisibility. How else could we live in the lap of luxury?

This time of Covid needs to become a time of realisation for India: that it might look at itself and see the inequality it enforces on the majority of its population; that it might listen to the cry for visibility from its people; that it might listen less to the BJP cronies who fill their pockets while India cries out in poverty and in pain.

Mahatma Gandhi failed to properly recognise or acknowledge this harsh reality of Indian life. BR Ambedkar, the man who oversaw the writing of the Indian constitution in 1947, did see it and wrote extensively about this horrific and continuing fact. Sadly, his insights have been ignored while, in typical Indian fashion, his person is celebrated.

The time has come for India to reassess its shameful inheritance and the social injustice on which its supposed success is based. END