

Caste in Great Britain and equality law: a public consultation

**Consultation analysis report for the
Government Equalities Office**

July 2018

Nigel Lloyd, NHL Partnership Ltd

Contents

1 Introduction	4
1.1 Consultation background	4
1.2 Consultation details	4
2 Consultation analysis	5
2.1 Coding framework development	5
2.2 Analysis of written, narrative, 'free-text' consultation responses	5
3 Consultation responses and respondents	6
3.1 Overview and note on consultation responses	6
3.2 Response method and respondent breakdown	6
4 Analysis of consultation responses	8
4.1 Overview	8
4.2 Thematic analysis	9
4.2.1 Complex nature of caste and caste identity	9
4.2.2 The centrality and importance of the definition of caste	10
4.2.3 Key types of caste discrimination that might not be covered by the concept of ethnic origin in case-law	11
4.2.4 Perspectives on the preferred options	13
4.3 Analysis of respondents' 'Overall perspectives'	17
4.4 Analysis of individual consultation questions	18
4.4.1 Question 1	19
4.4.2 Question 2	19
4.4.3 Question 3	20
4.4.4 Question 4	24
4.4.5 Question 5	25
4.4.6 Question 6	26
4.4.7 Question 7	27
4.4.8 Questions 8 and 9	28
4.4.9 Question 10	31
4.4.10 Question 11	32
4.4.11 Question 12	32
4.4.12 Question 13	33

Table of Figures

Figure 1: Consultation response method	7
Figure 2: Respondents' overall perspectives	18
Figure 3: Responses to question 1	19
Figure 4: Responses to Question 2	20
Figure 5: Responses to Question 3 - Features of 'caste'	22
Figure 6: Question 3 - respondents' explanations for why identified feature would not be covered by 'ethnic origins'	23
Figure 7: Benefits of using case-law	24
Figure 8: Disadvantages of using case law	26
Figure 9: Benefits of inserting 'caste' into the Equality Act 2010	27
Figure 10: Disadvantages of inserting 'caste' into the Equality Act 2010	28
Figure 11: Question 8 - Should PSED and positive action apply to caste	29
Figure 12: Question 9 - Reasons for answer to Question 8 - PSED	30
Figure 13: Question 9 - Reasons for answer to Question 8 - positive action	31
Figure 14: Responses to Question 10 - preferred option	31
Figure 15: Respondents' reasons for their Question 10 responses	32
Figure 16: Question 13 - What else should the Government do to prevent caste discrimination?	33

1 Introduction

This report presents a summary of responses to a Government Equalities Office (GEO) consultation about how to ensure that there is appropriate and proportionate legal protection against unlawful discrimination because of a person's caste.

1.1 Consultation background

The Equality Act 2010 (the Act) brings together Great Britain's anti-discrimination legislation. It provides protection against discrimination because of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. The Act covers: employment; the provision of goods and services; public functions; education; premises; associations and clubs.

As the result of a House of Lords amendment to section 9 (5) (a) of the Act, a duty exists to introduce into domestic legislation, specific legal protection against discrimination because of caste, by making caste an aspect of race for the purposes of the Act. The consultation, the responses of which are provided in this report, invited views on whether legal protection against caste discrimination is best ensured by relying on emerging case-law under the Act, or by making caste explicitly an aspect of race in the Act.

1.2 Consultation details

The consultation was launched on 28th March 2017 and closed on 18th September 2017. It set out proposals for either reliance on case-law developed by courts and tribunals, or for specific legislation for the prevention of discrimination because of caste. It invited responses from employers, service providers and public authorities, as well as the wider public, about whether caste should be an aspect of race in the Act, and the implications of the amendment in section 9 (5) (a) of the Act.

The consultation consisted of 13 questions - three 'closed' and 10 'open-ended'. Respondents were able to complete the consultation questionnaire online, via email or in hard copy.¹

As well as completing the consultation survey, respondents were also asked to provide a small amount of information about themselves. This included their email address, and any organisation on whose behalf they were responding.

¹ In addition, a large number of respondents chose to respond to the consultation without completing the consultation questionnaire (for example, by submitting written, narrative, 'free-text' responses).

2 Consultation analysis

The GEO commissioned NLH Partnership Ltd to analyse the consultation responses and provide a brief, written report outlining the key findings.

The GEO was particularly interested in gaining from this consultation, new perspectives, findings and arguments that might enhance the Government's knowledge about how best to ensure that there is appropriate and proportionate legal protection against unlawful discrimination because of a person's caste. The aim was therefore to provide a largely thematic analysis of consultation responses to inform the Government's considerations.

It is important to note that the methodological approach to the consultation, and the fact that responses were sought from a broad 'opportunity' sample, means that findings from this consultation should not be treated as representative.

2.1 Coding framework development

In preparation for the analysis of consultation responses, NLH Partnership worked with GEO representatives to develop and agree coding frameworks for the qualitative elements of the consultation questionnaire. This involved reviewing a sample of consultation responses and developing clear themes/codes into which respondents' answers to each question were to be placed.

These frameworks enabled NLH Partnership to generate a number of 'themes' for each question, under which responses could be grouped.

Each qualitative response to a consultation question was coded to one or more of the codes/themes that had been developed for the coding framework for that question. It was common for a single response to be coded to more than one code/theme.

2.2 Analysis of written, narrative, 'free-text' consultation responses

As noted earlier, a large number of respondents (please see section 3.2 for more details) provided written, narrative, 'free-text' consultation responses rather than completing the consultation questionnaire. Some of these respondents explicitly addressed specific questionnaire questions within their response, while others did not.

Where respondents explicitly addressed specific questionnaire questions, their responses were coded using the relevant coding framework. Where they did not, their responses were read and qualitatively analysed to extract salient information to inform the Government's response to the consultation, as well as to assess respondents' 'Overall perspective' (please see section 4.3 for more detail) regarding whether legal protection against caste discrimination is best ensured by relying on emerging case-law under the Act, or by making caste explicitly an aspect of race in the Act.

3 Consultation responses and respondents

3.1 Overview and note on consultation responses

In total 16,138 separate consultation responses were received.

It is important to note that a large proportion of these responses (more than two-thirds) were identical to those of numerous other responses. Some of these responses were duplicated a few dozen times, whereas others were ‘duplicated’ many hundreds of times. There were therefore, many identical consultation responses that had been signed by different individuals.

In total there were 24 versions of such duplicated, ‘batch’ responses, which together accounted for 11,634 responses. In addition, there were a significant number of other almost identical responses that differed only slightly from each other.

A range of views were expressed across these duplicated, ‘batch’ responses, including those who favoured a reliance on case-law, those who favoured making caste explicitly an aspect of race in the Act, as well as those who felt that neither of these options would be appropriate. Some of these ‘batch’ responses involved completing the consultation questionnaire, whereas others involved providing a ‘narrative’ response and/or endorsing the consultation response provided by a particular organisation.

In addition, a small number of petitions were received that either contained signatures supporting an organisation’s consultation response, or else supported a particular position (for example, that *‘caste discrimination should be outlawed’*, or that the *‘UK Parliament should repeal the caste ‘clause’ in the Equality Act 2010’*).

3.2 Response method and respondent breakdown

Figure 1, below, provides a breakdown of the methods by which respondents responded to the consultation. As the figure shows, of the 16,138 respondents:

- 7,329 (45%) completed a consultation questionnaire;
- 5,477 (34%) submitted a solely narrative/free-text response;
- 2,953 (18%) submitted a narrative/free-text response, but also explicitly addressed a single question (question 7);
- A further 379 (2%) respondents did not complete a consultation questionnaire, but explicitly addressed each consultation question in their submission.

Table 1, below, presents a breakdown of consultation respondents by respondent ‘type’. As the table shows, the vast majority of respondents (15,657, 97%) were individual respondents. Analysis of consultation responses by respondent ‘type’ was not conducted, as the small numbers of respondents who were not ‘individuals’ meant that such analysis would have been of limited scope and use.

Figure 1: Consultation response method

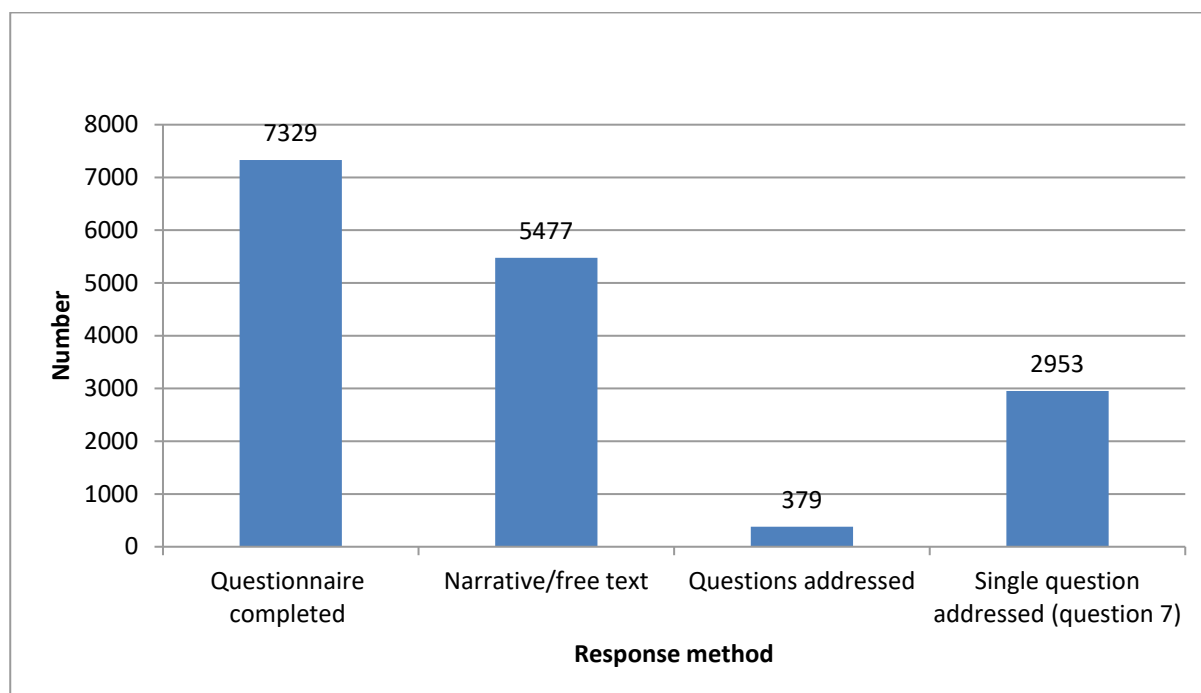


Table 1: Breakdown of respondents by respondent 'type'

Respondent 'type'	Number
Individual	15,657
Community organisation	25
Educational establishment	21
Employer/business	53
MP/Lords/Government department	4
Local authority	3
Religious organisation	111
Service provider	21
Representative body/sector organisation	11
Other	12
Non-UK	3
Unclear/not stated	217

4 Analysis of consultation responses

4.1 Overview

The GEO was aware of the complexities surrounding the issue of caste, and so allowed narrative responses to the consultation to be submitted. The GEO was also keen to gather the views and perspectives of a range of interested parties, and so allowed consultation submissions that went beyond simply completing a consultation questionnaire.

As stated in section 3.2 above, fewer than 50% of respondents completed a consultation questionnaire or explicitly addressed each of the consultation questions. In order to fully represent the views and perspectives of respondents in their totality, the responses of all respondents are represented in the analysis provided in this report. This includes the views of those who provided a narrative response rather than complete a consultation questionnaire.

To enable an accurate representation of the 'overall' perspective of each respondent, each respondent's consultation response was coded to indicate their 'Overall perspective' in terms of the options which were the focus of the consultation, namely: 'Relying on case law' or 'Inserting caste in to the Equality Act 2010'.

Fewer than 50% of respondents completed a consultation questionnaire, and therefore a minority of respondents directly answered Question 10, which asked for respondents' preferred option: '*Case law*', '*Using the legislative duty to insert caste into the Equality Act 2010 as an aspect of race*' or '*Other/Don't know*'. However, each response was read and, where it was clear, coded in terms of whether the respondent was in favour of case law, legislation, neither option, or either option. These findings are presented in section 4.3.

It is important to note that there was a common tendency among respondents answering the consultation questionnaire, not to answer the specific questions being asked. It was common for respondents to provide responses that outlined their general view or perspective about 'caste' and/or whether they favoured case law or legislation. It was also common for respondents to respond to different questionnaire questions with an identical or very similar response, rather than addressing the specific question being asked, and/or to express a general opinion and repeat this throughout the questionnaire. In addition, a large proportion of consultation responses utilised very similar wording and phrasing. In many cases the responses also lacked detail regarding the points being made, although the 'Overall perspective' was usually very clear.

There were also a small number (fewer than 25) of very detailed consultation responses received from organisations and individuals, some of which ran to many pages in length. Some of the points discussed in these responses mirrored those raised in the other consultation responses received, but provided more detail and clarity regarding some of

the main themes. These responses also provide some particularly salient points to inform the Government's consideration of the best way to ensure that there is appropriate and proportionate legal protection against unlawful discrimination because of a person's caste.

The analysis presented below begins with a broad, thematic analysis of some of the main issues and themes raised by this consultation. This analysis draws, in particular, on those detailed consultation responses which contained perspectives, findings or arguments that might enhance the Government's knowledge about how best to provide protection against caste discrimination. A quantitatively focused analysis of consultation responses is then provided.

4.2 Thematic analysis

4.2.1 Complex nature of caste and caste identity

A large number of respondents highlighted the hugely complex nature of caste identities and the concept of caste. This complexity and the nuances of caste were central to the arguments that were presented in the detailed consultation responses received from those that considered that there might be gaps in the protection offered by the concept of ethnic origin in case-law. For these respondents, the complexity of caste identity is not fully captured by 'ethnic origins'.

For example, one such respondent gave the example of a case where the claim was dismissed, in part, because the complainant and respondents were of the same caste, and it was therefore held that the complainant's mistreatment could not have been as a result of caste discrimination. The respondent provided this example to argue that the concept of ethnic origins fails to appreciate the nuance of caste identity. Other respondents highlighted the view that caste can operate as a distinct type of identity, often across different religions, classes, and ethnic groups, and a number of respondents highlighted that caste is not necessarily an aspect of ethnic or national identity.

Another respondent, who provided a detailed response, highlighted that in some cases caste discrimination may not be related to ethnicity at all, but rather to other perceived characteristics. This respondent, in highlighting the problematic nature of relying on the concept of ethnic origin to provide protection against caste discrimination, stated:

"There is a fundamental problem in principle in making the establishment of caste discrimination dependent on the question of distinct ethnicity. The systematic disadvantage suffered by certain castes may not be related to ethnicity in reality at all, but to perceived social and/or religious status. Caste discrimination ought to be equally objectionable in law whether or not it is based on ethnic origins."

Some more detailed responses explicitly highlighted the potential risk of failing to adequately address caste discrimination as a result of legal understandings of caste failing to encompass the complexities of caste identities. For example, one such response describes this risk in the following way:

“It is likely that if caste is left as an aspect of ethnic origins this will lead through case law to a very narrow definition of caste in which complexities, such as sub-castes and sub-groups, including those within the Dalit caste, will not be covered. It will create a legal situation where victims can seek legal redress only against members of distinctly separate castes, when this is not how discrimination is actually experienced by the victim.”

4.2.2 The centrality and importance of the definition of caste

A large number of respondents highlighted the lack of a clear, universally-agreed definition of caste, and some of the more detailed consultation responses highlighted the inherent difficulties in adequately and appropriately defining caste, particularly in law. For some of these respondents, the difficulty in defining caste provides a hurdle to being able to insert caste into the Act. As one respondent stated:

“However, a disadvantage of inserting caste into the EA 2010 as a specific aspect of race is the difficulty of defining caste in a manner which is not overly restrictive, reflects the complex nature of caste, and that does not unwittingly focus exclusively on caste as it exists in South Asia and the South Asian diaspora”

Another respondent said:

“The greatest hurdle in seeking to include caste as a specific aspect of race is that there is no clear definition of what is meant by caste, particularly if it is not sought to be targeted towards any specific community or religion. The inclusion of caste, without a clear definition, runs the risk of creating a blurring of the lines of discrimination in an unanticipated way. Any definition will be subject to challenge and test, with attempts to broaden the scope of caste which has the potential for creating further division within society, depending on the definition of caste that is used.”

A large number of consultation respondents also stated that they felt that the term ‘caste’ lacked meaning in the absence of a clear definition. This was often given as a reason for not being able to fully answer all consultation questions.

A small number of detailed responses also highlighted the importance of clear definition, particularly if inserting caste into the Act, in order to ensure that legislation adequately encompasses those it is intended to protect. Some of these respondents highlighted, for example, that too narrow a definition might risk failing to protect some of those it intends to protect, while too broad a definition might result in encompassing a wider group than intended.

The analysis of consultation responses suggests that formulating a clear agreed definition of 'caste' would be vital if caste is to be inserted into the Act as a specific aspect of race.

4.2.3 Key types of caste discrimination that might not be covered by the concept of ethnic origin in case-law

Discussions of the types of caste discrimination that might not be covered by the concept of ethnic origin were typically general in nature. Respondents often discussed the complexity of caste without specifically identifying the features of caste that they do not consider are covered adequately by the concept of ethnic origins. The following were typical examples:

“The concept of ethnic origin is not the same as caste: dalits (and other castes) are of differing ethnic origins. Caste-based discrimination is therefore not due to ethnic origin because they are not the same thing.”

“Dalits and other castes have multiple and varying ethnic identities including different languages, religions and cultures. Discrimination occurs within and between ethnic groups and religions. Lawyers’ understanding of ‘ethnic origins’ is not necessarily the same as what non-lawyers mean and understand by it. E.g. In UK equality law Sikhs are considered an ethnic group but Muslims, Christians, Jains and Hindus are not. It is therefore better to simply insert caste into the Equality Act rather than relying on judicial interpretation of the ethnic origins subcategory and on case law to extend the Equality Act to caste.”

Some of the more detailed responses received, however, did identify some key types of caste discrimination that might not be covered by the concept of ethnic origins in case-law. For example, one detailed response stated that 'ethnic origin' might not cover discrimination in the case of 'intra-caste discrimination, where two people are of the same caste but there is a hierarchy within the caste. This respondent stated:

“We can however foresee difficulties in making a case for direct discrimination which when the alleged treatment is intra-caste. Direct discrimination relies on a comparison between an individual with a particular protected characteristic, and someone who doesn't have that characteristic. For example, less favourable treatment of someone with a particular ethnic origin as compared to someone with a different ethnic origin. It may be more difficult to establish this comparison in a case of intra-caste discrimination, because arguably both individuals are from the same caste and so may be regarded as having the same ethnic origin.”

A small number of respondents also specifically highlighted their view that discrimination as a result of association with a specific religious tradition may not be covered by the concept of ethnic origin.

A small number of respondents highlighted that certain types of caste discrimination originating from social categorisations might not be covered by the concept of ethnic origins. For example, one respondent commented:

“Wherever the concept of ‘caste’ does not reflect any aspect of ethnicization but a more general social categorisation, rooted in historic indigenous or settled occupational status, it may not be covered by the concept of ethnic origin in existing case law.”

Another respondent commented:

“A person might be able to improve their social standing within a caste without this nullifying the concept of caste being part of their identity. They could still experience discrimination from members of higher castes or subcastes within their own and therefore have legitimate grounds for redress. Currently the concept of caste as part of ethnic origins has been shown to not cover cases involving a degree of social mobility. This case illustrates one of the main problems with the case law approach. Both parties shared a common sense of ethnic identity and descent. Yet there was evidence that caste remained a dividing aspect between them. It is a characteristic unique and apart from ethnicity.”

Another respondent stated that ‘social function’ might be a feature of caste that sits outside the definition of ethnic origins, stating:

“Social function as a distinct feature of caste would not easily fall within the definition of ethnic origin whether this is based on occupation or wider economic position – if a respondent were to argue that discrimination is based on someone’s occupation or socio economic standing (more akin to class than caste) this may evade the scope of “ethnic” origins (or at least lead to further case law and lack of clarity).”

The same respondent also stated:

“Less favourable treatment based on a person’s social standing/function (more akin to class than caste). If a respondent were to argue that discrimination is based on someone’s occupation or socio- economic standing this may evade the scope of “ethnic” origins.”

This respondent also highlighted that discrimination based on ‘ritual purity’ or ‘surname’ might also not fall within the concept of ethnic origin. In the case of surname, this respondent stated:

“Surname: this is one indicator of caste, seems to be linked to descent, but of itself it may not fall within ethnic origins – it may be argued that again this is indicative of social status which is the cause of the discrimination in an attempt to evade the scope of “ethnic origin”.

The comments highlighted above illustrate some of difficulties of capturing the complexities of caste within the concept of ethnic origins.

4.2.4 Perspectives on the preferred options

Analysis of consultation responses highlighted a number of key themes relating to respondents' perspectives on caste, caste discrimination, and the options presented in the consultation questionnaire. These are outlined below.

4.2.4.1 Distinct perspectives on caste

The majority of consultation respondents expressed one or more of a small number of distinct positions in relation to caste, caste discrimination and the options presented in the consultation.

A large number of respondents felt strongly that caste discrimination in the UK is an issue that needs to be addressed, and these respondents typically also felt that the legislative option is the most appropriate way to address caste discrimination. The following responses were typical from respondents holding this perspective:

“The UK Government must provide protection for all individuals facing all forms of discrimination and human rights abuses. At a minimum, it should ensure that caste is added to the Equality Act 2010. In doing so, greater confidence in the legal system would be instilled amongst the 4.5 million South Asians living in the UK and amongst other communities where caste discrimination may occur.”

“Caste discrimination takes place within ethnic minority communities. It needs special legislation to promote equality and make caste illegal.”

Conversely, a large number of other respondents indicated that caste discrimination does not exist in the UK. These respondents typically rejected the legislative option, and in many cases also stated that the term 'caste' should be removed from UK legislation. Many of these respondents also rejected the case-law route. The following responses were typical from respondents holding this perspective:

“Eradicate the word 'Caste' from UK Equality Law. The word caste has been introduced with an intent of divide and is foreign to our community. This is not relevant to us and the word needs to be eradicated.

“It does not exist in Britain so why are you even thinking about introducing this? I have never come across discrimination on these grounds before and we should not be using the word caste at all.”

“Neither option is preferable. Don't introduce a way of discrimination that doesn't already take place. No good will come of introducing caste discrimination into UK jurisprudence through either method.”

4.2.4.2 Use of the term ‘caste’

A key feature of the perspective of many respondents who rejected the legislative route, and particularly those who felt that caste discrimination does not exist, was their view that the use of the term ‘caste’ is itself offensive and should be avoided, particularly in legislation. This was a widely held view, with many of these respondents also stating that the use of the term ‘caste’ discriminates against people of South Asian origin and contributes to a ‘negative portrayal’ of South Asian groups.

These respondents typically stated that they did not want to encourage caste consciousness in the UK, and that raising the issue of caste widely, and potentially entrenching caste in legislation, runs the risk of encouraging caste consciousness, particularly among young people of South Asian origin. The following responses were typical:

“The use of the term Caste is in itself discriminatory and objectionable.”

“The term caste has no place in society.”

“The use of the word 'caste' is hateful and derogatory. The said word is a colonial concept imposed upon Indians and does not need to be in any global vocabulary.”

4.2.4.3 Potential ‘flexibility’ of case law

A number of respondents, particularly those who provided more detailed responses, highlighted that in the absence of a universally-agreed definition of caste, case law might avoid the difficulty of not being able to define caste in legislation – the duty currently requires the word ‘caste’ to be inserted into the Act but it does not allow for any ancillary definition to be included - and allow for interpretations of caste to be developed, clarified or refined through case law. As one respondent stated:

“As it is seemingly so difficult to come up with a universally accepted definition of caste, it may be prudent for a definition to come about or become refined through case law.”

A number of respondents stated that this approach might allow for greater legal flexibility, for example, allowing the law to evolve over time and to capture and respond to the complexity and potentially fluid and changing nature of caste.

The following are examples of this position from some of the more detailed consultation responses:

“There is no commonly accepted definition of caste. It is multi-faceted and complex. Such subtleties may be better dealt with by case law, which can evolve and respond to arguments and facts, and provide greater flexibility than a rigid statutory definition.”

“No universally agreed definition, so: Case law may therefore be better equipped to evolve and respond to arguments presented on what ethnic origins may cover and provide greater flexibility.”

“Case law will develop naturally even in the absence of legislation. Courts and tribunals can be left to determine whether particular instances of ‘caste discrimination’ constitute discrimination on the grounds of ethnic origin or, in certain cases, discrimination on the grounds of religion. There is a strong tradition of fairness, natural justice and tolerance in British society.”

“Case law is fluid and allows for an investigation of specific facts allowing it to be flexible to cultural and societal changes as well as being more nuanced in approach than a strict definition.”

4.2.4.4 Uncertain nature of case law

A common theme amongst those respondents who were in favour of inserting caste into the Act was that relying on case-law would result in uncertainty regarding the development of law in relation to caste discrimination. These respondents typically stated that there would be no guarantee of the way in which case law would develop, or that it would develop in such a way as to provide adequate protection for those experiencing caste discrimination. The following responses were typical:

“There is no guarantee that case law will develop to recognise that caste is covered by existing law and that discrimination on the grounds of caste is unlawful.”

“Case law won’t necessarily develop to recognise that caste is covered by existing law, and that caste-based discrimination is illegal.”

These respondents often also highlighted the potential cost and stress to claimants that might be associated with bringing a claim under these circumstances, and that this might deter claimants from bringing a claim.

The more detailed responses to the consultation that highlighted the uncertain nature of case law also tended to focus on the lack of legal clarity that might result from relying on case law to address caste discrimination. These responses typically highlighted the potential for contradictory or inconsistent legal decisions. The following are examples of responses from the small number of more detailed responses:

“Development of case law has already established that caste discrimination is prohibited as a form of discrimination based on ethnic origins, but that Tirkey was a decision only at EAT level and that therefore that does carry a risk that a contrary decision could be made by a higher Court.”

“Leaving the current legislation as it is, on the basis that developing case law could be relied upon to protect against caste discrimination would accordingly lead to very considerable legal uncertainty as to the circumstances in which such discrimination

was unlawful, and, potentially, to inconsistent decisions turning on the particular evidence put forward in an individual case.”

4.2.4.5 The need to raise awareness that caste discrimination is unacceptable

As stated earlier, a significant number of respondents stated that caste discrimination does not exist in the UK. However, a range of respondents, including a number of those who were in favour of relying on case law and those who were in favour of legislation, commented that there is a need to raise awareness, particularly among employers and service-providers, that caste discrimination is unacceptable.

Some of these respondents focused, in particular, on the benefits of inserting caste into the Act and/or the benefits of raising awareness among employers and service-providers of the implications of the current case-law position regarding caste discrimination. They stated that such action, and general awareness-raising among employers and service-providers around the legal implications of caste discrimination might have a number of potential benefits. These included: reducing the likelihood of caste discrimination taking place; and reducing the chances of employers or service-providers inadvertently contravening the Act as it relates to caste discrimination.

The following were stated in the more detailed responses received:

“As described above, additional steps could be taken to raise awareness of the decision in Tirkey and the unacceptable nature of caste-discrimination, including an amendment to the Equality Act Code of Practice and ACAS guidance.”

“A benefit of inserting caste into the EA as a specific aspect of race is that it would send a clear message that caste-based discrimination is unacceptable. Research by the National Institute of Economic and Social Research (NIESR) has identified that discrimination and harassment based on caste does exist both in the workplace, in the provision of services, and in schools (pupil-pupil bullying). Legislative awareness may have the effect of raising awareness, not only amongst employers, schools and service providers, but also amongst victims who may feel empowered to bring claims.”

“Specifying caste sends a clear and unmistakeable signal that discrimination on the grounds of caste is not accepted although this really needs to be coupled with a clear definition of caste.”

“Provide a clear and acceptable definition of caste, along with guidance on how to avoid discrimination, in order to educate employers and service providers on issues of caste. This will help caste issues to be recognised and addressed within the existing framework of anti-discrimination legislation.”

“Once caste is inserted into the Equality Act 2010, the UK Government should produce information on caste-based discrimination and share this widely across

society, including employers, to help educate, identify it and prevent it from occurring.”

*“While the decision of the EAT in *Tirkey v Chandok* was a significant landmark decision, there has been no noticeable response from employers in terms of amending their diversity policies, or extending their training programmes to cover caste discrimination issues. Legislation may have a much more noticeable effect on education and awareness than case law although an alternative way to address this would be to update the notes to the Equality Act to refer to *Tirkey v Chandok* and also to update ACAS guidance to raise awareness amongst employers.”*

4.2.4.6 Lack of data on costs and benefits

No respondents were able to provide clear, quantitative data on the costs or benefits of caste becoming an aspect of race in the Act either through a change in legislation or reliance on case law. Even respondents who provided very detailed consultation responses were unable to provide such data.

As stated in section 4.4.11, which outlines the findings of Question 12 (which asked whether respondents were able to provide data), respondents discussed potential costs and benefits but were not able to provide statistical ‘data’.

4.3 Analysis of respondents’ ‘Overall perspectives’

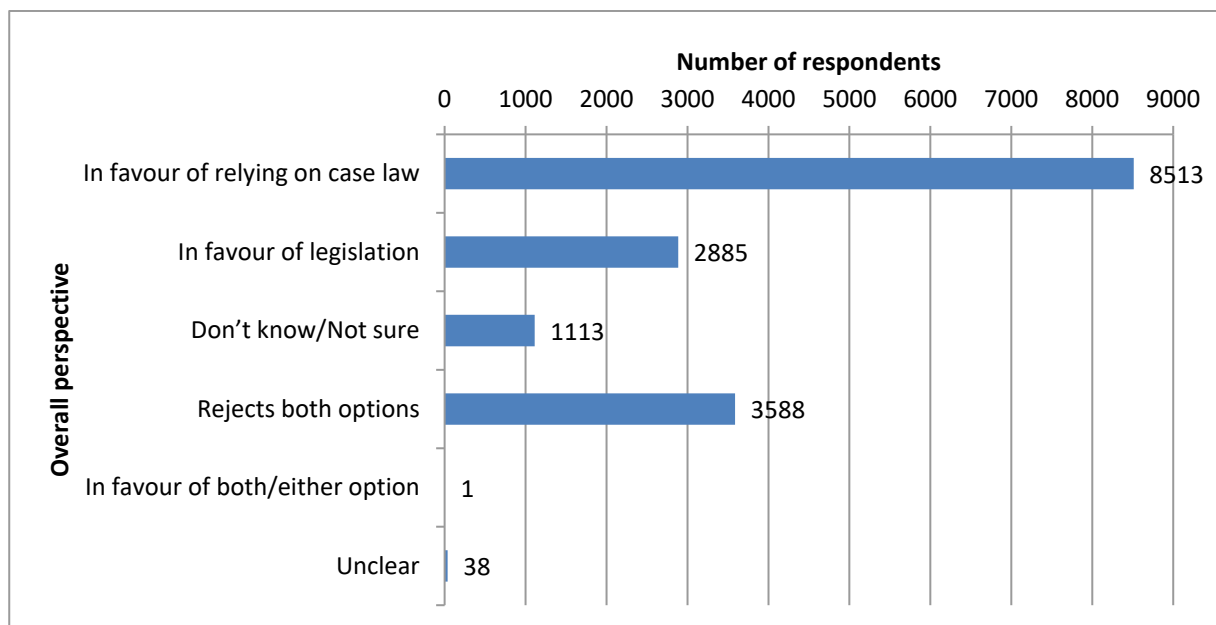
As stated earlier, a minority of respondents completed a consultation questionnaire, and a minority completed Question 10 which explicitly asked respondents to indicate their preferred ‘option’ in terms of the options which were the focus of the consultation, namely: ‘Relying on case law’ or ‘Inserting caste in to the Equality Act 2010’, i.e. ‘case law’ or ‘legislation’. In order to provide an accurate representation of the ‘overall’ perspective of each respondent, it was therefore necessary to qualitatively analyse and code each respondent’s consultation response in order to ascertain their ‘Overall perspective’ in terms of these options. In the vast majority of cases, respondents who had not completed a consultation questionnaire nevertheless clearly indicated their preferred option.

A further benefit of this coding was that it allowed for a fuller understanding of respondents’ positions and perspectives, particularly where respondents had chosen the ‘Don’t know/Other’ option for Question 10.

Figure 2 shows the breakdown of data for the 16,138 consultation respondents’ ‘Overall perspective’. In total, 8,513 respondents were ‘In favour of relying on case-law’, 2,885 respondents were ‘In favour of legislation’ (that is, inserting caste into the Act), and 3,588 respondents stated that they rejected both presented options. A further 1,113 were coded as ‘Don’t know’ and one respondent stated that s/he was in favour of either

option². For 38 respondents it was unclear what their 'Overall perspective' was (these respondents did not answer question 10, and it was also unclear which option, if either, was preferred).

Figure 2: Respondents' overall perspectives



4.4 Analysis of individual consultation questions

The following sections provide a summary of the main quantitative findings from the consultation.

Where quantitative responses are provided, it should be noted that, as stated earlier, a significant proportion of respondents provided a narrative, free-text response, and so did not answer the questionnaire questions. Therefore, while the 'Overall perspective' of respondents presented above takes account of all consultation responses, the consultation findings presented in the following sections represent only the responses of those who completed a consultation questionnaire. The findings therefore only represent the responses of a sub-group of all those who participated in the consultation.

In addition, a large number of responses to each question were coded as 'not applicable' as it was common for respondents not to address the question specifically, but instead to refer to: their general perspective on the issue of caste or caste discrimination; their

² Where a respondent had completed a consultation questionnaire, and had stated that they were in favour of 'Option 1' or 'Option 2', this was taken as their 'Overall perspective'. Where they had stated 'Don't know/not sure', their response was coded as either 'Don't know' or 'Rejects both option' based on their reasons for choosing this option, as outlined in their Question 11 response.

general views about the use of the word 'caste'; or their general feelings about whether 'legislation', 'case law' or neither option was preferred.

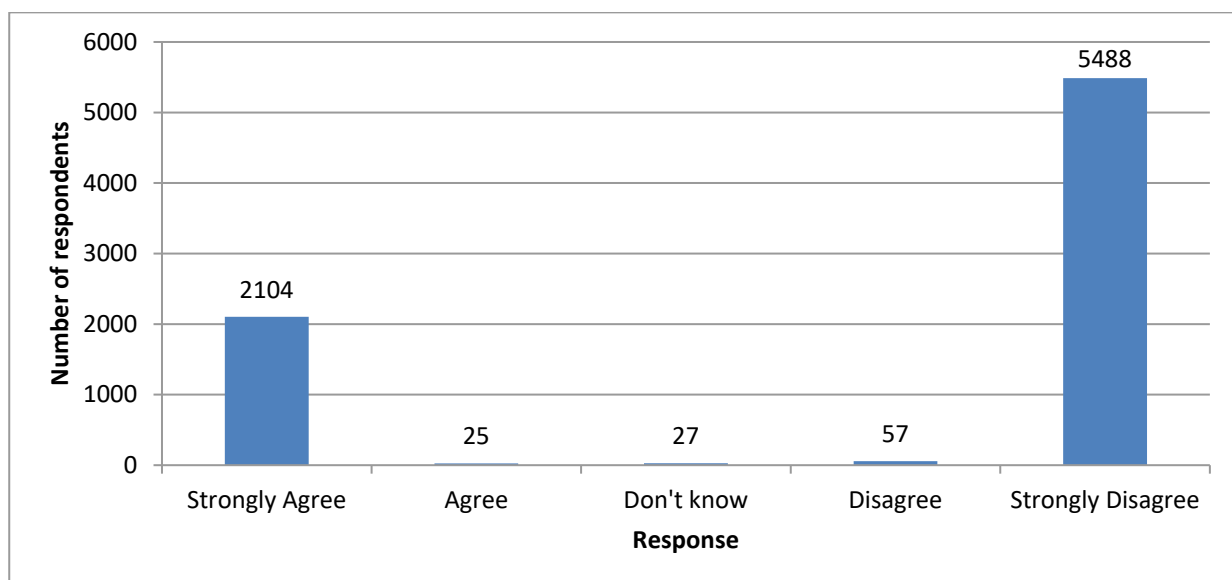
As stated earlier, it was common for a single response to be coded to more than one code/theme. Therefore sum totals of responses typically exceed the number of total respondents.

4.4.1 Question 1

Figure 3 presents responses to Question 1: *'To what extent do you agree or disagree that protection against discrimination on grounds of ethnic origin provides an appropriate level of protection against caste discrimination?'*

In total, 7,701 of the 16,138 respondents answered this question. Of those, 5,488 answered 'Strongly Disagree', with 2,104 answering 'Strongly Agree'. As Figure 3 shows, a far smaller numbers of respondents selected the remaining three options.

Figure 3: Responses to question 1



4.4.2 Question 2

Question 2: *'Why do you think this? Please explain the reasons to your answer to Question 1'*, asked respondents to provide reasons for their answers to Question 1.

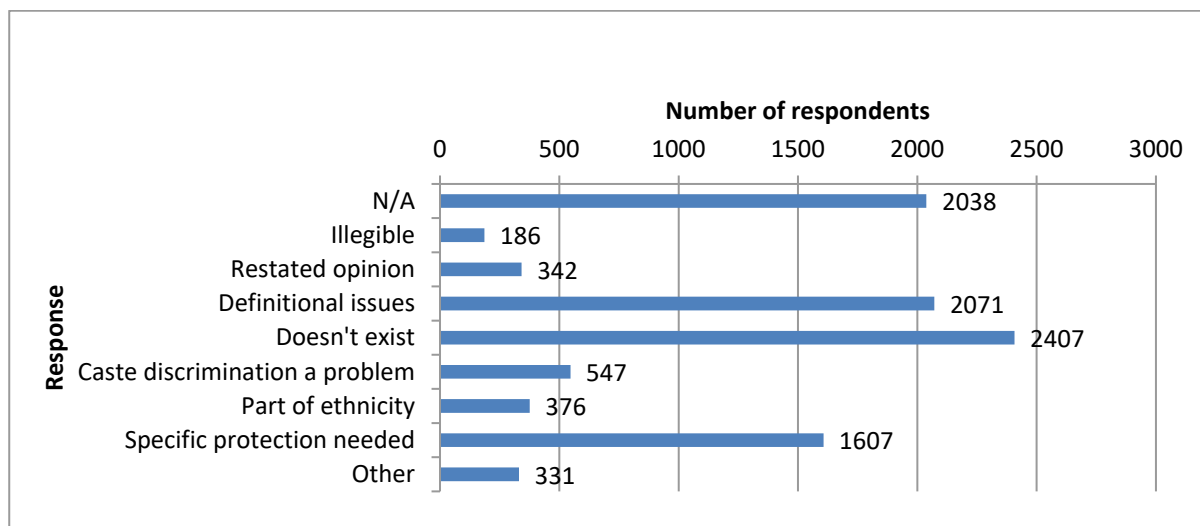
In total, 7,438 respondents provided a response to this question. However, a large number of respondents failed to address the question being asked, and did not discuss their reasons for agreeing or disagreeing that *'protection against discrimination on grounds of ethnic origin provides an appropriate level of protection against caste'*.

This is reflected in the breakdown of responses provided in Figure 4. As the figure shows, 2,038 responses were coded as 'not applicable' to the question. Of these, 342

involved respondents stating a general opinion regarding caste discrimination or whether ‘legislation’, ‘case law’ or neither option was preferred.

The most frequently expressed view among the 7,438 who provided a response to this question was that caste discrimination does not exist in the United Kingdom, with 2,407 respondents expressing this viewpoint. In addition, 2,071 respondents stated that a lack of clarity and agreement about the definition of ‘caste’ was the reason for their Question 1 response, 1,607 stated that specific protection was need for caste discrimination, and 547 respondents stated that caste discrimination was a problem that needed to be addressed. 376 respondents stated that they had provided the answer they did to Question 1 because in their view ‘caste’ was a part of ethnicity or ethnic origin. Responses that stated simply ‘Caste is not an element of ethnicity’ or ‘Caste is different from ethnicity’ were among the responses coded as ‘Other’.

Figure 4: Responses to Question 2



4.4.3 Question 3

Question 3 asked: “Which types of caste discrimination, if any, do you think would not be covered by the concept of ethnic origin in case law? Please clearly list the features of caste which you think are not covered by ethnic origins and explain why you think this.”

A total of 7,126 respondents provided a response to this question. Separate coding frameworks were developed and used to allow the coding team to separately code ‘features’ identified by respondents and respondents’ ‘explanations’.

As Figure 5 shows, 2,960 of these responses were ‘not applicable’ in terms of the ‘features’ aspect of Question 3. That is, these responses did not attempt to state which, if any, features of caste are not covered by ethnic origins or list any such features. Typically, ‘not applicable’ responses either: stated that the question was not applicable or appropriate; described the respondent’s personal experience of caste discrimination;

highlighted the difficulties of defining caste; or provided a general statement about the issue of caste or caste discrimination.

A total of 3,731 respondents stated that there were no types of caste discrimination that would not be covered by the concept of ethnic origin in case law. Of these: 2,939 respondents stated that this was because caste discrimination does not exist in the United Kingdom; 61 stated that this was because there is no agreed definition of caste; and 731 respondents stated that there are no types of caste discrimination that would not be covered by the concept of ethnic origin but did not provide a reason.

Five hundred and sixty-eight respondents indicated that there are some types of caste discrimination or features of caste that do not reflect ethnicity, or that lie outside ethnicity, and so may not be covered by 'ethnic origins'. Very few respondents however, provided clear examples of specific features of caste. The vast majority of respondents provided a discussion of the complexities of caste identities, outlining that they can include aspects that extend beyond 'ethnicity'. Examples of such responses include the following:

“Dalits (identity spanning different castes), and other castes have various ethnic identities including different languages, religions and cultures. Discrimination occurs within and between ethnic groups and religions.”

“We don't believe that ethnic origins will cover caste based discrimination because many people who have arrived and settled in Britain come from the same geographical region (e.g. Punjab, India and Pakistan); belong to common religion; have similar eating habits; share in common source of entertainment; have common dress and similar colour skin (e.g. are racially and culturally identical), but still face discrimination on the basis of caste.”

“The caste system is not a simple or straightforward stratification. One caste group may include people of various regions who speak different languages and have very different cultural / religious practices. It would therefore not be practical to ascertain caste discrimination if ethnic origin alone was taken as a 'marker' of caste.”

Figure 5: Responses to Question 3 - Features of 'caste'

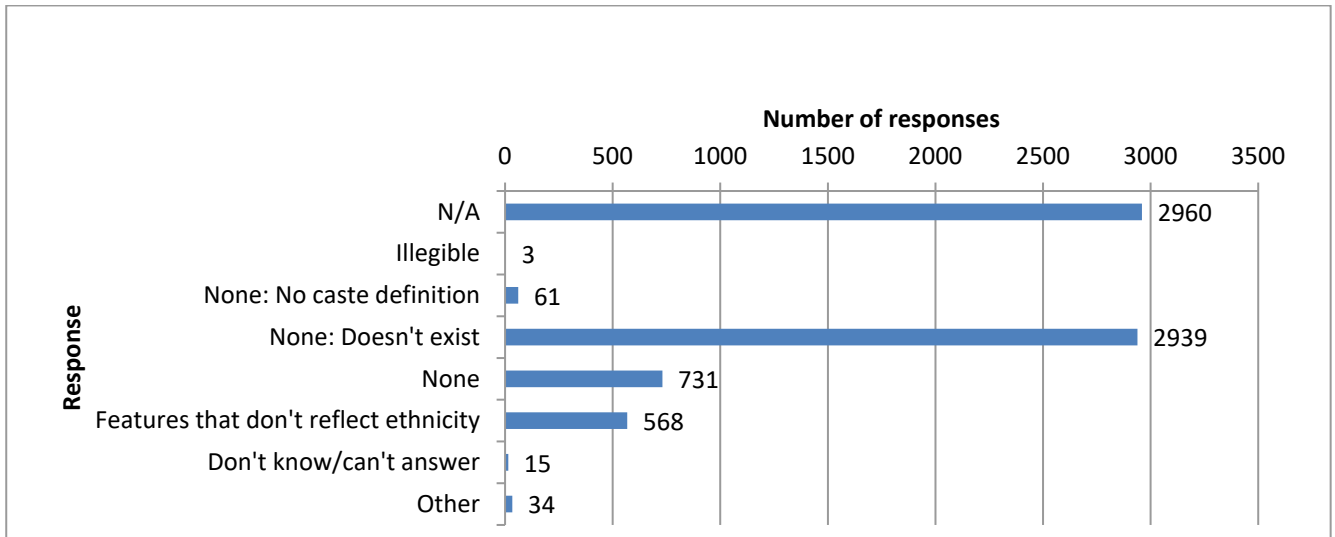
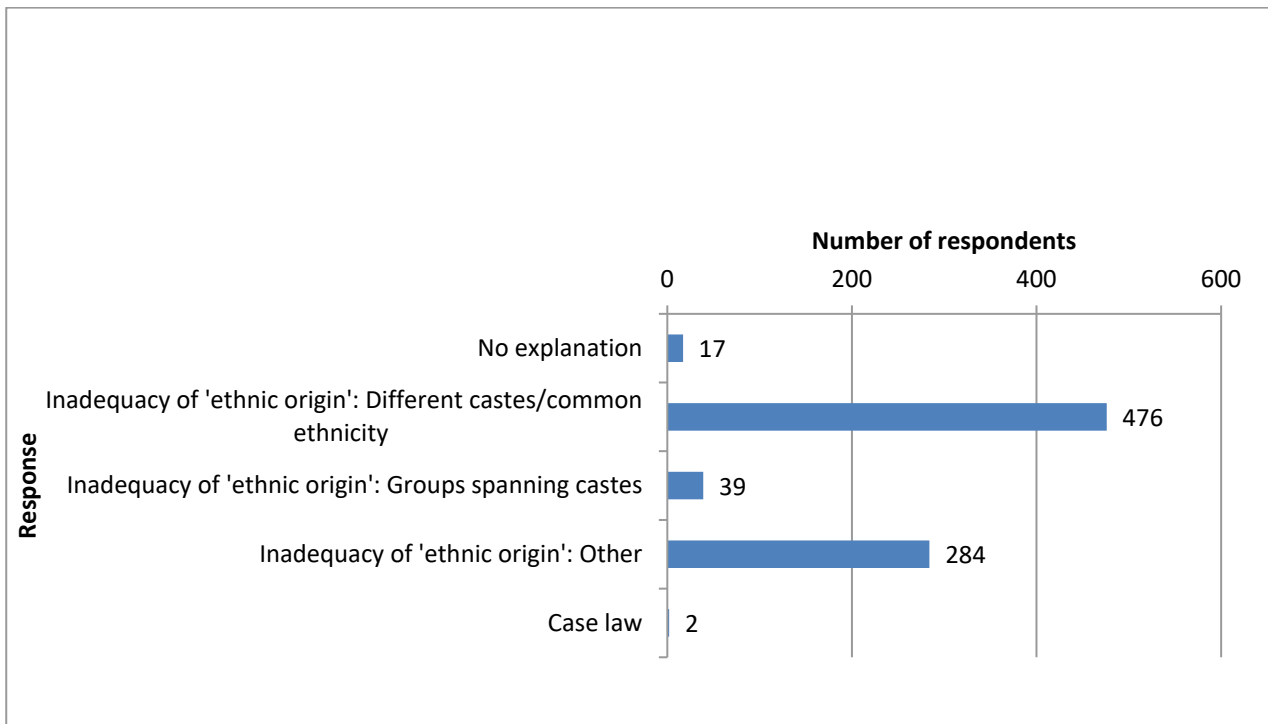


Figure 6 presents coded responses for respondents' explanations for why they thought any types of caste discrimination identified would not be covered by the concept of ethnic origin in case law. In coding responses, there was a large degree of 'cross-coding' between categories, with many responses being coded to more than one category.

As the figure shows, 476 respondents³ provided a response that indicated that 'ethnic origin' did not provide adequate coverage for caste discrimination in case law because those of a common ethnicity might still be perceived as being of a different caste and discriminated against on this basis.

³ 406 of these 476 responses were duplicates of two versions of 'batch' responses

Figure 6: Question 3 - respondents' explanations for why identified feature would not be covered by 'ethnic origins'



The following is an example of such a response, which was coded as 'Inadequacy of 'ethnic origin': Different castes/common ethnicity':

“Meaning of Ethnic Origin is usually perceived in terms of language, nationality, culture and sometimes as religion but caste is unique in that it can encompass all these. For example, people of identical faith, language, race, colour, country of origin with similar cultural habits are capable of being discriminated against on the basis of their caste e.g. one can be discriminated on the basis of caste if you are to the same ethnic or racial group.”

Thirty-nine respondents indicated that 'ethnic origin' did not provide adequate coverage for caste discrimination in case law because ethnic groups might span different castes. Examples of such responses, which were coded as 'Inadequacy of 'ethnic origin': Groups spanning castes', include:

“Caste discrimination amongst peoples of South Asian origin cuts across many ethnic and several religious lines. Individuals that are Dalits (castes spanning many oppressed castes) and also members of other castes belong to a variety of ethnic and religious groups. It is wrong to subsume caste under ethnicity as it will cause a lot of confusion and lead to wrong legal decisions as both lawyers and particularly non-lawyers will not be able to breakdown these social categories to develop good case law. Only solution is to have a separate category of caste included in Equality legislation.”

“The caste system is not a simple or straightforward stratification. One caste group may include people of various regions who speak different languages and have very different cultural/religious practices. It would therefore not be practical to ascertain caste discrimination if ethnic origin alone was taken as a ‘marker’ of caste’.

Two hundred and eighty-four respondents provided a response that was coded as ‘Inadequacy of ‘ethnicity’: Other’. Typically these responses discussed the complexities of caste identities and highlighted the inadequacies of the concept of ethnic origin to provide protection against caste discrimination. An example of such a response is:

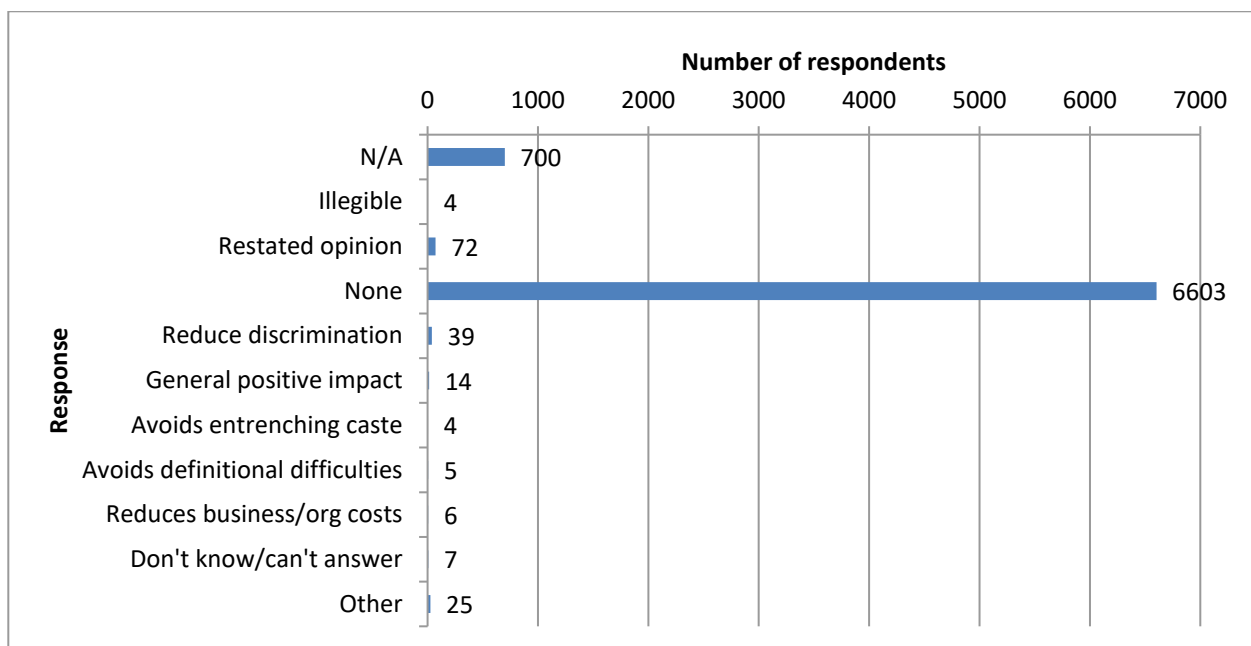
“Caste is primary consciousness in India. It continues to regulate the life opportunities of individuals. It operates beyond ethnicity given that it is sanctioned by religion, demarcates occupations and relationships for specific caste groups and discriminates both overtly and covertly against those who flout these demarcations and relationships. Caste is based on the principle of purity-pollution and this feeds into social and culture hierarchies. I am of the opinion that there is a need for a separate section for Caste under the Equality Act.”

4.4.4 Question 4

Question 4 asked: *“What are the benefits (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination.”*

A total of 7,137 respondents provided a response to this question. As Figure 7 indicates, by far the most frequently cited response was that there were no benefits of using case law to implement a legal ban on caste discrimination (6,603 respondents). A very small proportion of respondents highlighted benefits such as a reduction in caste discrimination.

Figure 7: Benefits of using case-law



4.4.5 Question 5

Question 5 asked: *“What are the disadvantages (e.g. social and economic) of using case-law to implement a legal ban on caste discrimination.”*

A total of 7,040 respondents provided a response to this question. Of these, 6,617 stated that there was at least one disadvantage of relying on case-law.

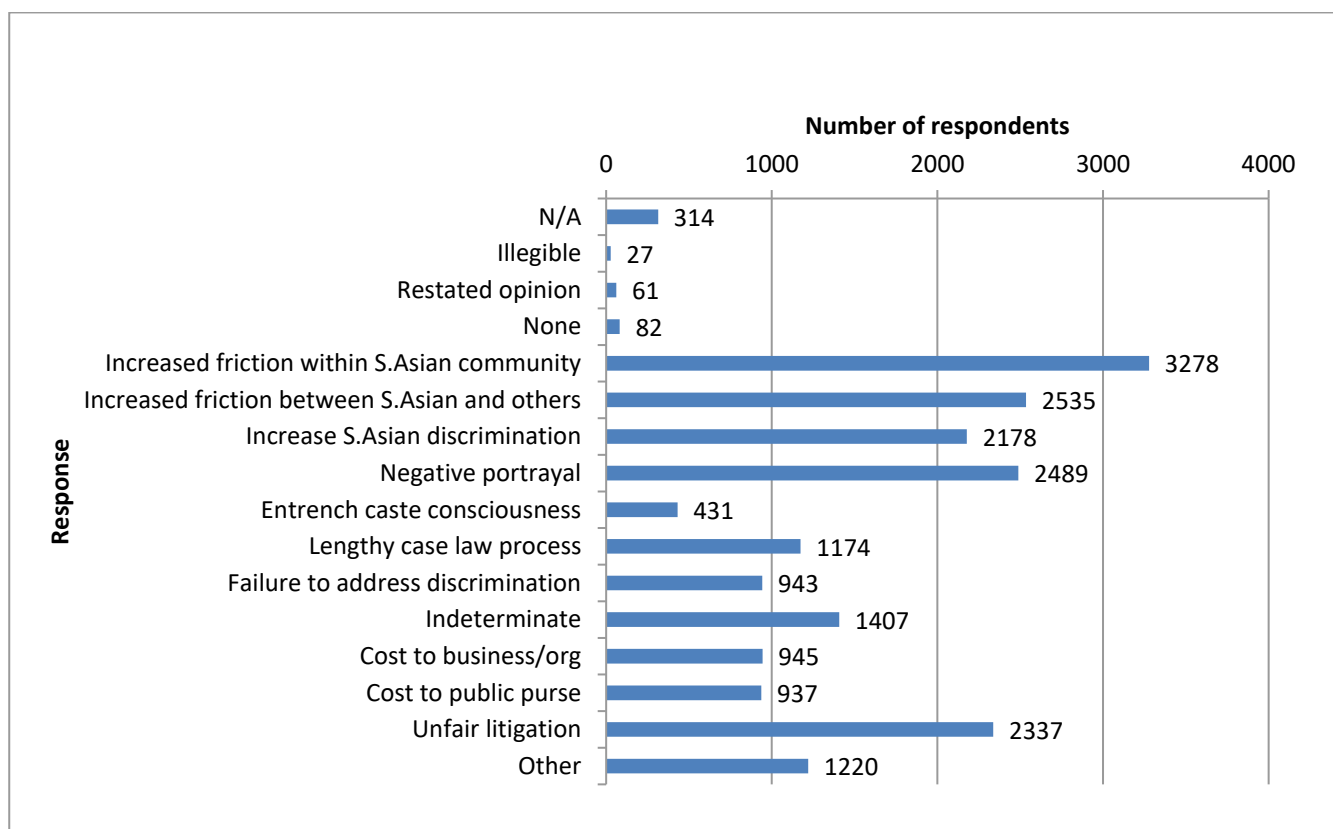
As Figure 8 indicates, the most frequently cited responses were that case law would:

- increase friction within South Asian groups (3,278 respondents);
- increase friction between South Asian groups and other non-South Asian groups (2,535 respondents);
- encourage a ‘negative portrayal’ of the South Asian community (2,489 respondents);
- result in ‘unfair litigation’ (2,337 respondents); and
- lead to an increase in discrimination or hate crime against South Asian groups (2,178 respondents).

The vast majority of respondents did not provide a detailed explanation, and it was common for respondents to provide very short phrases in making each point. The following were typical:

- *“Negative portrayal of South Asian community.”*
- *“It will cause division and friction within society.”*
- *“It will divide communities unnecessarily.”*
- *“Unfair Litigation.”*
- *“Increase in hate crime.”*

Figure 8: Disadvantages of using case law

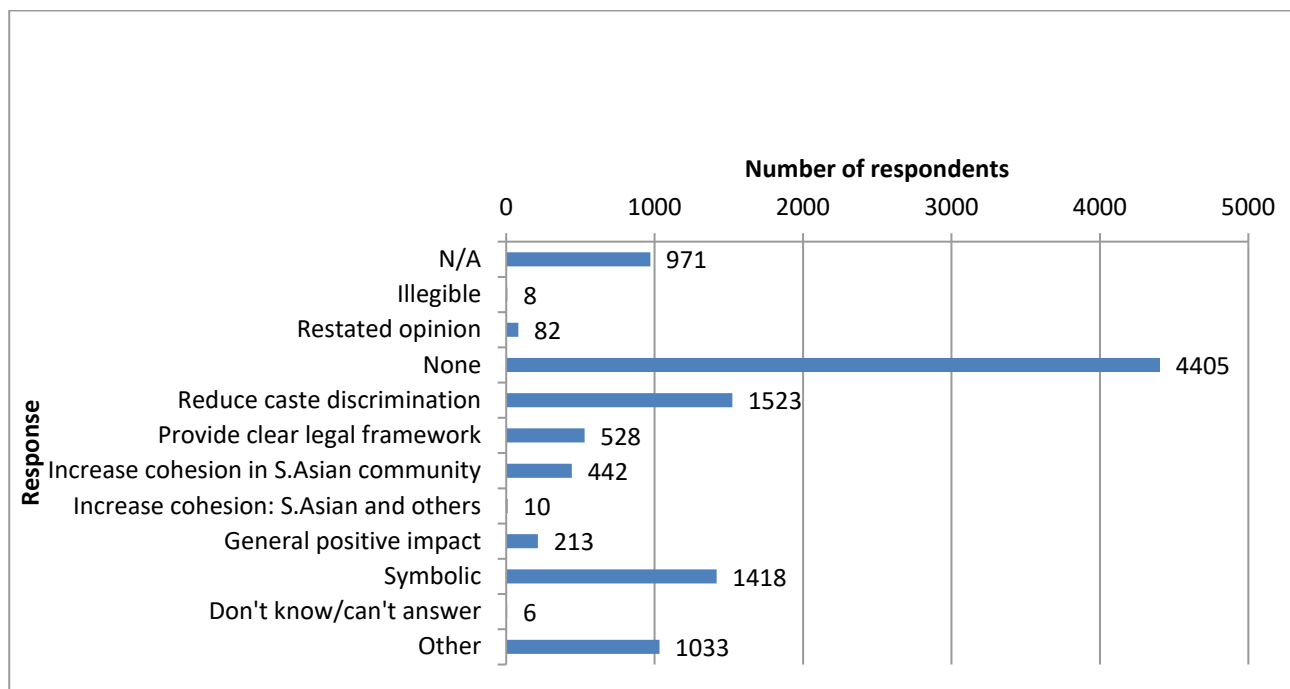


4.4.6 Question 6

Question 6 asked: “*What are the benefits (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?*”

A total of 7,433 respondents provided a response to this question. As Figure 9 indicates, by far the most frequently cited response (4,405 respondents) was that there were no benefits of inserting caste into the Act. In addition, 1,523 respondents stated that a benefit of inserting caste would be a reduction in the incidence of caste discrimination, and 1,418 stated that inserting caste would have a strong symbolic value, highlighting that caste discrimination is unacceptable.

Figure 9: Benefits of inserting 'caste' into the Equality Act 2010



4.4.7 Question 7

Question 7 asked: “*What are the disadvantages (e.g. social and economic) of inserting caste into the Equality Act 2010 as a specific aspect of race?*”

A total of 7,726 respondents provide a response to this question. Of these, 4,676 stated that there was at least one disadvantage of inserting caste into the Act.

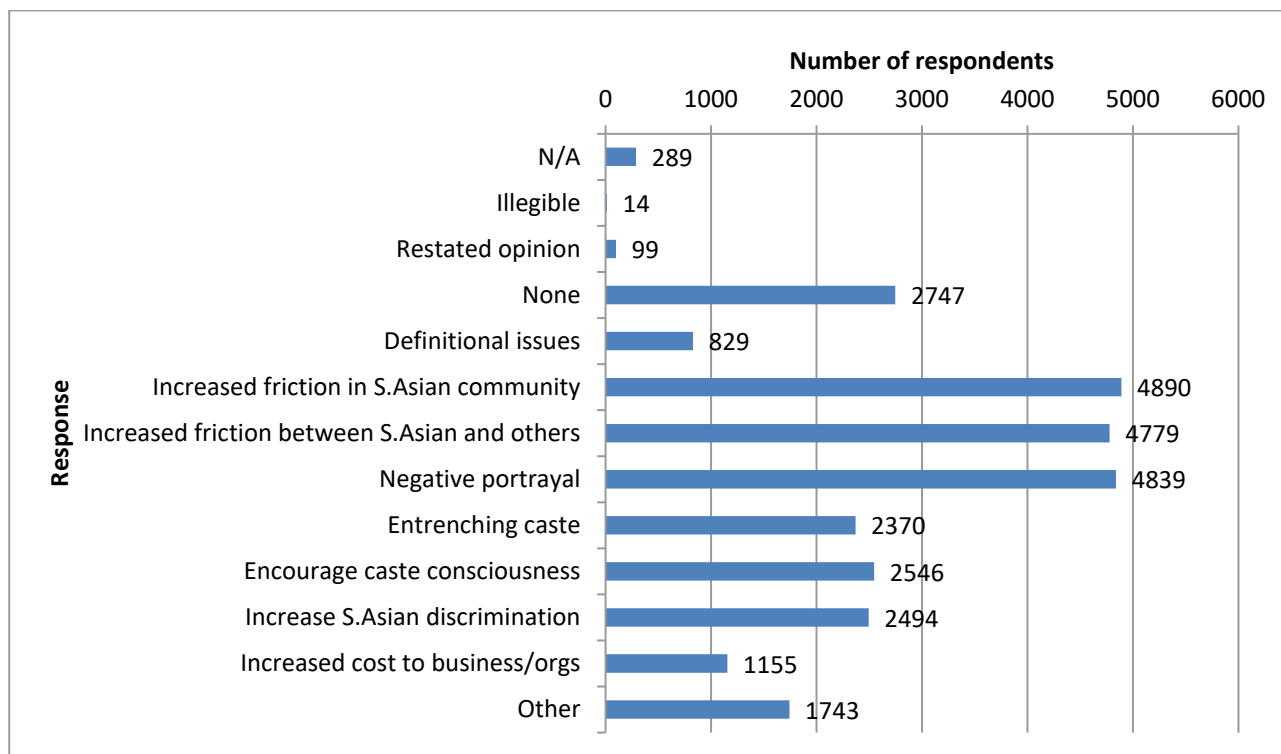
As Figure 10 indicates, by far the most frequently cited responses were:

- 4,839 respondents stated inserting caste would encourage a ‘negative portrayal’ of the South Asian community;
- 4,890 respondents stated that inserting caste would increase friction within South Asian groups;
- 4,779 respondents stated that inserting caste would increase friction between South Asian groups and other, non-South Asian groups.

Significant numbers of respondents also stated that inserting caste would entrench caste in society, encourage caste consciousness, or increase discrimination and hate crime against South Asian groups.

There were, therefore, similarities between the disadvantages to relying on case law cited by respondents (presented in section 4.4.5 above), and the cited disadvantages to explicitly inserting caste into the Act. Examples include the risk of increased community friction and of a negative portrayal of South Asian groups.

Figure 10: Disadvantages of inserting 'caste' into the Equality Act 2010



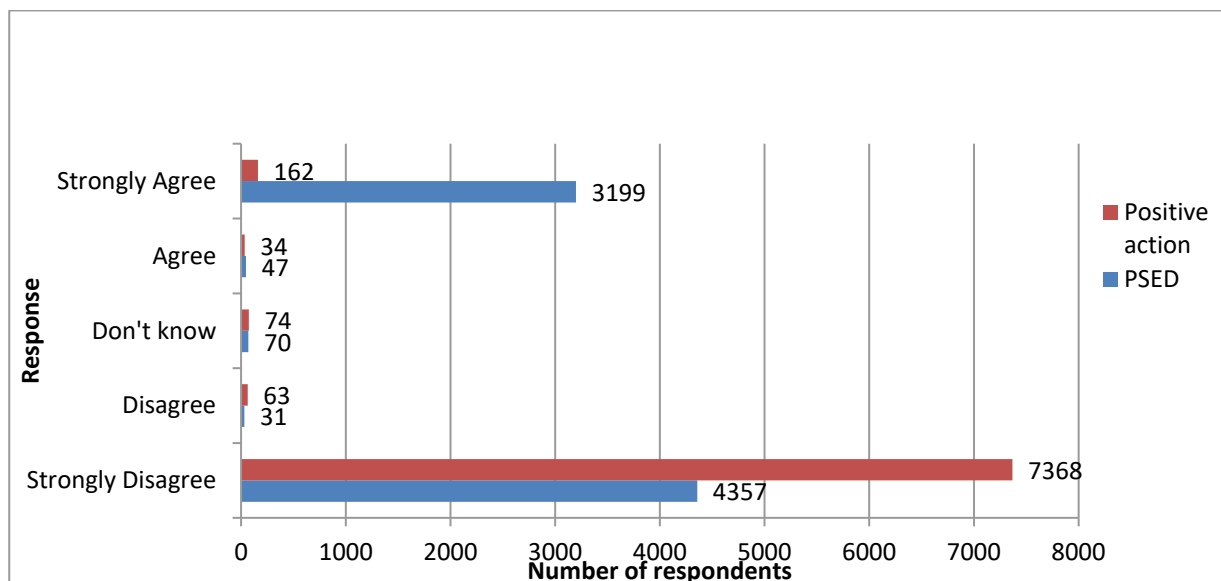
4.4.8 Questions 8 and 9

Questions 8 and 9 asked respondents to state the extent to which they agreed or disagreed that the Public Sector Equality Duty (PSED) and 'positive action' should apply to caste, and to provide reasons for their answers.

A total of 7,704 respondents answered Question 8 in relation to PSED and 7,701 answered this question in reaction to positive action. As Figure 11 shows, 4,357 respondents indicated that they strongly disagreed that the PSED should apply to caste, and 3,199 that they strongly agreed that the PSED should apply to caste.

In terms of positive action, 7,368 respondents indicated that they strongly disagreed that positive action should apply to caste, with very small proportions of respondents selecting other options.

Figure 11: Question 8 - Should PSED and positive action apply to caste

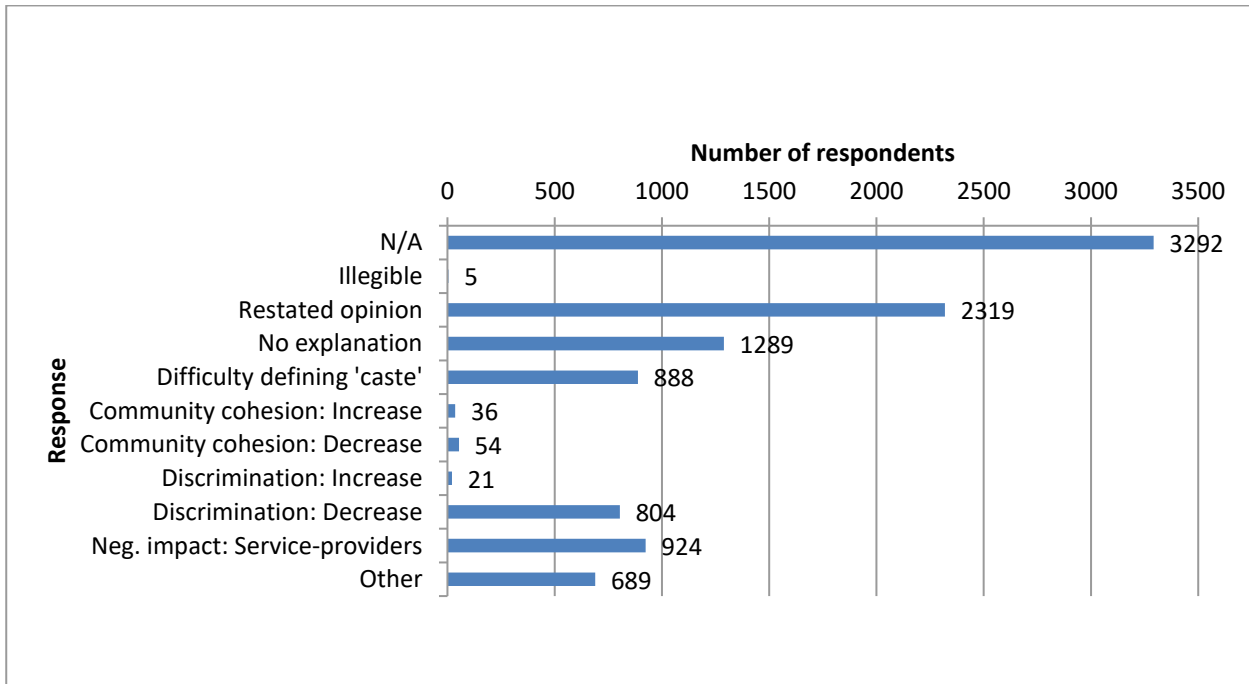


Figures 12 and 13 present data on respondents' Question 9 answers - their stated reasons for their answers to question 8 - for PSED and positive action respectively. For brevity, in each case, the figures present the most common reasons provided by respondents.

In total, 7,277 respondents provide a response to Question 9 for the PSED. As figure 12 indicates, 3,292 of these responses were coded as 'not applicable', with 2,319 of these involving the respondent re-stating a general opinion, view or perspective rather than addressing the specific question. In a further 1,289 cases, the respondent answered but provided no clear explanation.

The most frequently cited applicable responses to this question were that applying the PSED to caste would: result in a negative impact for public sector service-providers, for example, an increase in costs or administrative burden (924 respondents); or lead to a decrease in caste discrimination (804 respondents). In addition, 888 respondents stated that they had answered Question 8 as they had, because there was no clear definition of 'caste'.

Figure 12: Question 9 - Reasons for answer to Question 8 - PSED



A total of 7,298 respondents provide a response to Question 9 for positive action.

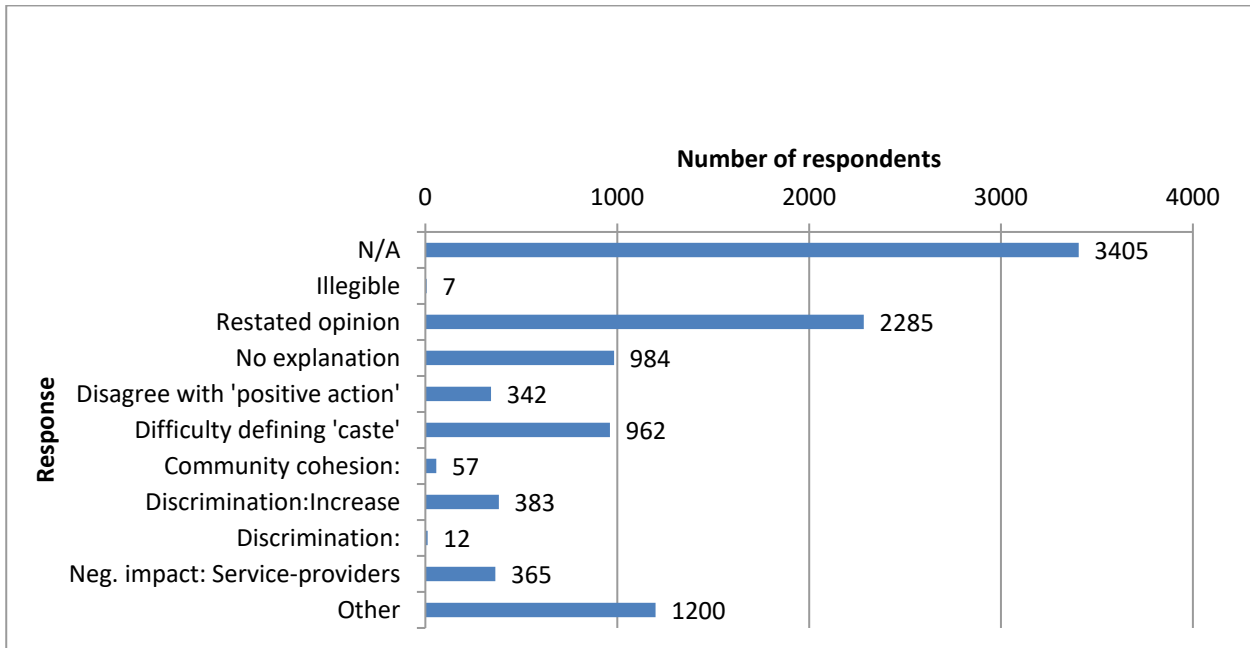
As Figure 13 indicates, 3,405 of these responses were coded as 'not applicable', with 2,285 of these involving the respondent re-stating a general opinion, view or perspective rather than addressing the specific question. In a further 984 cases, the respondent answered but provided no clear explanation.

The most frequently cited applicable response to this question was that the respondent had answered Question 8 in the way they had because:

- there was no clear definition of 'caste' (962 respondents);
- 342 respondents stated that they disagreed with the idea of positive action in principle (for example, that it went against the notion of a meritocratic society);
- 383 respondents stated that applying positive action to caste would lead to an increase in discrimination against people of South Asian origin; and
- 365 respondents stated that applying positive action to caste would result in a negative impact for public sector service-providers.

There were 1,200 'Other' responses, which typically related to respondents stating that applying positive action to caste would result in a need to monitor individuals' 'caste', and that they believed that this would be undesirable.

Figure 13: Question 9 - Reasons for answer to Question 8 - positive action

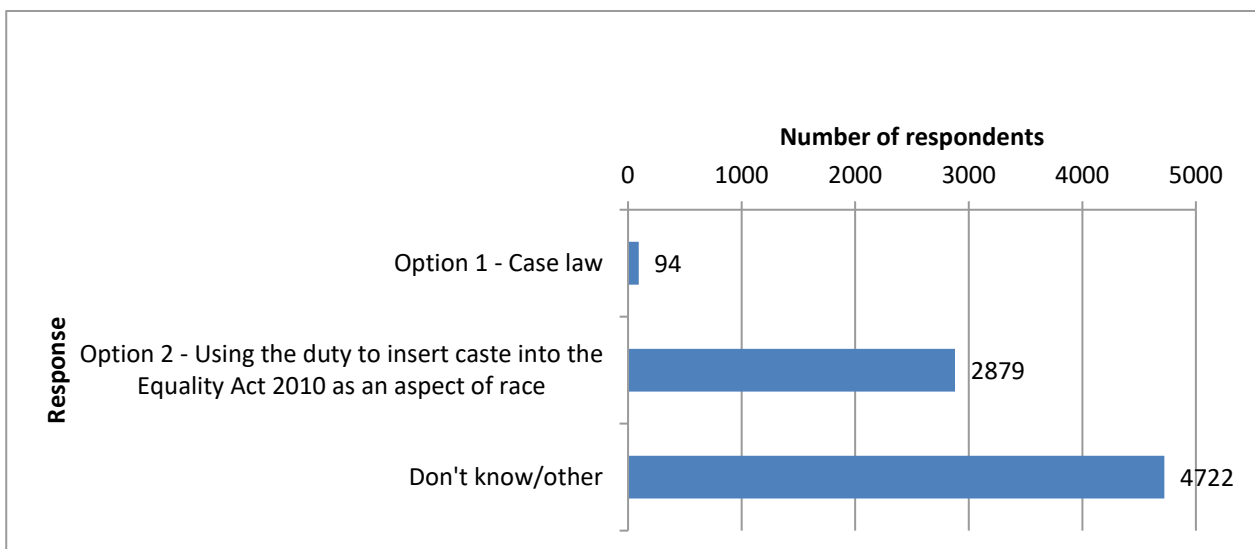


4.4.9 Question 10

Question 10 asked: “Which is your preferred option to tackle caste discrimination?”. A total of 7,695 respondents provided a response to Question 10, which represents a minority of total respondents. Of these, the majority (4,722 respondents) chose the ‘Other/Don’t know’ option, with 94 respondents selecting the ‘Case law’ option, and 2,879 selecting the option to insert caste into the Act. This data is presented in Figure 14.

As stated earlier, it is important to note that this finding represents only the responses of those who completed a consultation questionnaire, rather than reflecting the perspectives of all who participated in the consultation. The findings presented in section 4.3 that relate to respondents’ ‘Overall perspectives’ therefore provide a more accurate overall indication of the perspectives of consultation respondents.

Figure 14: Responses to Question 10 - preferred option

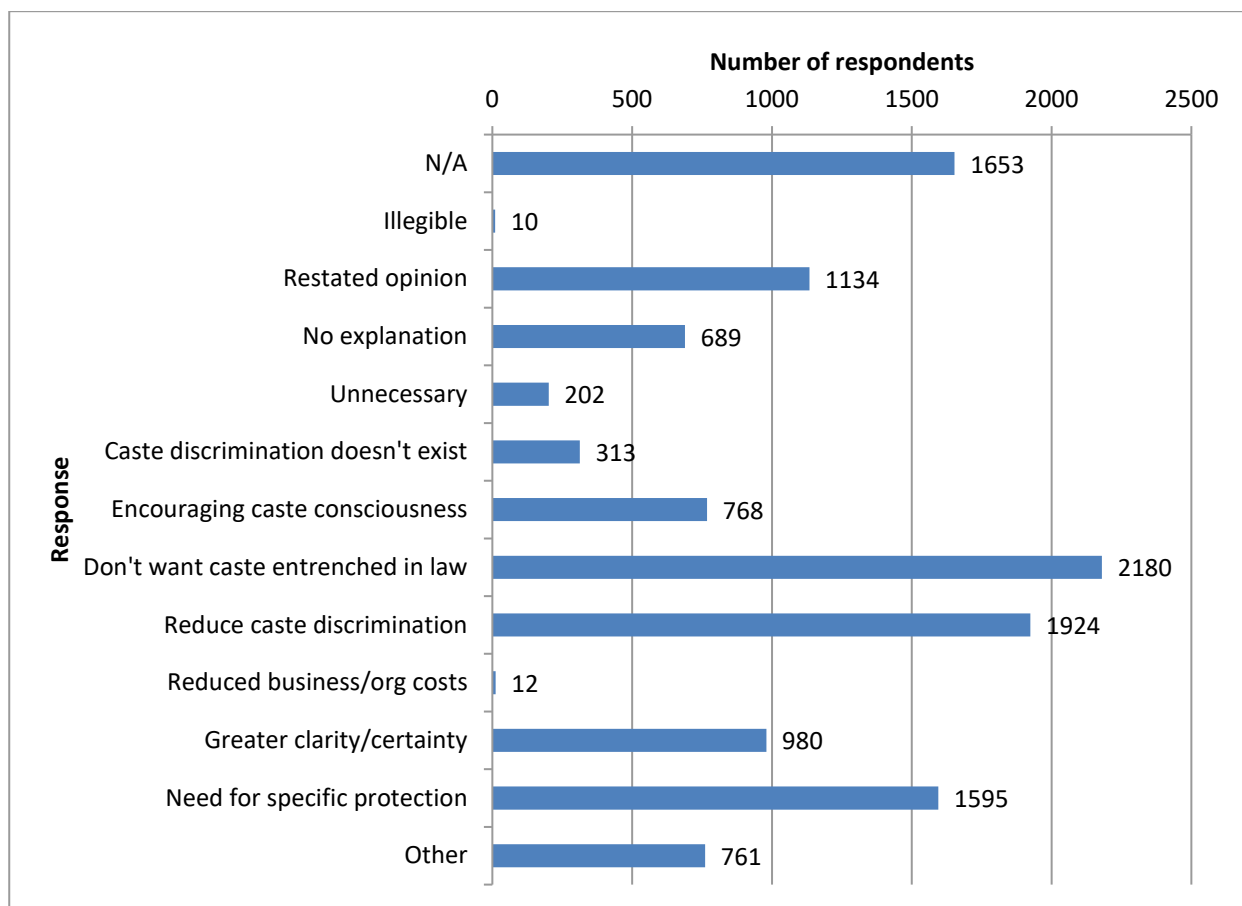


4.4.10 Question 11

Question 11 stated: “*Why do you think this? Please explain the reasons for your answer to Q10.*” A total of 7,309 respondents provided a response to this question. As Figure 15 shows, the most frequently cited applicable response was that the respondent did not want ‘caste’ entrenched in law (2,180 respondents). Other common responses were:

- it would reduce caste discrimination (1,924 respondents);
- there was a need for specific protection against caste discrimination (1,595 respondents); and
- their preferred option would lead to greater legal clarity and certainty (980 respondents).

Figure 15: Respondents' reasons for their Question 10 responses



4.4.11 Question 12

Question 12 asked respondents whether they were able to provide any data on costs and benefits, including costs and benefits to individuals, of caste becoming an aspect of race in the Act, through a specific change in legislation or through reliance on case law.

There were more than 7,000 responses to Question 12. However, as stated earlier in section 4.2.4.6, no respondents were able to provide ‘data’ on costs and benefits. The

vast majority of respondents who answered this question outlined potential costs and benefits but none were able to provide statistical data.

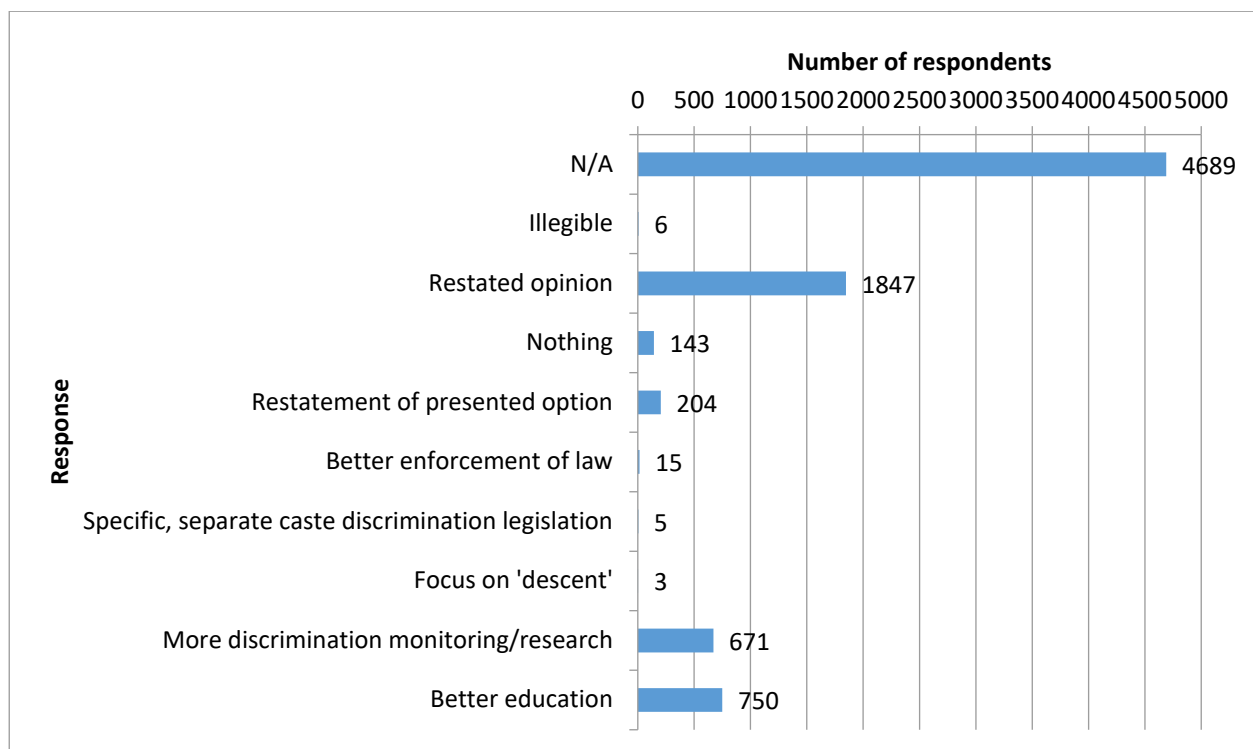
4.4.12 Question 13

Question 13 asked: “Apart from the options covered in this document, is there anything else you think Government can do to prevent discrimination on grounds of caste in Britain?”.

There were 7,351 responses to this question. Figure 16 presents the breakdown of responses and shows that a significant proportion of these responses were ‘Not applicable’ (4,689 responses). This was typically because the respondent did not answer the question, but rather re-stated their general position in terms of the options presented in the consultation, or provided a general statement about caste or caste discrimination or the existence/non-existence of caste in the UK.

As Figure 16 shows, implementing greater education around the issue of ‘caste’ and caste discrimination was the theme that most applicable responses were related to (750 respondents). In addition, 671 respondents stated that the Government should engage in more discrimination monitoring or research, to further explore the extent of caste discrimination in the UK.

Figure 16: Question 13 - What else should the Government do to prevent caste discrimination?



© Crown copyright 2018

This document/publication (not including logos) is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3
email psi@nationalarchives.gsi.gov.uk
write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

About this publication:

enquiries www.education.gov.uk/contactus
download <https://www.gov.uk/government/organisations/government-equalities-office>

Reference: GEO-00221-2018



Follow us on Twitter:
[@WomenEqualities](https://twitter.com/WomenEqualities)



Like us on Facebook:
facebook.com/GovtEquality