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*On behalf of amicus curiae Ambedkar International Center, Inc.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Department of Fair Employment  
and Housing,

*Plaintiff,*

v.

Cisco Systems, Inc., Sundar Iyer,  
and Ramana Kompella,

*Defendants*

Case No. 20CV372366

**Application to file amicus curiae brief in  
opposition to defendant's demurrer and  
motion to strike**

Hearing date: March 9, 2021

Hearing time: 9:00 a.m., Dept. 6

Judge: Hon. Maureen A. Folan

## APPLICATION FOR LEAVE TO FILE AMICUS BRIEF

Amicus curiae Ambedkar International Center, Inc. (AIC) respectfully asks leave to file the attached brief in opposition to Defendant Cisco Systems, Inc.'s demurrer and motion to strike, which are set for hearing on March 9.

This is a landmark case in which the State of California alleges that a major tech-industry employer has violated civil rights laws by discriminating against an Indian worker because he was born into the lowest Indian caste.

Though California law forbids ancestry discrimination, and jurists have made clear that caste systems are “utterly incompatible with the spirit of our system of government,”<sup>1</sup> no published opinions directly address caste discrimination in American workplaces.

This brief would help the court rule on Cisco's motions by shedding light on the nature of caste discrimination. As the brief makes clear, caste is hereditary, and casteism is therefore a form of ancestry discrimination forbidden by the California Fair Employment and Housing Act (FEHA). Casteism is also a form of race and color discrimination.

Ambedkar International Center is dedicated to understanding and disseminating the ideas of Dr. B. R. Ambedkar, who fought to eradicate caste

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<sup>1</sup> *Edwards v. California*, 314 U.S. 160, 181 (1941) (Douglas, J., conc.); *see also, e.g., In re Marriage of Chandler*, 60 Cal. App. 4th 124, 134 n.2 (1997) (Sills, J., conc.) (“Ours is a country, to borrow from Justice Harlan's famous line, that recognizes no castes.”).

discrimination and make Indian society more just.<sup>2</sup> AIC is joined in this filing by the organizations and scholars whose names appear at the end of the brief.

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<sup>2</sup> Like the John Doe employee in this case, Ambedkar was born into India's lowest caste, the Dalits (a group formerly called "untouchables"). Nevertheless, Ambedkar became the chief architect of India's constitution as well as a prolific jurist and scholar of human rights whose collected writings — including a book called *Annihilation of Caste* — fill seventeen volumes. He also led a conversion of more than half a million Dalits from Hinduism in an effort to free them from the shackles of casteism.

AMICUS CURIAE BRIEF OF AMBEDKAR INTERNATIONAL CENTER IN  
OPPOSITION TO DEFENDANT’S DEMURRER AND MOTION TO STRIKE

*Yes, I am an untouchable, and every Negro in the United States of America is an untouchable.*

Dr. Martin Luther King Jr., *The American Dream*<sup>3</sup>

May a California employer discriminate against an employee because he was born a Dalit — that is, a member of India’s “untouchable” caste?<sup>4</sup> Defendant Cisco Systems, Inc. asks this Court to rule for the first time that such casteism in the workplace is legally permissible. But caste status is based on ancestry, and as the Supreme Court said in *Hirabayashi v. United States*, “Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.”<sup>5</sup>

**I. Introduction**

California’s Fair Employment and Housing Act protects employees against discrimination based on a number of protected characteristics, including ancestry, race, and color.<sup>6</sup> Employees are protected if they are perceived as being “different”

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<sup>3</sup> Sermon delivered at Ebenezer Baptist Church on July 4th, 1965.

<sup>4</sup> The term “Dalit,” as used in this brief, is not meant to suggest that India’s most oppressed people form a discrete, homogenous group. The term is a shorthand description of the people known in India as members of the “Scheduled Castes.”  
<sup>5</sup> 320 U.S. 81, 100 (1943).

<sup>6</sup> Cal. Gov. Code § 12940(j)(1); *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 638 (1998).

in any of these ways and are subjected to discriminatory treatment based on that perceived difference.<sup>7</sup>

The employee at issue in this case, John Doe,<sup>8</sup> was perceived as different by his Cisco supervisor with respect to several of these protected characteristics because that supervisor is a Brahmin, a member of India's most privileged caste, while Doe is a Dalit, a member of India's most downtrodden caste.<sup>9</sup> Doe was then treated unfavorably because of those perceived differences.

In South Asian casteism, individuals born into a low caste are subjected to lifelong discrimination based on who their ancestors are.<sup>10</sup> "Caste divisions in India dominate in housing, marriage, employment, and general social interaction—divisions that are reinforced through the practice and threat of social ostracism, economic boycotts, and physical violence."<sup>11</sup>

The motions at hand can be easily resolved because caste discrimination is a form of ancestry discrimination: discrimination based on the fact that John Doe was born to Dalit parents. In addition to being based on ancestry, caste is bound up with at least two other protected characteristics: race and color.

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<sup>7</sup> See Cal. Gov. Code § 12926(o) ("Race, religious creed, color, national origin, ancestry,' [etc.] . . . includes a perception that the person has any of those characteristics . . .").

<sup>8</sup> AIC strongly opposes Defendants' attempt to deanonymize the victim in this case. Outing him as a Dalit who stood up for his rights will not only hurt his career, but also stigmatize his family and children.

<sup>9</sup> See Compl. ¶¶ 29–31.

<sup>10</sup> "Caste is descent-based and hereditary in nature." Human Rights Watch, *Hidden Apartheid: Caste Discrimination against India's "Untouchables"* 2 (2007).

<sup>11</sup> *Id.*

In this brief, we describe the nature and persistence of the caste system before explaining how caste relates to the protected FEHA characteristics.<sup>12</sup> Our investigation makes clear that Cisco’s motions should be overruled.

## II. Background: The caste system and casteism in India and America

Just as the United States has worked to make a more perfect union by enacting civil rights reforms, India has made progress in addressing “untouchability.” It has enacted decades of official reforms including a vast affirmative action program that attempts to remedy caste discrimination against Dalits and others born into oppressed castes. Like racism in the United States, however, casteism remains common in the Indian subcontinent and diaspora.<sup>13</sup>

The caste system places individuals in fixed positions of a graded social hierarchy that forms the basis for familial, social, and economic relations, as well as for rights and entitlements related to work, education, and civic life. It creates, in the words of Dr. B.R. Ambedkar, a “descending scale of contempt” in which Dalits and other members of low castes are systematically oppressed.<sup>14</sup>

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<sup>12</sup> As Brandeis University recognized in adopting an anti-casteism policy, “caste identity is so inextricably intertwined with [] legally recognized protected characteristics that discrimination based on one’s caste is effectively discrimination based on an amalgamation of legally protected characteristics.” See Brandeis University, *Statement on the Interpretation of Caste Within the Brandeis Nondiscrimination Policy*, <https://www.brandeis.edu/human-resources/policies/discrimination/caste-statement.html> (Nov. 26, 2019).

<sup>13</sup> See, e.g., Harald Tambs-Lyche, *Caste*, in *Brill’s Encyclopedia of Hinduism Online* (2018) (noting that discrimination against “untouchables” remains a “significant problem” that sometimes degenerates into violent atrocities).

<sup>14</sup> See Rupa Viswanath, *Dalits / Ex-Untouchables*, in *Brill’s Encyclopedia of Hinduism Online* (2018).

Despite modern India's efforts to address the injustice of caste, "Caste is as much a reality in today's India as it ever was,"<sup>15</sup> and "[i]nherited caste identity is an important determinant of life opportunity for a fifth of the world's population."<sup>16</sup> Life and work for Dalits such as John Doe is characterized by "pervasive forms of condescension, exclusion, and derogation."<sup>17</sup> These "conditions of deprivation" are maintained by "complex and concerted forms of social policing on the part of other castes."<sup>18</sup> Dalits are at the bottom of the caste system, and the word *dalit* means oppressed or ground-down.<sup>19</sup> The caste system treats Dalits as untouchables and "continues to operate as though a form of legal apartheid were effectively still in place."<sup>20</sup>

As this case illustrates, prejudices and social hierarchies can travel across national borders, and casteism has become an invisible menace in California as a byproduct of the tech industry's reliance on labor from the Indian subcontinent.<sup>21</sup>

Casteism is particularly relevant to employment law because of the close association between caste and labor. The notion of "untouchability" relates in part to the fact that Dalits were historically relegated to low-status and "impure" jobs

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<sup>15</sup> See Tambs-Lyche, *supra* n. 13.

<sup>16</sup> David Mosse, *Caste and Development: Contemporary Perspectives on a Structure of Discrimination and Advantage*, 110 *World Development* 422, 422 (2018).

<sup>17</sup> See Viswanath, *supra* n. 14.

<sup>18</sup> *Id.*

<sup>19</sup> Laura Dudley Jenkins, *Symposium: Race, Caste and Justice: Social Science Categories and Antidiscrimination Policies in India and the United States*, 36 *Conn. L. Rev.* 747, 753 (2004).

<sup>20</sup> Smita Narula, *Equal by Law, Unequal by Caste: The "Untouchable" Condition in Critical Race Perspective*, 26 *Wis. Int'l L.J.* 255, 259–60 (2008).

<sup>21</sup> See, e.g., Nitasha Tiku, *India's Engineers Have Thrived in Silicon Valley. So Has Its Caste System*, *Wash. Post* (Oct. 27, 2020). The problem is not unique to California and India; casteism is also widespread in the United Kingdom. See Hilary Metcalf and Heather Rolfe, *Caste Discrimination and Harassment in Great Britain*, *Nat. Inst. of Econ. and Soc. Research* (Dec. 2010).

such as handling human waste and remains. Labor abuses of the sort alleged in this case remain an integral feature of the caste system. They are examples of how caste discrimination persists despite affirmative action programs<sup>22</sup> — how untouchables become unpromotables, receiving less opportunity and continuing to play a subservient role in society.

### III. The FEHA bars employers from discriminating on the basis of caste.

American law and society promote the idea that people can rise socially and economically regardless of the characteristics they inherit at birth. Casteism — the notion that certain people are born into a lowly station in life and must be kept there by social, economic, and political oppression — is diametrically opposed to the assumptions underlying the Fourteenth Amendment and American civil rights law, including the FEHA. Casteism is just as illegal under those laws as other forms of descent-based discrimination that are more familiar to Americans.

Though the FEHA's drafters may not have had the South Asian caste system in mind, they sought to encompass all forms of discrimination unrelated to merit — as evidenced by the fact that the FEHA lists fourteen protected characteristics. Casteism implicates at least three of those characteristics: ancestry, race, and color.

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<sup>22</sup> Caste-based affirmative action programs are controversial in India, and higher-caste workers sometimes view lower-caste workers such as John Doe who benefit from affirmative action programs as incompetent and undeserving. *See* Ambika Prasad, *Caste at Work: A Study of Factors Influencing Attitudes Toward Affirmative Action in India*, 39 *Equality, Diversity, & Inclusion: An Int'l J.* at \*5 (Jan. 2020). That attitude is evident in the case before the court: John Doe's Cisco supervisor told colleagues that Doe was "not on the main list" at one of India's universities. *See* Compl. ¶ 38.



A. Casteism is a form of ancestry discrimination.

Caste membership is wholly based on the FEHA-protected characteristic of ancestry, which “identifies individuals by biological descent.”<sup>23</sup>

Dalit status is inherited from one’s parents and other ancestors.<sup>24</sup> A person discriminated against for being a Dalit is being targeted not because of any action or inaction on the Dalit’s part, but because the Dalit happened to be born to Dalit parents. Similarly, eligibility for India’s caste-based affirmative action programs is determined primarily by ancestry.<sup>25</sup>

The nature of caste as hereditary is perhaps the central fact of the caste system. All definitions of caste “stress the existence of a number of ranked groups, generally separated by a ban on intermarriage, in which membership is hereditary.”<sup>26</sup>

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<sup>23</sup> *Davis v. Guam*, 932 F.3d 822, 836 (9th Cir. 2019) (noting that an “ancestor” is defined as “[o]ne from whom a person is descended, either by the father or mother”). Black’s Law Dictionary defines ancestry as a “line of descent” or “lineage.” See also *Billiter v. Jones*, 2020 U.S. Dist. LEXIS 173187, \*17 (S.D. W. Va. 2020) (interpreting the term “ancestry” in the West Virginia Human Rights Act).

<sup>24</sup> See, e.g., Isabel Wilkerson, *Caste: The Lies That Divide* 17 (2020) (“A caste system is an artificial construction, a fixed and embedded ranking of human value that sets the presumed supremacy of one group against the presumed inferiority of other groups *on the basis of ancestry* and often immutable traits . . .”) (emphasis added).

<sup>25</sup> Prime Minister V.P. Singh noted: “If there is discrimination by birth, then in delivering the remedy, identification of victims of such an order can only be done by birth.” See Jenkins, *Symposium*, 36 Conn. L. Rev. at 753. Eligibility is also partly determined by religion, as Dalits who convert to a religion other than Hinduism lose eligibility for affirmative action programs.

<sup>26</sup> Tambs-Lyche, *Caste*. See also *id.* (“Membership of a caste is hereditary, and the groups are largely endogenous.”); David P. Forsythe, *Hinduism*, in *Encyclopedia of Human Rights* (2009) (stating that the caste system “divides the whole society into a large number of hereditary groups”); Prasad et al., *supra* n. 22 at \*2 (“Caste represents a form of identity that legitimizes the idea of inherited hierarchy.”).

The Court can dispose of Cisco’s motions on this basis alone. Casteism is a form of ancestry-based discrimination; it is therefore illegal under the FEHA.

B. Casteism is a form of race and color discrimination.

Under California and federal civil rights law, prohibitions on race-based discrimination are intended to protect “identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics.”<sup>27</sup> Casteism is considered a form of racial discrimination under international human rights law, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).<sup>28</sup> The United States is a signatory to that treaty, and the FEHA should be interpreted in harmony with it.

Casteism is a form of race-based discrimination in part because it only poses a threat to South Asians. In *Bostock v. Clayton County*,<sup>29</sup> the Supreme Court held that Title VII’s prohibition on sex discrimination barred employers from discriminating against gay and transgender workers because but for these workers’ gender, they would not face discrimination.<sup>30</sup> The same reasoning applies here: if John Doe had not been a South Asian, he would not have been subject to caste-based discrimination.

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<sup>27</sup> *Sandhu v. Lockheed Missiles & Space Co.*, 26 Cal. App. 4th 846, 855 (1994) (quoting *Saint Francis College v. Al-Kharzraji*, 481 U.S. 604, 613 (1987)).

<sup>28</sup> See ICERD Article 1(1), which “defines racial discrimination by reference to five grounds - race, colour, descent, or national or ethnic origin.” Annapurna Waughray, *Capturing Caste in Law: Caste Discrimination and the Equality Act 2010*, 14 Human Rights L. Rev. 359 at \*6 (2014). The term “descent” has been held to include “discrimination against members of communities based on forms of social stratification such as caste and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights.” *Id.*

<sup>29</sup> 140 S. Ct. 1731 (2020).

<sup>30</sup> See *id.* at 1741.

Caste is also related to the protected characteristic of color because, as alleged in the Complaint, caste status is correlated with skin pigmentation,<sup>31</sup> and Dalits tend to have darker complexions than members of higher castes.<sup>32</sup> In a recent Washington Post article, a Dalit “rattl[ed] off all of the ways he can be outed as potentially being Dalit, including the fact that he has darker skin.”<sup>33</sup> The relationship between caste status and skin color is another reason that Dalits’ struggle for equal opportunity fits within the tradition of American civil rights law. It is no coincidence that Dr. Martin Luther King, Jr. declared himself an untouchable: he saw direct parallels between the plight of the Dalits and that of African Americans in the Jim Crow-era South.

#### IV. Conclusion

American civil rights law has little experience with the South Asian caste system, but it is very familiar with the idea of caste: the notion that some people are born to low stations in life in which they are forced to remain. “The intent of the Fourteenth Amendment was to abolish caste legislation,”<sup>34</sup> and the intent of civil rights laws such as the FEHA was to abolish casteism of all kinds in the private sector. By banning employment discrimination on the basis of ancestry,

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<sup>31</sup> See, e.g., Anshuman Mishra et al., *Genotype-phenotype Study of the Middle Gangetic Plain in India Shows Association of rs2470102 with Skin Pigmentation*, 137 J. Investigative Dermatology, 670 (“[T]he social structure defined by the caste system in India has a profound influence on the skin pigmentation patterns of the subcontinent.”).

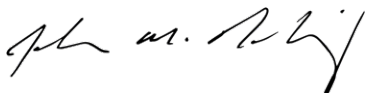
<sup>32</sup> See Compl. ¶ 29; Kathy Russell-Cole et al., *The Color Complex: The Politics of Skin Color in a New Millenium* 34 (2014) (stating that “the Dalits are also among the darkest skinned people in the Indian subcontinent”).

<sup>33</sup> Tiku, *supra* n. 21.

<sup>34</sup> *Kadrmas v. Dickinson Pub. Sch.*, 487 U.S. 450, 469 (1988) (Marshall, J., dissenting) (citing *Plyler v. Doe*, 457 U.S. 202, 213 (1982)).

race, and color, the FEHA bars employers from discriminating against a worker because he is a Dalit. Cisco's demurrer and motion to strike should accordingly be overruled.

Respectfully submitted,



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#### ADDITIONAL SIGNATORIES

In addition to the Ambedkar International Center, the following groups and scholars wish to add their names in support of this brief:

- Ambedkar King Study Circle
- Anti Caste Discrimination Alliance
- Boston Study Group Inc.
- Ambedkarite Buddhist Association of Texas
- Dr. B. R. Ambedkar International Mission Center
- Ambedkar Educational Aid Society
- Shri Guru Ravidass Sabha – Bay Area, California

- International Bahujan Organization CA
- Hindus for Human Rights, USA
- Kevin D. Brown, Richard S. Melvin Professor of Law, University of Indiana Maurer School of Law
- Ajantha Subramanian, Professor of Anthropology, Harvard University
- Shailaja Paik, Associate Professor of History, Yale University
- Annapurna D. Waughray, Reader, Manchester Law School, Manchester Metropolitan University
- Hari Bapuji, Professor of Strategic Management and International Business, University of Melbourne
- Scott R. Stroud, Ph.D., Associate Professor of Communication Studies and Program Director of Media Ethics for the Center for Media Engagement, University of Texas at Austin.
- Meena Dhanda, Professor of Philosophy and Cultural Politics, University of Wolverhampton
- Gaurav Pathania, Adjunct Professor, Department of Sociology, Georgetown University
- Sunita Viswanath, Co-founder, Hindu for Human Rights and Sadhana
- Tanojkumar Meshram, Ph.D. Candidate (ABD) in Social Policy, The Heller School for Social Policy and Management, Brandeis University