

CASTE DISCRIMINATION IN AMERICAN WORKPLACE - A PRIMER ON THE LANDMARK CASE AGAINST CISCO

On March 9, 2021, the Superior Court of the State of California, County of Santa Clara will hear a civil rights complaint of employment discrimination filed by the California Department of Fair Employment and Housing (DFEH).¹ This complaint has been filed against Cisco Systems Inc., a tech giant operating in California and two of its former employees (Sunder Iyer and Ramana Kompella) for discriminating against another employee (John Doe²), owing to him being a Dalit i.e. belonging to the untouchable caste in India.

I. Brief facts of the case and summary of arguments made by different parties

John Doe, the complainant, has been working at Cisco since 2015 and has complained of facing discrimination and harassment at the hands of his supervisors (Iyer and Kompella). Both these supervisors belong to upper castes.

- Iyer had mentioned to Doe's colleagues that Doe got through a coveted tech college in India through affirmative action³. This was despite Iyer himself recruiting Doe for his experience and expertise. On being confronted by Doe, Iyer denied saying so. Doe filed a discrimination complaint against Iyer to Cisco's HR.
- Shortly following the complaint, Iyer took away Doe's role as lead on two projects, promoted his colleagues who also received raises and reworked other teams in a manner that Doe was completely isolated and his responsibilities reduced.
- Cisco conducted an internal investigation and despite adverse findings against Iyer, closed the investigation. As Iyer's discriminatory actions continued, Doe sought a review of the internal investigation, which was again closed without recommending any corrective action despite adverse findings.⁴
- In 2018, Iyer stepped down, Kompella took over and continued the discriminatory behaviour. Later Doe applied for a promotion but was denied because the supervisor at that time was influenced by Iyer's retaliatory action and noted that Doe had projects and responsibilities taken away from him and made adverse observations about his social skills.
- As a result of caste discrimination, Doe lost out on projects, promotions, wages, despite being competent and suffered mental harassment.

¹ *Cal. Dept. Fair Empl. & Hous. v. Cisco Systems, Inc., et al.* Case No. 20CV372366

² The complainant's identity is to be kept anonymous to prevent further harassment

³ As per DFEH, Iyer admitted before the investigator that he did mention to Doe's colleagues about Doe getting in a coveted college through affirmative action.

⁴ As per DFEH, during the investigation, an internal spreadsheet was revealed which showed raises, bonuses, stock options which were promised to Doe, but while these materialized for other employees, they didn't materialize for Doe.

Failing to get any meaningful redressal and relief from Cisco, Doe approached California's DFEH in 2018 which has now filed this complaint after a settlement couldn't be reached in a mandatory dispute resolution. The DFEH has justified the cause of action on following grounds:

- Caste discrimination is prohibited under Title VII of Federal Civil Rights Act, 1964 which prohibits discrimination in employment practices like compensation, privileges of employment, depriving of employment opportunities, adversely affecting employment status etc. on basis of individual's race, color, religion, sex, or national origin/ ethnicity, ancestry.⁵
- Further that, harassment as a form of discrimination when it creates a hostile work environment is also prohibited.
- Retaliation by employer for opposing such discrimination or participating in an investigation against such discrimination is also prohibited.⁶
- Caste Discrimination is prohibited under California Fair Housing and Employment Act (FEHA) also which makes it illegal for employers to discriminate in matters of employment, compensation, conditions, privileges of employment on basis of an individual's race, religious creed, color, national origin, ancestry.⁷
- Further to that, harassment on similar grounds is also prohibited.⁸
- Retaliation against an employee for opposing discriminatory practices and harassment is also unlawful.⁹
- Finally, that it is also unlawful for an employer to fail to take action against discrimination, harassment and retaliation.¹⁰

Cisco filed a Motion to Strike and a demurrer, in which apart from raising technical grounds, it argued that caste based discrimination is not covered under FEHA and hence not a protected attribute. It also argued that observations and factual assertions made by DFEH regarding practice of untouchability in India, experiences of Dalits facing discrimination in America etc. should be struck as immaterial to the case. This is despite the fact that complainant's discrimination at the hands of two upper caste supervisors is rooted in this context and lived experiences of others like him.

The Ambedkar International Centre has filed an amicus curiae brief and specifically presented arguments against Cisco's demurrer. Particularly:

- It argued that despite affirmative action and official reforms, caste is practised in India and confines familial, social and economic relations in its bound. It further argued that it has particular relevance in cases of employment law as caste has a close association with distribution of labour, where for centuries Dalits have been relegated to 'impure' jobs such as handling human waste and remains of animals and hence considered 'unpromotable'.

⁵ 42 U.S.C. § 2000e-2(a)

⁶ 42 U.S.C. § 2000e-3(a)

⁷ Cal. Gov't Code § 12940(a)

⁸ Cal. Gov't Code § 12940(j)

⁹ Cal. Gov't Code § 12940(h)

¹⁰ Cal. Gov't Code § 12940(k)

- It also argued that FEHA may not cover caste in word, but it covers caste as a protected attribute in spirit as caste is implicated in three of its protected characteristics - ancestry, race and colour.
 - Caste is a form of ancestry discrimination as caste is inherited from one's parents and ancestors and thus Dalits get targeted for the simple fact of being born as one. Hence, caste based discrimination as a form of ancestry discrimination is illegal under FEHA
 - Caste discrimination is considered a form of racial discrimination under International Convention on Elimination of all forms of Racial Discrimination. It also quoted demographic studies to argue that caste status is associated with skin pigmentation and Dalits tend to have darker complexion compared to upper castes and this promotes untouchability. Hence, caste based discrimination as a form of racial and colour based discrimination is prohibited under FEHA.
 - In the case of *Bostock vs. Clayton County*¹¹, The US Supreme Court had held that Title VII Civil Right Act's prohibition on discrimination in employment on basis of sex applied to gays and transgender workers, because, if not for their gender, they would not face discrimination. Similarly, John Doe, hired for his experience and expertise, recognized by his superiors and colleagues, would not have faced discrimination from his Indian upper caste supervisors but for his caste.

II. Introduction to caste in India and America and congruence with other forms of discrimination

Caste in India is a lived reality. It can be described as a birth based hierarchical system wherein people are divided into four *varnas* or categories; *Brahmin*, *Kshatriya*, *Vaishya* and *Shudra* in an order of descending value.¹² Untouchability, associated with *Shudra*, has been a key feature of the practice of caste and transgression from the highly rigid system invites adverse social consequences. "Dalit", meaning 'oppressed', is a 'self-chosen identity' for a quarter of India's population who have been at the receiving end of centuries old systematic and institutionalized discrimination and disenfranchisement.¹³

The system of caste has infiltrated every single aspect of Indian life through segregation and oppression. It is an epidemic of violence wherein according to the National Crime Records Bureau data¹⁴ ten Dalit women are raped every day, however the reality remains far more brutal and festering. There are daily institutional discrimination episodes in higher education universities that Dalit students battle. Incidents of deaths of manual scavengers, strikes by

¹¹ 140 S. Ct. 1731 (2020)

¹² Ambedkar, B. R. (Bhimrao Ramji), 1891-1956. Annihilation Of Caste

¹³ Yashica Dutta, 'The spectre of caste in silicon valley', The New York Times, July 14, 2020, <https://www.nytimes.com/2020/07/14/opinion/caste-cisco-indian-americans-discrimination.html>

¹⁴ Also see; <https://thewire.in/caste/ncrb-crimes-against-dalits-women>

workers coupled with no representation in the employment sector are only the tip of the iceberg which may not melt anytime soon.

Since, being born in a caste is immutable, it follows one wherever they may go, including moving across continents. It must be remembered that despite India putting in place affirmative action, being born in a lower caste puts one at a competitive disadvantage and hampers their access to opportunities and chances of progress in life. And for those who manage to climb the ladders are still not able to shed the stigma of caste. It doesn't come as a surprise that:

- scholarly studies have shown that of all Indian immigrants in the United States in 2003, only 1.5% were Dalits¹⁵;
- Another study in 2016 found that more than 90% of Indian migrants came from 'high' or 'dominant' castes.¹⁶

It is in this context that the proliferation of caste oppression globally needs to be documented and challenged to form a translational anti-caste movement based on the ideals of all anti-caste revolutionaries and philosophers. It may be helpful here to remember Martin Luther King, Jr.'s empathetic association with the untouchables in India, when on his visit to India in 1959 he realized that, "Yes, I am an untouchable, and every negro in the United States of America is an untouchable."¹⁷

Discrimination and oppression triggered by - caste, race, gender, sexual orientation - has the ultimate effect of dehumanization and disenfranchisement. It was seen in the murder of George Floyd in Minneapolis and in the heart-wrenching gang rape and brutal murder of a Dalit teenage girl in Hathras, Uttar Pradesh in India.¹⁸ Caste in America is also a lived reality now much like race and needs to be resisted with equal vigour as the iconic Black Lives Matter movement.

III. International conventions on caste based discrimination

Caste-based discrimination is prohibited in International Human Rights Law. Many human rights organizations along with UN special rapporteurs and UN human rights bodies like the United Nations Committee on the Elimination of Racial Discrimination (CERD) continue to work on the eradication of the same as seen in various reports.

- In 2002, CERD adopted the General Recommendation 29 on Article 1, Paragraph 1 of the Convention on Elimination of Racial Discrimination and strongly reaffirmed that discrimination based on "descent" includes discrimination against members of

¹⁵ Tinku Ray, 'The US isn't safe from the trauma of caste bias', The World, March 08, 2019, <https://www.pri.org/stories/2019-03-08/us-isn-t-safe-trauma-caste-bias>

¹⁶ Patrick French, 'All come to look for America', The Indian Express, December 10, 2016, <https://indianexpress.com/article/lifestyle/books/the-other-one-percent-indians-in-america-book-review-migration-4419534/>

¹⁷ Isabel Wilkerson, 'America's 'untouchables': the silent power of the caste system', The Guardian, July 28, 2020, <https://www.theguardian.com/world/2020/jul/28/untouchables-caste-system-us-race-martin-luther-king-india>

¹⁸ Niharika Ravi, 'What happened in Hathras case while you weren't looking', The Leaflet, December 21, 2020, <https://www.theleaflet.in/what-happened-in-hathras-case-when-you-werent-looking/#>

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'.¹⁹

- Other UN treaty body committees and conventions such as the UN Convention on Elimination of all Forms of Discrimination against Women (CEDAW) in 2004 and Committee on Economic, Social and Cultural Rights (CESCR) in 2009 have also addressed caste-based discrimination.²⁰
- The former Commission on Human Rights, the UN sub-Commission on the Promotion and Protection of Human Rights had prepared draft principles and guidelines for elimination of discrimination that also mentioned caste.²¹
- The issue of recognizing caste as a ground of discrimination based on descent was taken up to an extent in the Durban Review Conference followed by a list of recommendations titled Durban Declaration and Plan of Action.²²

Within the American jurisprudence, California FEHA, 1959 protects employees on the basis of ancestry. As already discussed above, the ground perfectly covers caste-based discrimination since caste is a birth based hereditary system. Apart from this there is the Federal Civil Rights Law 1964 that bars discrimination on the basis of race, color, religion, sex and national origin²³, and as already argued above by AIC, caste gets implicated in the same.

¹⁹ CERD General Recommendation XXIX on Article 1, Paragraph 1, of the Convention (Descent), <https://www.refworld.org/docid/4538830511.html>

²⁰ CEDAW, General Recommendation No.25, [https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf), CESCR, General comment No. 20, <https://www.refworld.org/docid/4a60961f2.html>

²¹ For a comprehensive compilation of how caste based discrimination has been addressed by UN Committee bodies, Univesal Periodic Reviews and Special Procedures, check International Dalit Saolidarity Network's compilation - <https://idsn.org/wp-content/uploads/2021/01/UNcompilation-Jan-2021.pdf>

²² Durban Review Conference and caste based discrimination, https://idsn.org/wp-content/uploads/user_folder/pdf/New_files/UN/Durban_and_caste_-_joint_position_paper.pdf

²³ Amrita Dutta, "Explained | Getting America to recognise caste: previous efforts, renewed push" The Indian Express, October 16, 2020, <https://indianexpress.com/article/explained/getting-america-to-recognise-caste-previous-efforts-renewed-push-6495101/>