



International Commission for Dalit Rights

For Policy and Media Briefing

D.B. Sagar, President
1751 Pinnacle Dr., Suite 600
McLean, VA, USA
Email: dbsagar@icdrintl.org;
icdrintl@icdrintl.org

ICDR Sued SAHIB Restaurant of Employment Discrimination based on Caste at Workplace

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New York, *International Commission for Dalit Rights (ICDR International)* filed lawsuit against Sahib Restaurant, accusing its manager and the co-workers harassed and discriminated a Nepali origin employee because he belonged to a lower caste, which is a part of religion.

The case filed in Equal Employment Opportunity Commission (EEOC) New York on behalf an alleged victim of Caste-based discrimination, harassment and unfair treatment at the workplace.

The Victim worked in Sahib Restaurant in New York, from late March 2017 until end of July 2017. During this time, his co-workers and managers made his life miserable by continuously making derogatory remarks and using 'N-words' (like calling racial remarks) about his being from a so-called "lower caste" and being born an "Untouchable". Like other restaurants owned by South Asian-Americans, Sahib's employees are Nepalese and other South Asian immigrants, who are often from so-called dominant caste groups.

On July 31, 2017, the victim filed a verified complaint with the New York State Division of Human Rights (NYSDHR) after experiencing caste-based discrimination and harassment at his workplace, the Sahib restaurant. The ICDR and the victim did not satisfy with the final findings of the NYSDHR.

Background Information

In the victim's report, he claimed that his employer treated him differently in a disrespectful manner and was not granted the same employment rights as his coworkers. The victim stated that the unfair treatment was due to the fact that he belongs into a lower caste ("Untouchables") in Nepal, which gave his employer and coworkers, who are of the same national origin, a reason to discriminate. Upon filing his complaint, *D.B. Sagar*, President of the ICDR, stated that this is a first legal battle on the ground of Caste-based discrimination within

the government authority, New York State Division of Human Rights in the USA; he further said, we will continue alert and educate policy-makers and advocate to recognize “caste-based discrimination” as a protected classification under the civil (human) rights and non-discriminatory U.S. laws.

Decision of the New York State Division of Human Rights

After the investigation, the New York State Division of Human Rights determined “that there [was] NO PROBABLE CAUSE to believe that the respondent (Sahib restaurant) ... engaged in ... the unlawful discriminatory practice complained of” (*Bishowkarma v. Sahib*, 2018). The Division made this decision due to the following reasons. There was insufficient support for the victim’s allegations of unlawful discrimination. There was also discrepancy between the victim’s and his employer’s claims regarding the end of his employment; the victim initially claimed that he had been terminated, but his employer claimed that he had “voluntarily and abruptly abandoned his employment by walking off the job...” (*Bishowkarma v. Sahib*, 2018). Regardless, the Division also ruled that there was lack of evidence that the victim was mistreated due to his creed, national origin, and race/color. Lastly, **caste-based discrimination is “not a protected classification under the Human Rights Law”** and that the victim’s “allegations are beyond the jurisdiction of the Division” (*Bishowkarma v. Sahib*, 2018).

Analysis/History and Prevalence of Caste-based discrimination

One of the reasons stated by the Division to close the victim’s case is because **caste-based discrimination is “not a protected classification by the Human Rights Law” and is “...beyond the jurisdiction of the Division”** (*Bishowkarma v. Sahib*, 2018), which questions the extent minorities and underrepresented groups are protected under the Human Rights Law and the Division, as caste discrimination has and continues to prevail in the U.S. First of all, to define caste discrimination, it is the unjust and prejudicial treatment of people based on class structure determined by birth. Caste discrimination has been prevalent in India, Nepal, Pakistan, Sri Lanka, and Bangladesh and has been exported to other developed countries like the U.S. as a result of immigration. It is typically common in workplaces where the employer and/or coworkers are of the same national origin from the listed countries (above) and aware of each other’s caste. There have been many reported incidents of caste discrimination in the U.S. not just in the workplace but also in housing and renting, education systems, communities, and other public spaces such as temple where casteism is well understood and familiarized. One such example is the ongoing struggle of Dalits (“Untouchable”) against caste discrimination after the Dalit Diaspora in the U.S. (Wankhede, 2014). There have been reported incidents of “gruesome rapes and ‘honor’ killings of Dalit women”; rape and public hangings of teenage Dalit girls; molestation and sexual abuse of a college graduate by a Hindu priest; exploitation of a maid by an Indian millionaire couple; and the burning of a woman’s house by her own father after her marriage to a man of a lower caste. In other words, the victim’s case represents one of

the many struggles that Dalits and members of the lower caste face on a daily basis both in their home country and in the U.S.

ICDR filed a Case in Equal Employment Opportunity Commission (EEOC), New York

On January 24, 2018, the New York State Division of Human Rights closed the victim's case. However, the ICDR and the victim were not satisfied with the final findings of the Division. The ICDR's legal representative, Ms. Swati M. Sawant, Esq., filed a case in the U.S. Equal Employment Opportunity Commission (EEOC). The request, written by Sawant, describes in detail the incident for which the victim filed a complaint, as well as his hopes and dreams about change upon immigrating to the U.S. only to find that the caste system remained intact. Additionally, in the request, Sawant describes how the caste-based label "Untouchable" is equivalent to other commonly known ethnic slurs and subsequently provides various examples of such slurs and incidents of racial oppression and discrimination. Following this, Sawant requests for the EEOC to reevaluate the circumstances and investigate the victim's employer (Sahib) and its past employees who may have been subjected to the same treatment, as there were no witnesses at the time to support the victim's claim. Sawant further presses the need to reinvestigate the case by denying the claim made by the Division that caste-based discrimination is "not a protected classification under the Human Rights Law" and that the victim's "allegations are beyond the jurisdiction of the Division" (*Bishowkarma v. Sahib*, 2018), as the caste system is a form of religion.

International Commission for Dalit Rights (www.icdrintl.org):

The International Commission for Dalit Rights (ICDR International), Washington, D.C. based nonprofit organization, is a leading global movement of people striving to eliminate Caste, Work and Descent (CWD)-based Discrimination, inequality and injustice. We campaign for the rights and dignity of Dalits, Minorities, marginalized and underprivileged people worldwide who face CWD and Social Exclusion. We investigate, expose discrimination, educate and mobilize the public, provide community services, and campaign to leverage for changes in policy and transform societies. More importantly, ICDR does provide pro-bono legal services to the victims on the issue of discrimination, harassment or unfair treatment based on caste at workplace and employment opportunity. Appointing Sawant as a representative for ICDR and for the victim is just one of the many steps ICDR has taken to defend and promote the inherent dignity, equality, and rights of the underprivileged, marginalized, and Dalit people worldwide and establish justice. ICDR will stand by and provide the utmost support for the victim and litigate for the losses incurred by caste-based discrimination and termination of employment. As its immediate goal, ICDR will work towards eradicating the engraved label that has divided people of the same origin and heightened prejudice and violence for millennia.

ICDR educates business communities on the non-discriminatory laws and equal opportunity at workplace and employment retention processes. ICDR has also been alerting, educating and

advocating to recognize and incorporate the term “caste” within the protected classification by the Human/Civil Rights Laws including EEOC law, regulations and policies. Moreover, ICDR will continue to work towards attaining its ultimate goal by educating and advocating EEOC and other agencies to recognize that caste discrimination abuses and violates human rights and must be protected under the Human Rights Law. Likewise, ICDR is educating and advocating on two main concerns - to the White House and the Congress: First, that the state has to ratify the UN Human Rights Council's Draft Principles and Guidelines for the Effective Elimination of Discrimination based on Work and Descent (A/HRC/11/CRP.3), and second, that the US Congress has to pass a binding resolution that requires action against caste-based discrimination and expand the geographic scope of its historic Concurrent Resolution on Untouchability in India (House Concurrent Resolution 139 of 2007). Both the concerns highlight that even in the US, a section amongst the Asian immigrants face caste-based discrimination and prejudices and therefore reform in the form protective discriminatory policy is needed to assure justice, mainly to the Dalits, who are living in the USA.

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