

Listening Session with EEOC, OFCCP, DOJ



on Caste Based Discrimination



September 17, 2021 2:00pm EST

International Commission for Dalit Rights (ICDR)

And

National Coalition Against Caste Discrimination in the USA



Opening Remarks

- **Davis Kim**, Principal Legal Advisor, Office of Chair Charlotte A Burrows, U.S. Equal Employment Opportunity Commission
- **Aziz Ahmad**, Counsel for Civil Rights Division, U.S. Department of Justice
- **Jane Suhr**, Regional Director - Pacific Region, Office of Federal Contract Compliance Programs, U.S. Department of Labor
- **D.B. Sagar**, President and Founder, International Commission for Dalit Rights (ICDR International) and Co-funder, National Coalition Against Caste Discrimination in USA.
- **Lakshmi Sridaran**, Executive Director, South Asian American Leading Together (SAALT) and member of National Coalition Against Caste Discrimination in the USA.

Mr. D.B. Sagar (Dil Bishkarma)

D.B. Sagar is a globally recognized civil rights/social justice advocate, social entrepreneur, and an experienced government and public services management professional, who has devoted his entire career to advance governments, public services and civil rights. With over 20 years of experience, Mr. Sagar brings substantial expertise in leading advocacy, litigation, and public services efforts both at national and international levels. He regularly collaborates with a broad range of stakeholders in the course of this work.

Mr. Sagar has briefed leadership of the U.S. Department of State, USAID, DFID, European Commission on several occasions. He has testified before the UN Intergovernmental Negotiations on the Post-2015 Development Agenda, the UN Committee on Elimination of Racial Discrimination; the UN Human Rights Sub-Committee; the European Parliament; and the British House of Commons on matters of Human Rights and equality. He was actively engaged in the UN World Conference against Racism in 2001. He hosted the first ever Global March Against Caste Discrimination in 2014 and the Global Conference on Dalit Rights in 2015. He co-authored the Dalit Rights Global Declaration 2015.

Mr. Sagar received a Master of Law (LL.M) degree from American University Washington College of Law and graduated in Sociology from the American University, D.C. He has given public speeches/lectures and interviews to news media, including the Associated Press. Mr. Sagar has written articles/reports and provided expert commentary on public policies.

Opening Remarks by D.B. Sagar, President and Founder of ICDR

- The ICDR has been working on advocacy, litigation and public services for minorities and caste-oppressed people at community, national and international levels for 13 years.
- Thanks to the EEOC and federal agencies who have agreed to recognize an often-forgotten issue, “Caste”, for the first time in federal agencies’ record. A historic day!

What is Caste:

- Caste is a system of hierarchical social stratification in which rank is inherited and social status is fixed at birth. Caste upholds systems of domination, exclusion, exploitation, and discrimination – in short, inequality and injustice.
- Caste affects many religious groups. It is established in many South Asian countries with similar systems found in Africa, Latin America, Middle East, Europe, and Asia.
- There is much documented evidence of dominant caste people discriminating against subordinate caste people known as “Dalits” in every section of our society regardless of their religion.

What is Caste Discrimination?

(D.B. Sagar, cont.)

- In the United States, the incidents of caste discrimination have increased dramatically in recent years, as the population of South Asian Americans has also increased.
- Like race and ancestry, caste allocates differential privileges and penalties depending on inherited social status or discrimination.
- There are currently almost 5.4 million people of South Asian descent in the United States.
- American citizens should not have to fear caste discrimination at any level
- American Dalits always fear that their human dignity might be questioned or dehumanized just because of their ancestry or caste.

Caste Discrimination in Workplace: (D.B. Sagar, cont.)

- The workplace remains a significant site of caste discrimination, harassment, and exclusion.
- A recent report has revealed that there are more than 250 complaints of caste discrimination from employees in major multinational companies in the United States.
- In another study, 67% of Dalit respondents reported experiencing some form of caste discrimination at their place of employment.
- Hundreds of American Dalits face caste discrimination at all levels, in schools, at the workplace, in housing, and in public places.
- American Dalits are losing jobs and fair promotion opportunities.
- Caste discrimination restricts their liberty and negatively impacts their prosperity.

Litigation against Caste Discrimination in USA (D.B. Sagar, cont.)

- ICDR started advocating and litigating against caste discrimination in the United States in 2014
- In 2017, ICDR filed a complaint with the New York State Division of Human Rights against caste discrimination and harassment at the workplace.
- The NY Division of Human Rights dismissed the case stating that caste discrimination is **“not a protected classification under the Human Rights Law”** and that the victim’s **“allegations are beyond the jurisdiction of the Division.”**
- In 2018, on behalf of the victim, ICDR appealed to the EEOC New York field office to reinvestigate the case; EEOC did not investigate further.
- This was the first legal complaint filed before the any enforcement agency in the United States. Today, there are several high-profile cases of caste discrimination in Silicon Valley and across the country.

Policy Memorandum to EEOC and DOJ (D.B. Sagar cont.)

- On May 10, 2021, ICDR and members of the National Coalition submitted a memorandum to the EEOC and Civil Rights Division of Department of Justice demanding that federal agencies:
 - recognize and include 'caste' under the Title VII civil rights law,
 - investigate and litigate against caste discrimination, and
 - hold a public hearing and educational trainings against caste discrimination.
- The time has come for federal enforcement agencies to formally recognize that Title VII prohibits caste discrimination as it is a form of ancestry or national origin and racial discrimination.
- Legal arguments from our speakers will show how caste is covered by civil rights law, and why the EEOC and other federal agencies should recognize and enforce caste as a protected classification and commit to preventive efforts against caste discrimination.

Ms. Lakshmi Sridaran

Lakshmi Sridaran currently serves as the Executive Director of South Asian Americans Leading Together (SAALT). Since 2014, she was SAALT's Director of National Policy and Advocacy where she led the organization's external engagement and developed SAALT's policy and legislative agenda, which primarily focuses on immigration, racial profiling and combating hate violence. Prior to that, she served as the Policy Director for The Praxis Project, a Washington D.C.-based national movement support organization focused on health justice in communities of color. Before moving to D.C., Lakshmi completed six years of work in New Orleans, Louisiana after Hurricane Katrina helping improve federal contracting opportunities for Disadvantaged Business Enterprises, institute participatory budgeting, and preserve public schools and infrastructure.

Lakshmi holds a master's degree in city planning from Massachusetts Institute of Technology and a B.A. in Ethnic Studies from The University of California, Berkeley.

Welcome Remarks by Lakshmi Sridaran, Executive Director at SALT

- We hope caste discrimination is federally recognized as a protected group, in order for us to continue moving our work forward and helping the victims of this type of discrimination
- Education and training regarding Caste and Caste-based discrimination are essential for all agencies present, in order to identify, mitigate and prosecute Caste-based discrimination.
- What Government Can do:
 - * Add Caste as a protected category in your institutions
 - * Implement diversity and inclusion training for HR, managers, and staff to build Caste competency
 - * Invest in Dalit organizations for external contracts for caste competency and services for caste oppressed victims.
 - * Hold a Public Briefing on Caste
 - * Collect data on Caste exclusions to set KPI's for measuring progress on Caste equity
 - * Conduct a review of past trafficking cases with a lens on how caste impacted the process

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Legal Expert Presentations

Ann Ravel, (Legal Counsel for Equality Labs and former Deputy Assistant Attorney General in the Civil Division of the DOJ and a former Chair of the Federal Election Commission) – Overview of caste discrimination legal cases and data in the US; states that have protections against discrimination based on ancestry.

Guha Krishnamurthi (Associate Professor at University of Oklahoma College of Law and co-author of an article, “Title VII and Caste Discrimination,” 134 HARV. L. REV. FORUM 456 (2021) – Legal definition of caste and legal arguments for how caste is covered by protections against race discrimination (ancestry as covered by race, al-Khazraji decision).

John Rushing (Attorney/ Founding Partner of Rushing McCarl LLP) – Legal argument for how caste discrimination is covered by protections against national origin discrimination (ancestry as covered by national origin).

Kevin Brown, PhD (Prof. of Law at Indiana University/Legal Advisor at ICDR and co-author of an article “Bostock v Clayton County Game Changer: US Federal Employment Law Now Covers Caste Discrimination Based on Untouchability”) – Legal argument for how caste discrimination is prohibited by the implications of the Bostock decision.

Dr. Annapurna Waughray (Law Prof./Lawyer/ Legal Advisor at ICDR and co-author of an article “Bostock v Clayton County Game Changer: US Federal Employment Law Now Covers Caste Discrimination Based on Untouchability”) – Human Rights laws and legislation against caste discrimination in the U.K.; caste as a HR violation; development of legal protection against caste discrimination in the UK

Theodore Shaw (Prof. of Law and Director of the Center for Civil Rights at University of North Carolina School of Law and a past Director-Council and President of the NAACP Legal Defense and Education Fund) - Caste discrimination and civil rights in the U.S.; civil rights organizations support of measures against caste discrimination.

Speakers' Bios

Ms. Ann Ravel

Ann Ravel was the County Counsel in Santa Clara County for over 11 years, then appointed by President Obama to the Department of Justice as the Deputy Assistant Attorney General in the Civil Division overseeing Torts and Consumer Litigation, in 2009. She subsequently was appointed by Governor Brown as the Chair of the CA Fair Political Practices Commission, and then appointed by President Obama as Commissioner (and Chair and Vice-Chair) of the Federal Election Commission. After leaving in 2017, she has worked internationally and in the US on Digital Deception policy, human rights and electoral issues including counseling to Equality Labs.

Prof. Guha Krishnamurthi

Guha Krishnamurthi is an Associate Professor at the University of Oklahoma College of Law. His research interests are in criminal law and procedure, constitutional law, and employment law. Prior to entering academia, he clerked for the Honorable Goodwin H. Liu of the California Supreme Court, the Honorable Andrea R. Wood of the U.S. District Court for the Northern District of Illinois, and the Honorable Diane P. Wood of the U.S. Court of Appeals for the Seventh Circuit and worked in private practice in Los Angeles.

Mr. John Rushing

John Rushing began his legal career in Chicago as a litigator, where he was a member of one of the nation's premiere products liability practice groups and handled complex cases relating to pharmaceutical products, medical devices, environmental injuries, and insurance coverage. After many years of serving as a litigator, Mr. Rushing became a plaintiff's attorney focusing on protecting individuals hurt by nursing home negligence and medical malpractice.

Mr. Rushing founded his own law firm, Rushing McCarl LLP in 2020, to focus on resolving complex cases and bringing positive resolution to his clients. His firm filed an amicus brief on behalf of the Ambedkar International Center in the caste discrimination case filed against Cisco and supports efforts to remove all forms of discrimination.

Prof. Kevin Brown

Prof. Brown teaches law and education, race, American society, and criminal law. Brown has been a visiting professor at the University of Texas School of Law, University of Alabama School of Law, and University of San Diego School of Law. He has been affiliated with universities on four different continents, including the National Law School of India University in Bangalore, India; the Indian Law Institute in New Delhi, India; the Law Faculty of the University of Cape Town in Cape Town, South Africa; and the University of Central America in Managua, Nicaragua.

In the spring of 2014, Mr. Brown taught in London as part of the London Law Consortium Program. He has published nearly sixty articles or comments on issues related to race, law and education. Mr. Brown was one of the original participants and founders of both the Critical Race Theory Workshop and the People of Color Conference. He has also spoken on issues of race, caste, law and education on over 100 occasions, including at the First Global Conference on Dalit Rights 2015, the annual Convention of the NAACP, the Congressional Black Caucus Braintrust Meetings, the National Bar Association, the American Bar Association and the Justices of the Indiana Supreme Court, and at several leading law schools.

Dr. Annapurna Waughray

Dr. Annapurna Waughray is a Reader in Human Rights at Manchester Metropolitan University, where she teaches Human Rights Law, International Law, International Criminal Law and European Union Law. She was in practice as a civil litigator before moving into academia. Dr Waughray works on caste and the law and the legal regulation of caste discrimination in the UK, India, the diaspora and in international human rights law. Her research specialisms are caste, human rights, equality, discrimination, and the law, in South Asia and the diaspora, international human rights law, caste and minorities, British equality law in relation to race, religion and caste, and the laws of India, particularly in relation to caste and minorities. She is the author of a number of key articles on caste discrimination and the law and is a co-author of the UK Equality and Human Rights Commission's research reports on caste in Britain. She has a contract with Routledge for her book, "Capturing Caste in Law: The Legal Regulation of Caste and Caste Discrimination."

Prof. Theodore Shaw

Ted Shaw is the Professor of Law and Director of the Center for Civil Rights at the University of North Carolina School of Law at Chapel Hill. He was also “Of Counsel” to a law firm. His practice involved civil litigation and representation of institutional clients on matters concerning diversity and civil rights. Professor Shaw was the fifth Director-Counsel and President of the NAACP Legal Defense and Educational Fund, Inc., for which he worked in various capacities over the span of twenty-six years. He has litigated education, employment, voting rights, housing, police misconduct, capital punishment and other civil rights cases in trial and appellate courts, and in the United States Supreme Court. Mr. Shaw has testified on numerous occasions before Congress and before state and local legislatures. His human rights work has taken him to Africa, Asia, Europe, and South America. He is a member of the faculty of the Practising Law Institute (PLI). Mr. Shaw served on the Obama Transition Team after the 2008 presidential election, as team leader for the Civil Rights Division of the Justice Department.

Ann Ravel's Legal Arguments

- Caste discrimination is a timely and important issue
- This issue affects many people worldwide, across many South Asian countries, even those who have relocated
- 1 in 3 Dalits experience discrimination
 - A hotline for caste discrimination was created, with more than 250+ reports in one year
- Reddy case
 - Reddy trafficked 200+ employees to the US under false pretenses, including young girls for sex trafficking
 - There was a significant lack of competence due to the lack of understanding of caste
- EEOC v. Signal International
 - Signal International recruited workers from India and forced them into slave-like conditions
- California DEFH v. Cisco Corp
 - Cisco engineer faced caste discrimination by his colleagues and was not offered equal opportunities, due to his low caste status
- BAPS Case in New Jersey
 - Dalits brought to NJ to build Hindu temple under slave-like conditions with little to no pay

Why is Caste an urgent issue? (Ravel cont.)

- Wherever South Asians go they bring Caste with them. *Who are South Asians?*
 - South Asian Americans are Americans whose heritage comes from any of the countries of South Asia including: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka, and Myanmar. It also includes people who were indentured from these communities including Indo-Caribbean, Indo-Fijian and Indo-African communities.
 - There are 1.75 billion South Asians in the world
 - There are 5.4 million South Asian Americans
- Caste is found in institutions across the country from universities, corporations, to social service organizations.
- It's impacting our workplaces, our products, and our opportunities to engage new markets.
- **Equality Labs' finding on Caste-based discrimination in the U.S.**
 - **One in four** Dalits who responded said they has faced physical assault based on their Caste
 - **One in three** Dalit students report being discriminated against during their education
 - **Two out of three** Dalits surveyed reported being treated unfairly in their workplace
 - **60%** of Dalits report experiencing Caste-based derogatory jokes or comments
 - **20%** of Dalits report feeling discriminated at a place of business because of their Caste
 - **Over 40%** of Dalit respondents have reported being rejected in a romantic partnership on the basis of Caste
 - **One in two** of all Dalit respondents and **one in four** of all Shudra respondents live in fear of their Caste being "outed"

2001- US VS. LAKIBALI REDDY (Ravel Cont.)

This Bay Area landlord trafficked 200 workers including many minor Dalit girls who became his sex slaves. After a difficult trial he was convicted for 3 years with \$2 million in restitution.

This was the first case at the Federal level in which many agencies had to engage on the issue of caste and the lack of caste competency impacted the victims. Also the violence of the perpetrators led to a difficulty in finding interpreters, social service case workers, and other needed support work for the survivors.



Examiner / Darryl Bush

2011- EEOC v. Signal International, LLC (Ravel cont.)

Signal International recruited the workers from India through the federal H-2B guest worker program to work at its facilities in Texas and Mississippi in the aftermath of hurricanes Katrina and Rita. EEOC alleged Signal subjected the men to a pattern or practice of race and national origin discrimination, including unfavorable working conditions and forcing the men to [pay \\$1,050 a month](#) to live in overcrowded, unsanitary, guarded camps. Signal was forced to [pay 5 million fee in restitution from the EEOC case and 20 million in civil case.](#)

Again caste competency would have assisted in investigations and in helping some of the difficult conditions these workers Faced and support required for rehabilitation.



2020- California DFEH Vs. Cisco Corp (Ravel cont.)

California Department of Fairness in Employment and Housing have sued Cisco Systems Inc, accusing it of discriminating against an caste oppressed employee and allowing him to be harassed by two caste privileged managers because he was from a lower Indian caste than them.

This case is the first time that an American corporation is being sued on the basis of caste and it is ongoing. It has led to a watershed of complaints against Tech companies with Equality Labs Hotlines receiving over [250 complaint from Google, Facebook, Microsoft, Apple, Netflix, and dozens of others in Silicon Valley](#) to report discrimination, bullying, ostracization, and even sexual harassment by colleagues who are higher-caste Indians.



2021- BAPS TRAFFICKING CASE (Ravel cont.)

Currently multiple federal agencies and a class action lawsuit has been filed on behalf of 200 caste oppressed dalit workers who class action lawsuit on behalf of Indian workers who were trafficked and faced rampant wage theft and shocking abuses for religious institution in New Jersey.

The workers allege they were brought here under false pretenses, the workers' passports were confiscated, and they were forced to live and work in a fenced, guarded compound. They were not allowed to leave the grounds unaccompanied, and they were under constant monitoring, threats of being fined for infractions, and arrest.

Plaintiffs allege that the trafficked workers were forced to work 12-13 hours a day with only rare days off, performing arduous and sometimes dangerous work for a **\$1.20 an hour.**



Examples of Worker Complaints (Ravel Cont.)

- Common Usage of Caste Slurs
- Bullying and Harassment
- Disparate salaries and/or benefits
- Attempts to out caste identity in the workplace
- Biased evaluations
- Demotion and Termination
- Caste Based Sexual Harassment
- Retaliation and demoralization

Guha Krishnamurthi - Legal Arguments: Legal Basis for Caste as Protected by Title VII

- Caste system, in South Asia, is
 - Hereditary and endogamous
 - Hierarchical
 - Emphasizes social and religious “purity” and “pollution”
- Caste is not specific to any one religion--it is considered an interfaith issue
- Legal basis for caste as a protected category under Title VII
 - “Race” is understood to encompass lineage and ancestry
 - “National origin” is understood to embrace place of origin or ethnic ancestry
 - “Religion” some cases will involved discrimination based on caste-based religious practice & custom.
Caste often relates to religious ancestry and hierarchical positions in religious society
- Further details: *Title VII and Caste Discrimination*, 134 Harv. L. Rev. F. 456.

Legal Basis for Caste as Protected by Title VII (Krishnamurthi cont.)

“Race” discrimination:

“Race” is understood to encompass lineage and ancestry, per Supreme Court. *Saint Francis College v. al-Khazraji*, 481 U.S. 604 (1987), and *Shaare Tefila Congregation v. Cobb*, 481 U.S. 615, 617 (1987).

“National origin” discrimination:

Similarly, as the EEOC explains, national origin is understood to embrace place of origin and ethnic ancestry.

“Religious” discrimination:

Some cases will involve discrimination based on caste-based religious practice & custom. Caste often relates to religious ancestry and hierarchical position in religious society.

John Rushing - Rushing McCarl LLP

Legal Arguments: Caste protected under National Origin

- There is no ruling class in the U.S.
- Caste discrimination is a form of ancestry and national origin discrimination
- Race is tied to ancestry and courts routinely rule this way, even today
- The concept of race discrimination is broad enough to include caste discrimination
- Race and caste are closely tied together with their commonality of ancestry
- Concepts of national origin include caste discrimination
- Caste is transnational, such as those who identify as Latinx--impacts people and communities across multiple nations

Prof. Kevin Brown's Legal Arguments:

How caste discrimination is prohibited by the implications of the Bostock decision

- Bostock v Clayton County
 - “Because nothing in our analysis depends on the motivating factor test, we focus on the more traditional but-for causation standard that continues to afford a viable, if no longer exclusive, path to relief under Title VII”
 - “If the employer intentionally relies on an individual employee’s sex when deciding to discharge the employee--put differently, if changing the employee’s sex would have yielded a different choice by the employer--a statutory violation has occurred”
 - Sex is inextricably connected to sexual orientation in the same way caste is inextricably tied to Asian ethnicity
 - Being a Dalit is inextricably tied to being Asian

Bostock Approach (Brown cont.)

- ***Bostock v Clayton County***
 - Gorsuch noted that the “because nothing in our analysis depends on the motivating factor test, we focus on the more traditional but-for causation standard that continues to afford a viable, if no longer exclusive, path to relief under Title VII”
 - “If the employer intentionally relies in part on an individual employee’s sex when deciding to discharge the employee—put differently, if changing the employee’s sex would have yielded a different choice by the employer—a statutory violation has occurred.”
- Bostock approach applied to caste discrimination based on untouchability
 - If we change the race of a particular Dalit victimized by caste discrimination based on untouchability from Asian to “say Black or White” then the person would no longer be a Dalit. For employers whose adverse employment action is motivated by a desire to engage in caste discrimination based on untouchability, changing the person’s race would lead to a different decision, simply put, because such a person would no longer be a Dalit.

Caste discrimination in the UK: development of legal protection (Ms. Annapurna Waughray)

Caste on UK shores

- Large-scale South Asian immigration to UK 1950s -1970s
- UK population 67.5M. Appx 7.5% South Asian heritage (4.2M)
- Caste a feature of South Asian diaspora society *regardless of religion* (Hindus, Christians, Muslims, Sikhs)
- Dalits - formerly known as “untouchables”. Varying religions. Size of population not known.

Caste discrimination in the UK

- Dalit organizations and other sources found caste prejudice and discrimination in employment, provision of goods and services, education, housing (fields regulated by discrimination law). Also in non-legally regulated fields e.g. social and private/ intimate sphere.
- 2015-2018: UK government acknowledged the problem, condemned as unacceptable “treating people *by reference to their origins, in particular their caste*”, agreed that legal protection against caste discrimination was appropriate.

Legal protection from caste discrimination in the UK: The Options (Waughray cont.)

- **Problem** – Caste not a protected characteristic in UK discrimination law – lawyers reluctant to take on cases – leaving victims without legal redress
- **Solution** – successfully plead caste within an existing characteristic. Options?
- **Equality Act 2010.** Nine categories - age, disability, gender reassignment, marriage & civil partnership, pregnancy & maternity, race, religion or belief, sex, sexual orientation.
- **Race** - “includes” colour, nationality, national or ethnic origins.
- **National origins** = connection by birth or ancestry to a country or nation.
- **Ethnic origins** = defined (in case law) by reference to shared history, culture, language, religion AND lineage, descent, ancestry.
- **Religion** – discrimination must be because of the victim’s known or perceived religion.

UK's first successful caste discrimination case

Tirkey v Chandhok (2015): caste falling within race (ethnic origins)(Waughray cont.)

- Trafficking and labor exploitation case. Domestic servant trafficked from India to work in a private home. Egregious violations of employment law. Claimed that her national and/or ethnic origins including her perceived status in the caste system was the reason for her exploitation.
- Outcome: ethnic origins – as a limb of race - can include the concept of caste. Employment Tribunal held she was mistreated because of her ethnic origins, defined as including her birth and inherited position in society in whole or in part because of her caste. Held: race discrimination (harassment on the ground of race).
- **UK government position:** following this case, protection against caste discrimination exists under existing discrimination legislation under race discrimination.

Legal protection from caste discrimination in the UK/ US – conclusions & recommendations (Waughray cont.)

- UK solution 2: ongoing debate in UK about amending discrimination legislation to explicitly add caste to Equality Act 2010 as an aspect of race.
- UK Government (2018): Opposes legislative change; prefers reliance on emerging case law/ leave it to individuals to bring claims of caste discrimination under ethnic origins. Will support cases to ensure the higher courts reinforce Tirkey. Will produce official guidance on caste discrimination - recognizing it, legal protection, policy & education initiatives - for employers and the public.
- Caste recognized by UK's Crown Prosecution Service as a motive prompting forced marriage <https://www.cps.gov.uk/publication/honour-based-violence-and-forced-marriage> and by safeguarding agencies as a driver for so-called 'honor' violence/ abuse.
- Law Commission Hate Crime Review 2020: interpret race for hate crime purposes in line with emerging equality legislation case law on race/ caste.

Conclusions & Recommendations (Waughray cont.)

- UK has successfully protected against caste discrimination using more limited options than the US has available to it.
- US has more options for legal protection from caste discrimination than the UK - caste readily captured by more than one statutory provision and more than one protected trait.
- Title VII is readily available and is *the* pre-eminent anti-discrimination tool.
- Guidance, training, policy initiatives, education and awareness-raising to support legal initiatives.

Theodore Shaw's Legal Arguments: Civil rights Law and the Caste Issue in the USA

- Title VII of the 1964 Civil Rights Act, 42 U.S.C. §§ 2000-e et seq. (Pub. L 88-352), which you are charged with enforcing, prohibits employment discrimination on the basis of race, color, religion, sex and national origin.
- The purpose of Title VII is to bar discrimination in employment on certain identifiable grounds. The Supreme Court has recently made clear that those grounds are defined in a manner that includes a measure of elasticity.
- While constitutional and statutory law employ different language and standards, American anti-discrimination laws work toward the same end. Title VII's anti-discrimination principles rest on the same anti-discrimination principles as the Constitution's equal protection clause. The Fourteenth Amendment redefined not only citizenship, but it also extended equality under law to all persons.
- Title VII extends protection against discrimination on the basis of who and what people are in a manner that cannot endorse a system of caste. Caste is not the American way.

Title VII (Shaw cont.)

- The purpose of Title VII is to bar discrimination in employment on certain identifiable grounds. The Supreme Court has recently made clear that those grounds are defined in a manner that includes a measure of elasticity.
 - My colleagues here today proffer the argument that Bostock's reasoning extends to ensure that caste discrimination is barred by Title VII. We believe that with respect to intentional discrimination, Title VII's proscription on race, color, and national origin discrimination bars caste discrimination. Caste discrimination as imported from Southeast Asia and practiced in the United States violates Title VII because race is caste, and caste is race.
 - It is difficult to imagine how Title VII could prohibit discrimination on the basis of race, color, religion, sex, or national origin, and allow discrimination on the basis of caste. That would violate the spirit and the letter of Title VII. It would take such an extraordinary sleight of hand to leave caste discrimination untouched by Title VII that it can't be done.

Title VII (Shaw cont.)

- While constitutional and statutory law employ different language and standards, American anti-discrimination laws work toward the same end. Title VII's anti-discrimination principles rest on the same anti-discrimination principles as the Constitution's equal protection clause. The Fourteenth Amendment redefined not only citizenship. It also extended equality under law to all persons.

Recommendations to EEOC

- 1) Adoption of guidance/opinion: Develop informal guidance and/or procedural regulations recognizing that caste discrimination is captured by the protected traits of national origin and/or race.
- 1) Litigation: Create, design, institute, engage or join litigation efforts that will help ensure that all employers are aware of and can recognize possible caste discrimination within their employment practices.

OVERALL RECOMMENDATIONS

TO
EEOC
DOJ
OFCCP

Recommendations: Equal Employment Opportunity Commission

- Adoption of guidance/ opinion: Develop informal guidance and/or procedural regulations recognizing that caste discrimination is captured by the protected traits of national origin and/or race.
- Partners: Develop a network of trusted public, private and third sector partners committed to combatting caste discrimination to assist in the Commission's efforts to combat this form of discrimination.
- Internal training to develop caste competency/ caste literacy: In order to advance the ability of the Commission to assist in the effort to combat caste discrimination, establish and institute workshops, programs and policies to create cultural competency within the Commission so that administrators and employees are aware of and recognize caste discrimination.
- External training & awareness raising: Establish and institute workshops, programs, and policies to create cultural competency among employers so that they are aware of and can recognize caste discrimination within their organizations.
- Public education role: Hold a public meeting that addresses caste discrimination to increase awareness of it by employers in their employment practices.
- Intersection between trafficking and caste - caste as a driver for trafficking: Create an internal committee to review trafficking cases for inclusion of caste discrimination.
- Litigation: Create, design, institute, engage or join litigation efforts to ensure that all employers can recognize caste discrimination within their employment practices.

Recommendations: Department Of Justice

- Develop requisite policies, guidance and/or procedural regulations recognizing that caste discrimination is captured by discrimination based on race or national origin.
- Develop a body of organizations concerned about combatting caste discrimination as trusted partners that the DOJ could work with to assist in the Department's efforts to combat this form of discrimination.
- Provide for a public awareness campaign about crimes against and harassment of caste-oppressed people in order to advance the ability of the Department to combat caste discrimination. Establish and institute workshops, programs and policies to create cultural competency within the Department so that administrators and employees are aware of and recognize caste discrimination.
- Ensure that the DOJ trafficking section considers caste as a possible key driver in cases of trafficking from South Asia.
- Recognize caste as a bias category for hate crime, bias or hate incidents, and bullying. Add caste discrimination as a focus for purposes of hate crimes and bullying initiatives.
- Prioritize engaging in litigation efforts to combat caste discrimination.
- Disaggregate data to specifically track crimes and incidents against caste-oppressed people.

Recommendations: Department of Labor Office Of Federal Contract Compliance

- Develop informal guidance and/or procedural regulations recognizing that caste discrimination is included within the protected traits of national origin and/or race.
- Develop a body of organizations concerned about combatting caste discrimination as trusted partners to assist in the Office's efforts to combat this form of discrimination.
- Establish and institute workshops, programs and policies to create cultural competency within the Office so that administrators and employees are aware of and recognize caste discrimination.
- In compliance evaluations of employment practices of federal contractors, include steps taken to address caste discrimination / untouchability practices.

Q & A

- Lyn Davenport - Title VII
 - Is caste discrimination singular to Dalits, or can it apply to other caste status?
 - Guha: Discrimination can happen across different caste status. However, Dalits tend to be the group most impacted
- Aziz Ahmad - Civil Rights Division
 - How can we best engage with caste-oppressed people--not just in education or employment, but also in the context of other affected communities?
 - Thenmozhi: Local and federal agencies struggle with these cases due to their lack of understanding and competency regarding caste. In order to bring these cases forward, we must have better understanding and competency, so victims can feel comfortable coming forward and bringing their cases to local and federal agencies

The background features a woman with glasses on the left side, partially obscured by a dark diagonal shape. The right side is a solid dark grey. In the bottom left, there is a graphic of a scale of justice with a word cloud of terms like 'unbiased', 'neutral', 'fair', and 'just' inside the pans.

THANK YOU!

National Coalition Against Caste

Discrimination in the USA