



**INDIANA UNIVERSITY**  
**MAURER SCHOOL OF LAW**  
Bloomington

February 11, 2023

Seattle City Council  
PO Box 94728, Seattle, WA, 98124-4728  
Council@seattle.gov

Dear Seattle City Council Members,

I write this letter as an African-American law professor who has researched and written about discrimination based on caste and race since being a Fulbright Lecturer to India from December 1996 to May 1997. There is no significant legal hurdle to anti-discrimination measures that add caste as a protected category or pursuing caste equity. Not only is such in compliance with current civil rights law, but anti-caste legislation is the unique historical foundation from which federal anti-discrimination law in the US developed. Thus, I urge you to vote YES on the ordinance proposed by Councilmember Kshama Sawant, to ban caste-based discrimination in the City of Seattle.

Caste-based discrimination is a form of discrimination that stems from a reliance on immaterial status that stereotypes an individual at birth with imagined undesirable characteristics, which are thought to be common to members of the group that shares these superficial traits. It results from a stubborn refusal to judge a person by their individual abilities and merits.

Like other anti-discrimination measures, prohibiting caste-based discrimination does not target specific communities based on their faith or background. The caste system is often associated with the Hindu religion on the Indian subcontinent. However, distinctions and discrimination on the basis of caste exist in other religions there, including Buddhism, Christianity, Islam and Sikhism despite the doctrinal bases of these religions that reject caste. Thus, caste is separate from religion. As such, anti-caste measures do not infringe on religious beliefs, it only targets those who intentionally engage in caste based discriminatory practices and, thereby, provides important protections for particularly vulnerable community members.

Like all immigrants, South Asians brought their beliefs with them to the United States, including those about the caste system. However, abhorrence to caste inequality has a very long legal history here. As early as the 1830s, abolitionists analogized the treatment of Black people in the U.S. to the Indian caste system in order to argue both against the horrors of slavery in the

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south and for better treatment of free Black people in the north who were often subjected to racial segregation. In the 1849 case of *Roberts v. Boston*, the first major school segregation case in American history, the Black plaintiff was represented by the legendary Radical Republican Senator Charles Sumner. Sumner argued that “[t]he separation of children in the Schools, on account of race or color, is in the nature of caste, and, on this account, a violation of Equality.” He drew a direct analogy of caste in India to school segregation. Congress’s first anti-discrimination measure was the Civil Rights Act of 1866. Several members of Congress pointed to the caste system to illustrate what they sought to prevent from developing on American soil by adopting the Act. The same is also true of the 14<sup>th</sup> Amendment adopted by the same Congress two months later. In other words, abhorrence to the caste system was at the root of the origins of federal anti-discrimination law. And, as virtually every American law student learns in Constitutional Law, Justice Harlan wrote a separate dissenting opinion in *Plessy v. Ferguson*, the Supreme Court decision that upheld “separate but equal.” In what may very well be the most renowned passage from any opinion ever written by a justice of the US Supreme Court, Harlan wrote:

[I]n view of the constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. *There is no caste here.* Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.

In more current legal debates, recent law review articles have asserted that caste discrimination in employment violates Title VII of the 1964 Civil Rights Act and 42 USC 1981 and 1982, both of which derive from the Civil Rights Act of 1866 as a form of either race and national origin discrimination. And, assuming caste discrimination violates Title VII, it would also violate Title VI of the 1964 Civil Rights Act. Thus, prohibiting discrimination on the basis of caste is consistent with and furthers long established goals of anti-discrimination measures in the United States.

In knowing the challenges that caste oppressed stakeholders face in pursuing their civil rights, I also ask the council to provide all safety measures to protect vulnerable caste oppressed communities who face increased discrimination even in advocating and coming out to speak on these issues. These attacks are very similar to attacks we see against critical race theory and the banning writings of Black scholars from the K-12 curriculum. I encourage the council to ensure safe access for all in this advocacy process and support Dalit civil rights groups and their allies as they pursue this historic, lawful, and necessary ordinance. For it is not only lawful, it is also the moral and right thing to do.

Sincerely,



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