

A STUDY ON THE EXTENSION OF SCHEDULED CASTE STATUS TO DALIT MUSLIMS AND DALIT CHRISTIANS

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ABSTRACT

In 2019, reports emerged about 3000 Dalit individuals from five districts in Tamil Nadu expressing their intention to convert to Islam. Subsequently, in the following year, it was reported that 430 people had already converted, and more were in the process. This decision came after a tragic incident in Mettupalayam, Coimbatore, where 17 Dalits lost their lives due to the collapse of a "caste wall" erected to segregate them from upper-caste neighbors. Similar cases of Dalits converting to Christianity and Buddhism have been observed in different parts of India^[1]. Despite 73 years since the Constitution was drafted, untouchability and discrimination persist, with Dalits facing various forms of humiliation and exclusion from society. With the aspiration of achieving equality and upward social mobility, these individuals chose to convert to religions that did not endorse the caste system, like Islam, Christianity, and Buddhism. However, their expectations were disappointing as they found that even after conversion, they were unable to break free from the injustice and the tag of being born as Dalits. Furthermore, Dalits who convert to Islam and Christianity lose their eligibility for the benefits associated with the Scheduled Castes status. Over the past several years, there have been numerous petitions and commissions consistently advocating for extending Scheduled Caste benefits to Dalit Christians and Muslims, but their efforts have not been successful. To look into the matter of whether the SC status should be extended to the Dalit converts, a 3-Judges bench was constituted in the Supreme Court in August 2022.

INTRODUCTION TO THE ISSUE

The third paragraph of The Constitution's (Scheduled Castes) Order of 1950 initially stated: "No person who professes a religion different from Hinduism shall be deemed to be the member of a Scheduled Caste" confining the status of Schedule Castes to Hindus. In addition, the Order included only four castes, namely the Ramdasi, Kabirpanthi, Mazhabi, and Sikligar, that didn't come under the Hindu community. The members of these four castes were residents of Punjab and professed Sikhism. Despite Sikhism not recognizing caste

distinctions, these four castes were granted Scheduled Caste status based on historical grounds, as their members had originally belonged to the Hindu community but later adopted Sikhism to escape the evil of untouchability.

Nevertheless, following India's independence, the Sikh community consistently advocated for the inclusion of all castes that had embraced Sikhism into the list of Scheduled Castes. In the early 1950s, this demand gained considerable momentum, as the inclusion of only four castes in the Scheduled Caste category was viewed as highly discriminatory towards those castes who continued to face untouchability despite their conversion to Sikhism. Under mounting pressure, the Parliament passed "The Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1956", which aimed at the inclusion and exclusion of certain castes and tribes in and from the Scheduled Castes and Scheduled Tribes list. The Act extended the Scheduled Castes status to all the remaining Dalit communities who had converted to Sikhism.

After the enactment of the aforementioned Act, another crucial question arose regarding the inclusion of Dalits who had converted to religions other than Hinduism and Sikhism into the Scheduled Caste list.

The matter of Dalit Buddhists received particular attention due to the historical Neo Buddhist movement initiated by Dr. B.R. Ambedkar in 1956. In this movement, approximately five lakh Dalits chose to renounce Hinduism and embrace Navayana Buddhism, an egalitarian religion, to liberate themselves from the confines of the caste system. However, despite their conversion to a more equitable faith, these individuals faced several challenges. On one hand, their socio-economic condition did not witness significant improvement, and they continued to be subjected to untouchability by the upper caste Hindus. On the other hand, upon embracing Buddhism, they lost the benefits and privileges accorded to Hindu Dalits. As a response to this injustice, the "Constitution (Scheduled Castes) Orders (Amendment) Act" was passed in 1990, acknowledging the Buddhist Dalit communities as Scheduled Caste.

Sikhs and Buddhists, despite not acknowledging caste hierarchies in their faith, are entitled to the same benefits as Scheduled Castes because their origins can be traced back to Hinduism. Unfortunately, this provision does not extend to Abrahamic religions like Christianity and Islam, which are egalitarian religions that do not recognize caste, making them fundamentally

opposed to the practice of untouchability, preventing Muslim- and Christian-Dalits from obtaining Scheduled Caste status.

AN OVERVIEW OF THE CONCERNING COMMISSIONS AND PETITIONS

Nonetheless, various independent Commission reports have extensively documented the presence of caste and caste inequalities within Indian Christian and Indian Muslim communities. These reports highlight that even after converting to these religions, individuals who were originally from Scheduled Castes (SCs) still face persistent social disadvantages and discrimination. Taking note of this, the First Backward Classes Commission's report in 1955^[2] emphasized the necessity of granting Scheduled Caste (SC) status to Dalits who had converted to Islam or Christianity. In the years that followed, the recommendation was reinforced by various reports. The Committee on Untouchability Economic and Educational Development of the Scheduled Castes found in 1969^[3], the Mandal Commission Report in 1980^[4], and the High Power Panel (HPP) report on SCs, STs, and Minorities in 1983^[5] all supported the recommendation.

On 29 October 2004, the Government of India established the Ranganath Mishra Commission, also known as the National Commission for Religious and Linguistic Minorities. The organization is led by the former Chief Justice of India Ranganath Mishra. The primary objective of the commission was to investigate and address various concerns and matters related to linguistic and religious minorities in India and to provide suggestions regarding the matters raised in WPs 180/04 and 94/05 submitted to the Supreme Court of India, as well as some High Courts, concerning Para 3 of the Constitution (Scheduled Castes) Order 1950 and its relevance to the 50 percent cap on reservations, along with the methods for adding groups to the Scheduled Castes list. The commission submitted its report^[6] on 21 May 2007 and one of the significant recommendations made was to allow Dalits who convert to Islam or Christianity to be eligible for reservation benefits under the Scheduled Caste reservation quota. Further in 2008, the National Commission of Minorities initiated a comprehensive investigation led by the distinguished sociologist Satish Deshpande, encompassing three key areas: the economic conditions of Dalit Muslims and Dalit Christians, a comparative analysis with their Hindu, Sikh, and Buddhist counterparts, and an assessment of the persistence of caste-related issues among them. The commission's findings revealed significant instances of discrimination against the Dalit converts, encompassing various aspects such as inter-caste marriage and spatial segregation. In a 2011 affidavit

submitted to the Supreme Court, the National Commission for Scheduled Castes (NCSC) proposed the extension of reservation benefits to Dalit Christians and Dalit Muslims, contingent upon their fulfillment of two specific criteria: If they follow their traditions and customs as they did before conversion; and if they experience social disabilities due to untouchability.

Nonetheless, these reports did not result in any significant outcome. In the 2019 affidavit, the Government stated that Dalits who embraced Christianity and Islam should not be equated with those who adopted Sikhism or Buddhism. It has been noted that previous requests to include in the Scheduled Castes and Scheduled Tribes categories were already reviewed and denied by the former Registrar General of India and the National Commission for Scheduled Castes (NCSC) in the early 2000s. Furthermore, the affidavit highlighted that Dalit Christians and Dalit Muslims already receive reservation benefits and other social advantages through their inclusion in the Central Other Backward Classes (OBC) lists and State OBC lists.

THE ONGOING CASE

The ongoing case at hand pertains to a PIL filed by the NGO Centre for Public Interest Litigation (CPIL), which brought attention to the issue of extending the reservation benefits enjoyed by Scheduled Castes to Dalit members of Christianity and Islam in 2004. However, the Centre did not submit any response during the lengthy span of 18 years. A bench of justices, namely Sanjay Kishan Kaul, AS Oka, and Vikram Nath, on August 30, 2022, acknowledged that these long-pending matters have significant social implications and are still unresolved in the court. The bench remarked that the time has come to decide on this matter, considering its importance and relevance to society.

In the hearings so far, the petitioners have put forward their demand for the recognition and fair treatment for all Scheduled Castes, irrespective of their religious conversion, as many Scheduled Castes experience persistent social and economic disadvantages, like living in a separate locality or facing discrimination in accessing educational institutions and getting employments. References were made to the Justice Ranganath Commission report to support the argument.

The Centre, in response, said that there is a lack of documented research and verifiable information to prove that untouchability, which contributes to the economic and social

backwardness of Hindu castes, is present in Christian or Islamic societies. Historical data also fail to substantiate such claims. Responding to the report of the Ranganath Mishra Commission, the Centre added that the report was compiled solely based on desk research without any field study conducted. This approach limited the Commission's understanding of the broader social context in India. Consequently, the Government could not accept the findings of the Ranganath Misra Commission due to these limitations and the lack of comprehensive empirical research.

Instead, the Centre has appointed a three-membered Commission, including the Ex-Chief Justice of India, Justice K. G. Balakrishnan, UGC member Prof Sushma Yadav and retired IAS officer Dr Ravinder Kumar Jain. The commission's investigation will encompass an examination of the transformations experienced by an individual from the Scheduled Caste (SC) community after converting to another religion, along with its implications for their inclusion as SCs. This study will involve an assessment of their traditions, customs, and various forms of social discrimination, considering how and if these aspects have altered as a consequence of their conversion. The report is expected to be completed and submitted by the commission within a time frame of 24 months based on that the Government would decide whether Dalits, who have converted to religions other than Sikhism or Buddhism, can be granted Scheduled Caste (SC) status.

ISSUES BEING DEALT IN THE CASE

The constitutional issues recorded by the Supreme Court by the order dated 21.01.2011 are -

1. Whether Paragraph (3) of the Constitution (Scheduled Castes) Order of 1950, which was enacted under the authority of Article 341(1) of the Constitution of India, states that "Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hinduism, Sikhism, and Buddhism shall be deemed to be a member of a Scheduled Caste," is considered unconstitutional and nullified due to its violation of Articles 14, 15, 16, and 25 of the Constitution of India.

2. Whether it is constitutionally permissible to deprive a Scheduled Caste individual, who follows a religion other than Hinduism, Sikhism, and Buddhism, of the benefits afforded by Paragraph 3 of the Constitution (Scheduled Castes) Order of 1950? There are concerns that this possible loss may go against the rules set out in Articles 14, 15, 16, and 25 of the Indian Constitution.

3. Whether the exclusion of "Christians" and "Muslims" from the ambit of Paragraph (3) of the Constitution (Scheduled Castes) Order of 1950, while including "Hinduism, Sikhism, and Buddhism," constitutes an act of discrimination and a violation of the provisions laid out in Articles 14, 15, 16, and 25 of the Constitution of India?

ARGUMENTS FOR AND AGAINST

Arguments in favor of the reservation

1. Article 341 of the Indian Constitution specifies the criteria for identifying individuals as members of Scheduled Castes in any State or Union Territory

The Constitution (Schedule Castes) ordered in 1950 that only people from the Hindu religion could have the status of Scheduled Caste, with later amendments in 1956 to include people from the Sikh religion, and then in 1990, Buddhists were included too.

2. Arguments against granting SC status to Dalit converts into Islam and Christianity state that, at an International level and also in India, Islam, and Christianity as a religion, do not recognize racism untouchability, or caste discrimination.

The Office of the Registrar General of India (RGI) proposed that communities experiencing social disadvantages due to the practice of untouchability, primarily observed in Hindu and Sikh communities, should be considered for Scheduled Caste status.

3. The RGI also said that since the practice of untouchability was a feature prevalent predominantly in Hinduism and its branches, including Dalit Christians and Muslims SC may result in being misunderstood internationally as India is accused of trying to impose its caste system upon the religions practiced internationally.

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4. The RGI in 2001 stated that Dalits who converted to Christianity and Islam do not belong to a single ethnic group, since they belong to different caste groups. Therefore, as per Clause (2) of Article 341, they cannot be included in the list of Scheduled Castes because only a single ethnic group is required for inclusion.

5. The Dalit Christians and Muslims would get double advantage of both 'SC/ST advantages and also 'minority rights' which would lead to them getting more rights and benefits than the

Dalit Hindus, Sikhs, and Buddhists. Thus the extension of the Scheduled Castes list would negatively affect the existing reservation quotas for Hindu, Sikh, and Buddhist SC/STs.

6. There would be a significant rise in Scheduled Castes population across the country as there might be a sudden mass conversion.

Counterarguments and concerns

1. As a sociological reason the fact is being stressed that although Dalits converted to other religions to escape the atrocities they faced in the realms of religion they acquired at birth and to uplift their social status, they landed into the harsh reality where their condition had no improvements and were still heavily discriminated as before, based on they being 'Dalits' or untouchables.

2. In addition to no enhancement in their situation, they suffered a greater loss and deterioration as they no longer could avail the benefits of Scheduled Castes. The Ministry of Minority Affairs in a 2008 report stated that a huge percentage of the Dalit converts are below the poverty line, have very limited access to education, healthcare, and better living conditions, and mostly engage in the unorganized sector of the economy and low-wage professions.

3. Article 14 of the Constitution of India affirms the Right to Equality by stating "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India" which ensures equality to every citizen of India.

According to Article 15, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them".

Article 16, about the Equality of Opportunity, mentions, "There shall be equality of opportunity for all citizens in matters of employment under the State".

Article 25 of the Constitution says "all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health" giving the citizens the right to practice any religion of their choice.

These are the fundamental rights of every citizen of India and not granting SC status to Dalit converts based on religion is a violation of these rights documented in the constitution.

4. This provision is also against the preamble of the Universal Declaration of Human Rights.

According to Article 2, "Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

5. The problem of Dalits was under extensive scrutiny in the 2007 report of the Committee on the Elimination of Racial Discrimination by the United Nations.

"The Committee notes with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programs, unlike converts who become Buddhists or Sikhs" (arts. 5 (d) (vii) and 2 (2)).

So significant organizations consider this issue as a matter of importance and regard it as a "concern".

CONCLUSION

Resolving the ongoing case has become complex as the petition challenges both the Constitution of India and the fundamental rights of all citizens. It involves the delicate issue of existing reservation quotas and the international implications surrounding religion, making the decision-making process more challenging. Notably, the Tamil Nadu Assembly recently passed a resolution urging the Central Government to extend reservation benefits to Dalit Christians. Ultimately, the responsibility for making a decision lies with the governments, and there is an anticipation for the assurance of social justice for Dalit converts.

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