



Reservation for Converted SCs

TIME TO WAKE-UP

J. SATYAJIT

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Author: J.SATYAJIT

© : Social Studies Foundation

Email id: ssf@ssfoffice.co.in

Contact: 020-29526979

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FOREWORD

Indians need to take serious note of a few developments, which can be easily viewed as a small part of a larger design to alter the very fundamental character and soul of this ancient nation. Awareness, accompanied by action, is the only solution to counter this design and protect national interests and geographical integrity of India. This book is aimed at awakening the people on an issue, which, layman has not taken seriously. The issue is vital as it will change the basic social fabric and national character of India.

The issue involves demand for reservation for those people, who had converted to Islam or Christianity. While this demand is not new, it has suddenly appeared on the national agenda because of a public interest litigation (PIL), which is being heard by the Supreme Court currently. PIL has been filed by Centre for Public Interest Litigation and two other organizations, representing Christian community. PIL has asked for reservation for Scheduled Caste people, who had converted to either Islam or Christianity. Central government has formally opposed the demand in the PIL through an affidavit. The central government also has formed a three-member committee, headed by retired Chief Justice of India K G Balakrishnan, to study the issue.

The judiciary will decide on the matter. However, every Indian ought to take the developments seriously to understand the future threats. Even if the plea in the PIL is not approved by the Supreme Court, it will appear in some or other form, considering the past experience. Christians and Muslims never compromise with their religious identity. This is a universal phenomenon and not restricted to India. Small countries are scared of losing their national identity because of insurgency and conversion. The forces behind insurgency and conversion are always protected by liberals, leftists and so-called humanists. Demography of several countries has changed because of the influx of population, which has resulted into new social, economic and political problems.

India is no exception to this phenomenon. Border states of West Bengal, Bihar, Jharkhand, Punjab and Kashmir are facing the same problems. Insurgency by Bangla Deshi or Rohingya and massive conversion undertaken by Christian missionaries, have changed demography in few parts of the

country. These areas frequently face the problem of law and order as Muslims or Christians have been dominating and refused to show any accommodative attitude towards Hindus. Massive conversion has been a major problem for India for a long time. Even though the law exists to stop conversion, some constitutional tools are used to push the agenda by clerics of Islam and Christian missionaries. Hindu population is declining at national level while Muslim population has shown a startling increase. Population of Buddhists and Sikhs is also at decline while Christian population is stable. However, Christian missionaries have adopted deceptive methods because of which their number, though increasing, appears stable.

Demand for reservation to Scheduled Caste people, who had converted either to Islam or Christianity has to be seen on the bigger canvas. It will not merely snatch away the rights of Scheduled Caste people, who had not converted to other religions but will result in unending problems in all walks of national life. Some scholars fear that reservation for converted Muslims or Christianity will give rebirth to pre-independence demands for separate representation in legislature to minority communities.

The PIL has raked up some fundamental constitutional issues like religious discrimination for reservation. It has even sought for judicial review of the original constitutional provision, which empowers the President to make any amendment to the list of Scheduled Castes. The people, who swear by constitution every now and then, are seen supporting the said PIL, which seeks for judicial review of the original constitutional provision. This amounts to encroachment of the judiciary on the rights of the Parliament. This is a big paradox.

The PIL is being filed when the very basic idea of minorities is being challenged by the people. The million-dollar question – What is the necessity of the term ‘minority’ when constitution does not approve religious discrimination and considers everyone equal before the law? It is absolutely unfair, illogical, irrational and unjust that citizens would get benefits of being minority on one hand and their caste on the other hand. This is happening even if their religion does not recognize the caste. This book is an attempt to awaken the people on the issue. The demand for converted Scheduled Caste people is merely a tip of an iceberg. The intentions can be judged by several other acts. We urge the people to understand the issue through this book and take it to the masses. Eternal vigilance, they say, is the price for democracy. Let us be vigilant.

PRELUDE

“Scheduled Castes were a backward section of the Hindu community, who were handicapped by the practice of untouchability and that this evil practice of untouchability was not recognised by any other religion and question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise.”

This is the view expressed by Dr Babasaheb Ambedkar on April 4, 1949 in the meeting of constituent assembly. Dr Ambedkar, architect of the Indian constitution, was very clear on his thoughts. His views on Scheduled Castes are consistent. Dr Ambedkar preferred Buddhism which originated in India, and very thoughtfully kept himself away from two Abrahamic religions – Islam and Christianity.

Dr Ambedkar’s statement has three very crucial elements 1) Scheduled Castes were a backward community of Hindu community, which was handicapped by practice of untouchability. 2) Untouchability was not recognised by any religion, other than Hinduism. 3) Dr Ambedkar very categorically rejected inclusion of Scheduled Castes, belonging to a religion other than Hinduism.

Dr Ambedkar fought for the rights and emancipation of Scheduled Caste people from the clutches of untouchability and caste discrimination. The Constitution was a major tool for his fight. His ideas and thoughts continue to be a guiding spirit when it comes to interpretation of the constitution. Dr Ambedkar was very clear that reservation should be restricted to depressed class people, who were victims of untouchability and caste discrimination. In other words, he was of the view that reservation should not be extended to any other religions as they do not have a caste system.

Reservation is a major feature of independent India, which is exclusively drafted for Scheduled Caste people, belonging to Hindu religion. However, the same policy was adopted in the pre-independence era when reservation policy was enacted. In 1902, Rajarshi Shahu Maharaj introduced reservation for backward class people in the princely state of

Kolhapur in Maharashtra. Rajarshi Shahu Maharaj is considered as the founder of the concept of reservation. Mysore was the second state, which implemented reservation for backward class people. Krishnaraja Wadiyar is credited for this decision which was taken in 1921. Madras Presidency took a similar decision in 1927 when it decided to opt for reservation for backward class people. Periyar Swamy had then launched a movement over the issue while Raja of Panagal of the Justice Party was the chief minister of the then Madras Province.

All three instances related to reservation in the pre-independence era were made for the upliftment of depressed class people within Hindus, who suffered due to the practice of untouchability for generations. None of these decisions has a mention of depressed class people, who had converted to other religions mainly - Islam and Christianity. In fact, the issue was not even on their agenda when conversion to Islam and Christianity was a reality of Indian social life. It underlines the fact that reservation policy is historically meant only for depressed class people within Hindu society and others cannot claim it.

Further developments – even during the period of British rule - underlines the fact that reservation policy was necessarily meant for depressed class people within Hindu society. The term - Scheduled Caste – appeared for the first time in the Government of India Act, 1935. This act defined the Scheduled Castes as “Such castes, races or tribes or parts of or groups within castes, races or tribes, being caste, races, tribes’ parts or groups, which appear to His Majesty in Council to correspond to the classes of persons formerly known as the depressed classes, as His Majesty in Council may specify.” Subsequently, the Government of India issued an order in 1936, which specified certain castes and tribes in the scheduled list. The definition and government order once again demonstrates that caste and “not religion” is the only requirement for reservation. It underscored that reservation is fundamentally aimed for welfare of marginalized people in Hindu society.

The first attempt to identify marginalized people in India was made during the 1931 census. The then Census Commissioner had used the term ‘depressed classes’ in the order. The order is self-explanatory as it confirms that exercise is meant for weaker people in Hindu society. The

order by Census Commissioner says, “I have explained depressed castes as castes, contact with whom entails purification on the part of high caste Hindus. It is not intended that the term should have any reference to occupation as such but to those castes, which by reasons of their traditional position in Hindu society are denied access to temples, for instance, or have to use separate wells or are not allowed to sit inside a school house but have to remain outside or suffer similar social disabilities.” The order clearly indicates that it focuses only on Hindu society, which was handicapped by untouchability and caste discrimination.

The Census Commissioner adopted nine tests for identification of depressed class people. The term ‘caste’ is used nine times in the said order while the term “Hindu’ is used four times. It neither mentions any religion other than Hindu nor converted people. It again emphasized that the caste was the utmost important element to identify depressed class people. It is important to note that the Government of India (Scheduled Castes) Order, 1936, which was the continuation of the earlier list of depressed classes says, “No Indian Christian shall be deemed to be a member of a Scheduled Caste.”

Discussions in constituent assembly are often mentioned to understand the vision of constitution makers. It helps to understand the spirit of the constitution and its values. Topics of minority rights, their representation and freedom were discussed in the meetings of constituent assembly. But no reference is found about reservation for converted people. This once again demonstrates that makers of the constitution had never thought about providing reservation to converted people. It can be inferred that almost the entire constituent assembly, which also included representatives of Muslims and Christians were unanimous on not addressing the topic. It can also be inferred that they were unanimous on providing reservation only to depressed class people from Hindu society, who were affected by untouchability.

Dr Ambedkar vociferously asked for reservation for depressed class people. He said in constituent assembly on April 4, 1949, “Scheduled Castes were backward section of the Hindu community, who were handicapped by the practice of untouchability and that this evil practice

of untouchability was not recognised by any other religion and question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise.” It implies a fundamental fact that untouchability is restricted to Hindu community and religions other than Hindus do not recognise untouchability.

Constituent assembly had roughly identified four topics for discussion, involving Muslim community. They included representation in the legislature, reservation in cabinet, reservation in public services and administrative machinery to ensure protection of minority rights. However, the entire focus of debate and discussion was on representation in the legislature. Political representation was of top priority for the Muslims and they did not raise the issue of reservation for converted Muslims. Senior Congress leader N V Gadgil has explained in his book – Government from Inside – how Pandit Nehru was under pressure for political representation for Muslims. Gadgil has stated in his book that Liaquat Ali visited Delhi in March 1950 – three years after independence – to request Pandit Nehru for representation in the Legislature. Gadgil further said that Liaquat Ali’s demand was accepted by Pandit Nehru but was turned down by the cabinet. The incident proves that Muslims were more eager in securing political reservation instead of reservation in the social sector.

Scholars have tried to understand silence on the part of representatives of Muslims and Christians on the issue. The silence of Christian community is attributed to the government order in 1936. The order has specifically said, “No Indian Christian shall be deemed to be a member of a Scheduled Caste.” The order was issued by British rule, which had deep sympathy for Christianity. Christian missionaries had announced on several occasions that their religion had no space for untouchability or caste discrimination. As a result, the topic on reservation for converted Christians, was not raised. Similarly, Muslim representatives in constituent assembly were not keen on getting reservation. They were more insistent on political representation in the legislature, which was severely criticised as it was against the principle of united India. In fact, Tajamul Hussain, who was a Congress representative from Bihar, had vehemently opposed the idea of reservation. While Muslims were more interested in political representation, the community had strong

resentment against reservation on the ground that it would be a direct state interference in their religious matters.

However, this was not the case about Sikhs and Buddhists. Sardar Patel had admitted that Sikhs, like Hindus, suffered from various disabilities. Sardar Patel was supported by Akali Dal's Hukum Singh. Col B H Zaidi, who represented Uttar Pradesh, had also expressed similar sentiments about Buddhism. Unlike Islam and Christianity, sentiments of Sikhs and Buddhists were raised in the constituent assembly. This happened as Sikhism and Buddhism are born in Indian soil and are non-Abrahamic. Debate in constituent assembly categorically shows that it was never keen in extending reservation to people, who had converted to Islam or Christianity.

The same definition of Scheduled Castes was retained in the post-independence period when the constitution came into force. Article 366 of the constitution had given this definition, showing that neither constitution makers nor the ruling party felt it necessary to change the focus of reservation. Article 366 says, "Scheduled Castes means such cases, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of this Constitution." They continued with the earlier unanimous decision, in which caste in Hindu society was a necessary element for reservation. Article 341 of the constitution has prescribed the procedure to alter the list of Scheduled Castes. This article empowers Parliament and President to undertake any such exercise. Article 341 also specifically mentions castes and tribes.

History of reservation from 1902 till independence, including the process of constitution making, categorically suggests that reservation for converted Muslims and Christians was never on the agenda. It was strictly restricted to Hindu community, which was affected by untouchability and caste discrimination. Neither Muslims nor Christians made any such demand when the constitution making was in process. Caste discrimination or untouchability was the only criterion for reservation and followers of Islam and Christianity do not fit in the category as caste has no space in both the religions.

Since 1950, The President has made six orders in connection with the Scheduled Castes list. But two of them – 1956 and 1990 are important. The 1956 order involves Sikh community while the 1990 order is related to Buddhists. The first order in 1950 says, “No person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of Scheduled Caste.”

In 1957, the Presidential Order made some changes to include a few sections in Sikh religion in the list of Scheduled Castes. The 1957 order says, “No person, who professes a religion different from Hinduism shall be deemed to be a member of Scheduled Caste. Provided that every member of Ramdasi, Kabirpanthi, Mazhabi or Sikligar castes resident in Punjab or the Patiala and East Punjab States Union shall in relation to that State be deemed to a member Scheduled Caste, whether he professes the Hindu or the Sikh religions.”

This was the first major addition to the list of Scheduled Castes. But addition was made following recommendation by the first National Backward Classes Commission, set up in 1953. The commission was headed by Kaka Kalelkar. The commission had suggested revision of the list of Scheduled Castes with the addition of Sikh community. Accordingly, Ramdasi, Kabirpanthi, Mazhabi or Sikligar communities were included as these groups had suffered from untouchability or caste discrimination.

In 1990, another amendment was made in the Constitution (Scheduled Castes) Order, 1950 and the Buddhist religion was also brought under the realm of Scheduled Castes. Presidential Order, 1990 says, “No person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of Scheduled Caste.” While adding Buddhists in the list of Scheduled Castes, explanation was given under article 25 of the Indian Constitution. It reads,” In sub-clause (b), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

Buddhists were included in the list of Scheduled Castes because of their long pending demand ever since Dr Babasaheb Ambedkar adopted Buddhism in 1956. Buddhism was included because 1956 conversion was

different in nature, compared to Christianity or Islam. Scheduled Castes embraced Buddhism voluntarily in response to the call given by Dr. Babasaheb Ambedkar. It was fundamentally different because of some innate socio-political imperatives. Buddhists inclusion was also supported on the ground that original castes of Buddhist converts can easily be determined.

Considering British Rule orders, discussion in constituent assembly, enforcement of constitution and subsequent amendment suggest that it was a national consensus to have reservation provision to depressed classes in Hindu religion, which was handicapped by caste discrimination and untouchability. Series of developments in nine decades categorically underlines that reservation was meant only for oppressed people within Hindu fold. Topic for reservation for converts never came up in nine decades.

A serious attempt was made in March 1996 by the Narsimha Rao government to include converted Christians into the Scheduled Caste category. A note prepared by the Welfare Ministry had proposed to amend Presidential Order, 1950, which would have paved the way for the move. The note was sent on March 6, 1996 while cabinet immediately considered it the next day.

The things moved very quickly and the note was immediately included in the supplementary list of business for discussion for the Parliament session. However, the bill, which proposed amendment to the Presidential Order, 1950, for the inclusion of converted Christians, could not be tabled as the House was adjourned sine die.

The issue has one more serious aspect. The Registrar General of India and the National Commission for Scheduled Castes and Scheduled Tribes had refused to include converted Muslims and Christians in the list of scheduled castes. Registrar General of India, on March 14, 2001, had made an official decision in this respect. Similarly, The National Commission for Scheduled Castes and Scheduled Tribes (NCSCST), turned down a proposal to include converted Muslims and Christians in the list on October 10, 2000.

THE BACKGROUND

Demand for inclusion of converted Muslims and Christians in the Scheduled Castes list received a major boost when the UPA government, led by Congress, formed two separate commissions or committees in a short span. Firstly, it was the National Commission for Religious and Linguistic Minorities, headed by retired Chief Justice of India Rangnath Mishra. The Commission is also known as Rangnath Mishra Commission. It was set up on October 29, 2004, five months after Congress returned to power in May 2004 under the leadership of Manmohan Singh. The commission submitted its report in May 2007.

The Mishra Commission report was severely attacked because of its recommendations. The Commission was accused of making one-sided recommendations. Mishra Commission was described as yet another Congress's policy of appeasement. Major recommendations by the Mishra Commission included a ten per cent quota for Muslims and five per cent quota to other minorities along with an increase in OBC quota for Muslims. However, it made two other major suggestions, because of which the basic character of the reservation was certain to be changed. The Mishra Commission sought to delink religion from the status of scheduled castes and scheduled tribes and asked for necessary amendment in the 1950 Presidential order.

It also specifically suggested that Scheduled Caste people, who had converted to either Islam or Christianity, be allowed to get the benefits of reservation. One of the recommendations of Mishra commission was 15 per cent reservation to minorities, which included ten per cent exclusively for Muslims. But the Mishra Commission went a step ahead and recommended that a candidate from the majority community (Hindu) should not be recruited if the required candidate was not available. It suggested that a 15 per cent quota for minorities, has to be filled from the minority communities. Hindus naturally got enraged with recommendations as it was largely seen as an extension of policy of appeasement, neglecting national interests.

While the Rangnath Mishra Commission was working, the UPA

government, headed by Manmohan Singh, announced the setting up of yet another committee. This committee was exclusively meant to prepare a report on the social, economic and educational status of the Muslim community. The seven-member High Level Committee, chaired by Justice Rajindar Sachar, submitted its final report on November 17, 2006. The Government immediately tabled the report in Parliament on November 30. Many of the recommendations of the Sachar Committee were seen as a back door entry of Muslims. For example, the Sachar Committee suggested introducing a nomination procedure to increase participation of minorities (Muslims) in public bodies.

Both Mishra and Sachar Commission reports came under severe attack. Their reports were seen as part of a much larger design. Major objection raised was that the report would further divide both Hindu and Muslim communities along the caste line and would further flare up religious sentiments. The Mishra Commission report was attacked as it made recommendations without conducting any scientific and methodological study and the reports did not consider possible impact on the existing situation. It was criticized that the report is an attempt to lay ground for reservation based on religion. Scholars criticise that report as a formal introduction of caste within Islam and Christianity when both the religions have no place for castes in their religion.

The Mishra Commission did not go unchallenged. Asha Das, member secretary of the commission did not agree with the recommendations and attached a dissent note, which is official part of the report. She maintained that discrimination against the converts from Scheduled Caste communities is the internal matter of the respective religion and they need to be addressed by them through religious reforms or some other ways and not by introducing caste system into religions that do not recognise intervention of inducting them into the caste system from which they chose to move to an egalitarian religion. Das stated that the "Test applied was the social, educational, and economic backwardness arising out of the historical custom of untouchability."

Quoting from the Report of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes and Connected Documents, 1969, Das further wrote, "Thus religion was the basis for inclusion of castes in the list of the Scheduled Castes in 1936 and later in 1950."

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Das further said, “Expanding the net of reservations to SC origin converted to Christianity or Islam would mean direct interference in the internal religious matter of these religions as they do not recognise castes at all. Therefore, the argument that despite conversion the social, educational and economic status of these converts remained unchanged and hence they too should be given the benefits of reservation, does not hold good.”

She went on to say that granting SC status to such converts by the government would amount to formal introduction of caste systems in Islam or Christianity and changing their basic tenets of the religion, which will be outside the jurisdiction of the Parliament and the judiciary. She argues that both Islam and Christianity are religions which originated outside India. These came from foreign lands to India along with traders, invaders and preachers or missionaries over a period of time. Both religions do not recognise castes. A vast majority of Muslims and Christians in India today comprise of the converts and their progeny and the identification of such Muslims or Christians who were originally of SC origin will pose many problems as no authentic records have been maintained.

Das highlighted that any procedure adopted to identify SC converts to Christianity and Islam is bound to produce innumerable hazard rational and equitable decisions for identifying those truly eligible. She warns that the chances of abuse and of the ineligible siphoning benefits at the cost of deserving are tremendous. In view of this factual position vis-à-vis conversion to Christianity and Islam by the Scheduled Caste people and the demand to include them in para 3 of the Constitution (SC) Order 1950, or delete the reference to religion from the Order, is not justified, according to Das.

The Supreme Court and High Courts have upheld the view that converts were not eligible for reservation in a series of judgements. This, of course, happened after considering all the historical facts and intention of the constitution. In a number of cases, the judiciary has categorically stated that caste was socially ill, restricted to Hindus and caste was never a feature of neither Islam nor Christianity. In other words, reservation was never applicable to two Abrahamic religions.

COUNTERING PIL

The current PIL has its origin in a judgement passed by Bombay High Court in 2001, in which it declined to extend benefits of Scheduled Caste reservation to a person, who was a Madari and belongs to Islam religion. The case was an appeal filed by Ghazi Saaduddin and Naseer Khan. Both have contested the election of municipal corporation from Aurangabad from the wards, which were reserved for Scheduled Castes. The High Court had refused to consider caste certificates issued by concerned Tehsildar. The defeated candidate Mr Chandane had earlier approached the Caste Verification Committee, challenging the validity of the caste certificate. The committee refused to identify Ghazi Saaduddin and Naseer Khan as members of Scheduled Caste and both of them approached the High Court, which upheld the decision of the Caste Verification Committee. Complainants then filed an appeal with the Supreme Court, which is still undecided. Several NGOs and others later intervened in the matter and the Supreme Court has taken up the matter. In the latest hearing in April 2023, the Supreme Court had even said that it would not even wait for the report of the government appointed K G Balakrishnan committee as the matter was pending for more than two decades.

On the basis of Rangnath Mishra Commission report, Centre for Public Interest Litigation (CPIL) has filed a public interest litigation in the Supreme Court, demanding reservation for Scheduled Caste people, who had converted to other religions. CPIL was set up by former SC judge V M Tarkunde in the 1980s when the concept of public interest litigation was new even in countries like the United States. Apart from Justice Tarkunde, Fali S Nariman and Shanti Bhushan were also associated with the NGO. Later Justice Rajindar Sachar, former Chief Justice of Delhi High Court also joined the NGO. Currently, senior lawyer Prashant Bhushan is associated with the NGO and is also appearing for the hearing in the Supreme Court.

In addition to CPIL, Catholic Bishops' Conference of India (CBCI) and National Council of Churches of India (NCCI) are also parties to the PIL. The Catholic Bishops and Conference of India is the permanent association of the Catholic Bishops of India. It was formally constituted in

September 1944 at the Conference of Metropolitans held in Madras. According to the CBCI website, its objectives are to facilitate coordinated study and discussion of questions affecting the Church, and adoption of a common policy and effective action in all matters concerning the interests of the Church in India.

The National Council of Churches in India (NCCI) is the apex body of Protestant and Orthodox Churches. The Council was established in 1914 as the National Missionary Council. In 1923, the Council constituted itself as the National Christian Council of India and in 1979 the Council transformed itself into what is known as the National Council of Churches in India. The Council is a common platform for thought and action and brings together the Churches and other Christian organisations for mutual consultation, assistance and action in all matters related to the life and witness of the Churches in India.

The PIL has fundamentally challenged the Constitution (Scheduled Castes) Order 1950, which was amended from time to time. PIL says that the constitutional order is discriminatory and violative of Articles 14 and 15 of the Constitution as it discriminates against Scheduled Caste converted to religions other than the Hindu, the Sikh and the Buddhist. PIL maintains that the social and economic disabilities of Scheduled Castes converted to Christianity continue to persist in most cases even after their conversion and discrimination between scheduled castes converted to Sikhism and Buddhism and to Christianity cannot take place.

The petitioners have contended that the theory that Christianity does not recognize castes cannot be a valid justification for excluding Christians since in theory even Sikhism and Buddhist also do not recognize castes. The petitioners have demanded that the clause 3 of the Constitution (Scheduled Castes) Order 1950 be declared as unconstitutional and void.

Petition cites Article 14 and Article 15 of the Indian Constitution. These articles are:

Article 14 - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- 1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
- 2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
- 3) access to shops, public restaurants, hotels and palaces of public entertainment; or
- 4) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public
- 5) Nothing in this article shall prevent the State from making any special provision for women and children
- 6) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

In November 2022, the government opposed the demand made in PIL and submitted an affidavit in the Supreme Court. It says that there was no backwardness and oppression in Islam or Christianity. Stating that the Constitutional Order (1950) does not suffer from any unconstitutionality, the affidavit says that 1950 order was based on historical facts and data while no such oppression or backwardness was faced by the members of Christian or Islam.

Affidavit also categorically states that neither Islam nor Christianity recognize the caste system, which was very much part of Hinduism. In fact, the affidavit further maintains that Caste discrimination was a major reason for people to adopt Islam and Christianity as they believed that they would come out of the oppressive nature of untouchability. The union the government, in its affidavit, also disagrees with recommendations by Rangnath Mishra Commission saying that they were myopic and short sighted.

On reservation for Buddhists, the affidavit says that people adopted Buddhism in response to the call given by Dr Ambedkar for socio-political imperatives, which might not be applicable to people opting for Islam or Christianity. Affidavit further says that people might have adopted Islam

or Christianity for some other reasons.

Apart from opposing the reservation to Scheduled Caste people, converted in Islam and Christianity, the union government took a crucial decision to appoint a committee to study sociological and constitutional aspects of the issue. The committee was appointed in October 2022. Three-member committee is headed by former Chief Justice of India K.G. Balakrishnan while Dr. Ravinder Kumar Jain, retired IAS officer and Dr Sushma Yadav, member of University Grants Commission (UGC) will be two other members. The committee has been asked to submit its report in two years.

Terms and reference of the committee will be (A) To examine the matter of Scheduled Caste status to new persons, who claim to historically have belonged to the Scheduled Castes but have converted to religion other than those mentioned in the Presidential Orders issued from time to time under article 341 of the Constitution. (B) To examine the implications on the existing Scheduled Castes, of adding such new persons as part of the existing list of Scheduled Castes. (C) To examine the changes Scheduled Caste persons go through on converting to other religions in terms of their customs, traditions, social and other status discrimination and deprivation, and the implication of the same on the question of giving them Scheduled Caste status. (D) To examine any other related questions that the Commission deems appropriate, in consultation with the consent of the Central Government.

Petitioners are heavily banking upon the recommendation made by National Commission for Religious and Linguistic Minorities, also known as Rangnath Mishra Commission. It was constituted by the Government of India on 29 October 2004 to look into various issues related to Linguistic and Religious minorities in India. However, the commission never conducted any scientific study while making the recommendations. Besides, commission mainly focuses on religious minority – particularly Islam – while issues of linguistic minorities were largely neglected. Petitioner has cited commission recommendation but shirking from legal responsibility to establish their contention. According to well established legal practice, burden rests on the petitioner to establish by clear and cogent evidence that the State has been guilty of

arbitrary discrimination when violation of Article 14 is claimed.

Petitioners have failed to submit in this respect. Instead, they are merely citing a commission report, which lacks credibility because of lack of scientific and methodological study. Petitioners want the Supreme Court to take decision in absence of any documented research and precise authenticated information, which will establish that the disabilities and handicaps suffered by Scheduled Caste members in the social order of its origin (Hinduism) persists with their oppressive severity in the environment of Christianity or Islam.

As against this, studies conducted by Rev. Samuel Mateer, a British Missionary in Kerala and Tamil Nadu, erstwhile Princely State of Travancore, Cochin and Madras Presidency, during his stay of over 25 years in India, and published in the form of two books titled “Land of Charity” and “Native Life in Travancore” in 1870 and 1883, respectively, show that the slave caste (the present Scheduled Castes) converted to Christianity in these States became socially, educationally and economically in a better position than their brethren who remained in Hinduism.

Petitioners allege that the Presidential Order, 1950 is unconstitutional as it discriminates on the basis of religion. It is said in the petition that Christianity and Islam are excluded from the order. However, petitioners have conveniently neglected a reality that both Islam and Christianity do not have space for untouchability and caste discrimination. It does not prevail in both the religions. Petitioners neglect the fact that untouchability and caste discrimination is the decisive reason for social educational and economic backwardness among the Scheduled Caste people.

The Presidential Order, 1950 was based on historical data, which categorically established that no such backwardness or oppression was ever faced by members of Christian or Islamic Society. The reality was that the people from Scheduled Castes have been converting to religions like Islam or Christianity to come out of the oppressive system, which prevailed in Hindu fold. Leaders of Islam and Christianity have always announced that caste discrimination and untouchability do not have a

place in their respective religions. Naturally it is illogical and irrational to claim backwardness, arising out of caste, even after conversion.

Another crucial fact has to be considered. Followers of Islam and Christianity are getting benefits of Other Backward Classes (OBC) currently. The court ruling has fixed the 27 per cent quota for OBC category, which includes certain groups from Muslim and Christian religions. Additionally, OBC category is getting other facilities like post-matric scholarship, hostels for boys and girls, assistance to voluntary organisations and income generating activities undertaken by National Backward Classes Finance & Development Corporation.

In more than one dozen states and three union territories of Chandigarh, Diu/Daman and Puducherry, scheduled caste people, converted to Christianity are included in the central list of OBC. Scheduled Caste people, who have converted to Christianity from states of Andhra Pradesh, Assam, Bihar, Gujarat, Karnataka Kerala, Madhya Pradesh, Maharashtra, Odisha, Punjab, Tamil Nadu, West Bengal, Chhattisgarh and Jharkhand are beneficiaries of this list.

Similarly, certain communities converted to Islam have been included in the Central list of OBC category in the States of Andhra Pradesh, Bihar, Himachal Pradesh, Madhya Pradesh, Maharashtra, Chhattisgarh, Jharkhand and Union territory of Delhi. This reservation is in addition to various schemes, which are exclusively meant for minorities. The schemes are obviously applicable for the converts. It clearly shows that followers of Islam and Christianity are getting benefits of reservation and various schemes, which are exclusively meant for minorities.

Another major argument made by the supporters of the PIL is that scheduled tribes, who had converted to Christianity continue to be within the purview of Scheduled Caste Order 1950 but Scheduled Caste people, converted to Christianity, are denied benefits. This reason is also being demonstrated as discriminatory. This argument is also unreasonable as Scheduled Tribes do not come under the purview of the Constitution Scheduled Castes Orders but come under the Constitution Scheduled Tribes Orders. This is in addition to separate criteria for specification of a community as Scheduled Tribe. These criteria are (A) Primitive traits (B)

Distinctive culture (C) Geographical isolation, (D) Shyness of contact with the community at large and (E) Backwardness. It has to be noted that professing any religion is not a point of consideration in the case of Scheduled Tribes. As against this, extreme social, educational and economic backwardness, arising out of traditional practice of untouchability, is the criteria for specification of a caste as a Scheduled Caste.

Apart from discrimination on the basis of religion, petitioners also urged the Supreme Court to examine Presidential Order, 1950 under judicial review. This demand has been made 73 years after the constitution came into force. Judicial review is the power of courts to examine the actions of the legislative, executive, and administrative arms of the government and to determine whether such actions are consistent with the constitution. Actions judged inconsistent are declared unconstitutional and, therefore, null and void. Petitioners have asked for judicial intervention, challenging constitutional validity of Presidential Order, 1950. But the Article 341 (1) categorically and exclusively empowers the President of India to specify, in consultation with the Governor of the State, with respect to the State or Union Territory, or for a part of the State, District or region by public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes in relation to the State or Union Territory as the case may be.

Clause (2) of Article 341 empowers Parliament by law to include in or exclude from the list of Scheduled Castes specified in the notification issued under clause B. This has been upheld in the Basavalingappa versus D Munichinnappa case by the five judges' bench of the Supreme Court in 1965. The legal dispute arose over change in the name of a caste in Mysore state. The state government had completed all the legal exercises to change the name of a particular caste but it remained unchanged in the Presidential order. Even as the SC agreed that both castes remained same, it observed that Article 341 provides for a notification and for its finality except when altered by Parliament by law. The court said, "In view of the stringent provision of the Constitution with respect to a notification issued under clause (1), it is not open to anyone to include any caste as coming within the notification on the basis of evidence-oral or

documentary if the caste in question does not find specific mention in the terms of the notification.” The Supreme Court even went on to say that the High Court had committed an error. The Supreme Court stated that it was the constitutional mandate of the President to include or exclude any name of caste from the schedule.

The Union Government, in its affidavit, has also raised the same point by saying that the judiciary had no constitutional power except to give effect to the notification issued by the President. The government has said in the affidavit that the judiciary would look into notification under Article 341 (1) and 342 (1) for a limited purpose and the power of the President and the Parliament in this regard is conclusive. In the *Bhaiya Lal versus Harkishan Singh* case in 1965, a five-member bench of the Supreme Court also upheld the similar view. The Supreme Court said, “a notification issued under clause (1) of Article 341 cannot be varied by any subsequent notification except by law made by Parliament. In other words, Parliament alone is competent by law to include in or exclude a caste/tribe from the list of Scheduled Castes and Scheduled Tribes specified in notifications issued under the said articles.”

Supporting the said provision of two articles – 341 and 342- in constituent assembly, Dr. Ambedkar said,” The object of these two articles, as I stated, was to eliminate the necessity of burdening the Constitution with long lists of Scheduled Castes and Scheduled Tribes. It is now proposed that the President in consultation with the Governor or ruler of a State Should have the power to issue a general notification in the Gazette specifying all the castes and tribes or groups thereof deemed to be Scheduled Castes and Scheduled Tribes for the Purpose of these privileges, which have been defined for them in the Condon. The only limitation that has been imposed is this; once a notification has been issued by the President, which undoubtedly, he will be issuing in consultation with and on the advice of the Government of each State. Thereafter, if any elimination was to be made from the list so notified or any addition was to be made that must be made by Parliament and not by the President. The object is to eliminate any kind of political factors having a play in the matter of the disturbance in the schedule so published by the President.”

The view expressed by Dr Ambedkar clearly underlines in no uncertain

terms that only the President is empowered to include or exclude names of Scheduled Castes and nobody - neither executive nor judiciary can amend it. To be precise, power in this connection lies with the legislature – Parliament – as the President takes decisions at the advice of the government in democratic set up of India. Judiciary, thus, cannot and should not expand its jurisdiction to deal with the question of inclusion or deletion entries mentioned in the Presidential Orders issued under Articles 341 and 342, particularly so when in clause (2) of the said article, it expressly states that the said Orders cannot be amended or varied except by law made by Parliament.

In addition to categorical constitutional provision, one more reason gives ground to Parliament to look into the issue. Parliament is in a better position to know and understand ground realities unlike the judiciary. Parliament is also equipped with necessary administrative mechanisms to undertake any exercise if need arises. This is not the case of the judiciary as it is completely handicapped with any official mechanism to undertake any required study. Judicial interference in the issue is unwarranted as Legislature, as an institution, is much larger in terms of composition and fundamental nature. Legislature uses in-built procedures, carefully designed, plenitude of representations and resources as they have access to information, skills, expertise and knowledge of the people working within the institution and outside in the form of executive. Process and method of legislation and judicial adjudication are entirely distinct. Judicial adjudication involves applying rules of interpretation and law of precedents and notwithstanding deep understanding, knowledge and wisdom of an individual judge or the bench. It cannot be equated with law making in a democratic society by legislators given their wider and broader diverse polity.

The Constitution states that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the courts which exercise the power of judicial review. It is not for the judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislators as a whole are

unclear and substantially divided on the relevant issues. Right decision must be taken by the right body. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. Reservation is necessary for transcending caste and not for perpetuating it. Reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country.

Reservation is underwritten by a special justification. Equality in Article 16(1) is individual-specific whereas reservation in Article 16(4) and Article 16(4-A) is enabling. The discretion of the State is, however, subject to the existence of 'backwardness' and 'inadequacy of representation' in public employment. Backwardness has to be based on objective factors whereas inadequacy has to factually exist.

Petitioners have also argued that Presidential Order, 1950 violates Article 14, which does not discriminate on the basis of religion. But it does not mean that all laws must be general in character and universal in application and that the legislature no longer has the power of distinguishing and classifying persons for the purposes of legislation. The expectation of Article 14 is that any classification should not be arbitrary and should be based on intelligible differentia.

LANDMARK CASE LAWS

The current PIL has raised several constitutional issues on which the judiciary has delivered judgements and closed the chapter. The PIL mainly involves a few constitutional issues including religious discrimination, powers of the President, existence of caste in Islam and Christianity and determination of caste. Here are some of the major case laws.

Caste and Abrahamic religions

1) Soosai versus Union of India - In a landmark decision, the Supreme Court ruled that Hindus converted into Christianity are not entitled to claim as Scheduled Castes and the same caste cannot continue after conversion. The judgement was delivered by Justice R S Pathak on September 30, 1985. The case involved a cobbler, who had converted to Christianity. He applied for a welfare scheme, which was meant only for the people from Scheduled Caste. He claimed that he continued to be a member of the caste, which he belonged to before conversion. However, he was denied the benefit of the scheme on the ground that he had converted to Christianity, which does not recognise the caste system. The Supreme Court categorically stated that the Presidential Order specifically mentions people from Hindu and Sikh community, who need protection from caste discrimination.

SC Order says, "For the purposes of the Constitution the constitutional provisions relating to Scheduled Castes are intended to be applied to only those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who profess the Hindu or the Sikh religion. If a Christian belongs to one of those castes, he is barred by reason of paragraph 3, from being regarded as a member of a Scheduled Caste and is, therefore, not entitled to the benefit of the constitutional provisions relating to Scheduled Castes."

2) Kailash Sonkar vs Smt. Maya Devi - The case has an interesting aspect of reconversion. Maya Devi was converted to Christianity and reconverted to Hindu fold. The issue in question was whether she can be considered in the caste before the conversion. The ruling was given by the

Supreme Court on December 16, 1983.

According to the case, Maya Devi contested the Assembly election from a constituency in Madhya Pradesh, which was reserved for Scheduled Castes. She described herself as a member of Katia caste, which is in the list of Scheduled Castes. Her nomination paper was challenged on the ground that Maya Devi was Christian and cannot contest the election from a reserved constituency. Her election was challenged by Kailash Sonkar. Maya Devi had two points - her parents were never Christian and she had married Jai Prakash Shalwar, who belonged to the Katia community. Her argument was countered by the appellant and furnished some evidence, showing that she belonged to Christian community.

Court came to conclusion - A) Maya Devi was born to Christian parents and was known as Christian in school and other education institutions. B) She reconverted to Hinduism by conducting a purification ceremony and married to Jai Prakash, who belongs to Katia caste. C) She was accepted and welcomed by the members of Katia community. D) There is no evidence to show that there was any bar under the Christian religion which could have prevented her from reconverting herself to Hinduism. Appeal, challenging Maya Devi's election was dismissed by the court.

The Supreme Court, however, made some important observations in the judgement. It said, "Converttee loses caste unless new religion accepts caste system and permits converter to retain his original caste and family laws. During conversion original caste remains under eclipse. Eclipse Disappears on reconversion to original religion."

3) Madras High Court - On December 3, 2022, Madras High Court ruled that a person "cannot carry his caste after conversion to another religion. The remark came while rejecting a petition by a man, who converted to Islam and asked for backward class reservation on the basis of his caste prior to conversion. The ruling was given by Justice GR Swaminathan.

The petitioner had challenged the action of the Tamil Nadu Public Service Commission (TNPSC) treating him in the 'General' category in the Combined Civil Services Examination-II (Group-II Services) instead of Backward Class. Justice Swaminathan, citing multiple Supreme Court

judgments, observed that once a person, born a Hindu, converts to another religion that does not follow or recognize the caste system, the converted person would no longer belong to the caste he was born into.

Justice Swaminathan relied on Supreme Court judgement in the Kailash Sonkar vs Maya Devi case, which ruled that the caste of a Hindu is determined by his or her birth. Therefore, if a Hindu converts to Christianity or Islam, or any other religion that does recognize the caste system, he or she ceases to belong to that caste. Upon reverting to the original religion, the person automatically will belong to the caste he was originally born into.

The TNPSC's decision was therefore upheld by the court. The petitioner argued that he was exercising his fundamental right to practice any religion he desired. But the court ruling went against the petitioner.

4) G Michael versus S Venkateshwara - Madras High Court in 1951, set aside a petition, which challenged the provision of scheduled castes list. Justice Rajamannar V Aiyar specifically said in the judgement that "a convert ceases to have any caste." G Michael was a member of the Paraiyan community but converted to Christianity and was not able to contest the election because of the Presidential Order. The court observed, ". It is clear that the President has not arbitrarily specified a part or group which has no independent objective existence. In my opinion, the Constitution (Scheduled Castes) Order is valid and within the powers of the President The petition is there-fore dismissed."

5) A Raja Case in Kerala - Kerala High Court in December 2022 also delivered a significant ruling. It declared void the election of A Raja of the CPI (M) from Devikulam, a reserved assembly constituency in the Idukki district. Justice P Somarajan ruled that Raja is not a member of 'Hindu Parayan' within the state of Kerala and is not qualified to be chosen to fill a seat in the assembly reserved for Scheduled Caste.

Petition against A Raja was filed by D Kumar, the defeated United Democratic Front (UDF). The court which examined details related to the family, baptism, marriage and burial registers found that Raja was actually professing Christianity during the submission of nomination

papers and had converted to Christianity long ago. Court observed that after the conversion, A Raja cannot claim to be a member of the Hindu religion. On that score also, the returning officer ought to have rejected his nomination. In short, on both grounds, it is clear that Raja is not a member of 'Hindu Parayan' within the state of Kerala and is not qualified to be chosen to fill a seat reserved for Scheduled Caste.

The allegation levelled against Raja was that he filed his nomination papers claiming that he belongs to 'Hindu Parayan.' A caste certificate issued by the Devikulam tahsildar and submitted along with his nomination papers was incorrect. The petitioner contended that his rival is not a member of a Scheduled Caste. Petitioner further argued that those who belong to the Scheduled Caste in Kerala among Hindus are accorded the status of Scheduled Caste within the State of Kerala to contest in a constituency reserved for Scheduled Castes. A person belonging to the Christian religion or a converted Christian cannot be qualified. In fact, he was baptised at the CSI Church, Kundara division. The petitioner alleged that the tahsildar issued the certificate without proper inquiry. Raja, however, submitted that the tahsildar issued the certificate after complying with all legal formalities. Therefore, the acceptance of his nomination paper was perfectly legal. However, all arguments made by A. Raja were turned down by the court.

6) SC bench of Justices Arun Mishra and M M Shantanagoudar said in January 2018 that there cannot be any dispute that the caste is determined by birth and the caste cannot be changed by marriage with a person of Scheduled Caste. The case involved a woman from upper caste, who got married to a man from OBC category. The woman had got a job in the OBC category.

7) Karnataka High Court delivered a similar ruling saying that caste is determined by birth. It was a case of a woman from upper caste, who contested from a constituency reserved for Scheduled Tribes. The court ruled that she was not capable of contesting the election as her caste was different by birth. Ruling was given by Justice Krishna Dixit. The Uttarakhand High Court has given the same ruling in another case. Justice Manoj Kumar Tiwari held that the caste status of a person is determined by birth and not by marriage.

The million-dollar question is – If the caste is determined by birth and even marriage cannot change it, how converts can get caste-based benefits if their religions do not approve the caste system? Similar judgements have been delivered in number of cases wherein courts have consistently upheld following views A) Caste is restricted only to Hindu community B) Caste has no space in other religions. C) Hindu Scheduled Caste people, converted to other religions, cannot claim benefits of reservations. D) Scheduled Caste people, who had converted to other religions but had reconverted to Hindu fold, can avail reservation.

Powers of President of India

All the earlier Supreme Court judgements have categorically stated that only the President is authorized to make any amendment. The Judiciary will cross its constitutional limits if it intervenes in the matter. This argument is also applicable to any amendment in the list of Scheduled Tribes.

This position was expressed by the Supreme Court in 2006 in *Manoj Kumar vs State of Maharashtra* case. The Supreme Court observed in the case, “It is now a well- settled principle of law that no authority, other than Parliament by law, can amend the Presidential Orders. Neither the State Governments nor the courts nor the tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or a tribe or part of or a group within a caste or tribe is included in the Presidential Orders in one entry or the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning, content and scope of Articles 341 and 342.”

In S. Swvigaradoss versus Food Corporation of India case, Supreme Court observed, “Article 341(1) empowers the President of India to specify, in consultation with the Governor of the State, with respect to the State or Union Territory, or for a part of the State, District or region by public notification specify castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the

Constitution be deemed to be Scheduled Castes in relation to the State or Union Territory as the case may be. Clause (2) of Article 341 empowers Parliament by law to include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification. In other words, the constitutional mandate is that it is the President who is empowered, in consultation with the Governor of the State, to specify by a public notification the caste, race or tribe or parts or groups within castes, races or tribes which shall for the purposes VIC the Constitution be deemed to be Scheduled Castes in relation that State or Union Territory. The Courts, therefore, have no power except to give effect to the notification issued by the President. It is settled law that the Court would look into the public notification for a limited purpose.”

The notification issued by the President and the Act of Parliament under Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 and the Schedules appended thereto can be looked into for the purpose to find whether the castes, races or tribes are (sic or) parts of or groups within castes, races or tribes shall be Scheduled Castes for the purposes of the Constitution. Under the Amendment Act. 1976, again Parliament has included or excluded from schedules appended to the Constitution which are now conclusive. Schedule I relates to Scheduled Castes and Schedule II relates to Scheduled Tribes. Christian is not a Scheduled Caste under the notification issued by the President. Supreme Court, on several occasions, had upheld that only President, after passage of law by Parliament, is authorized to make any changes in the list of Scheduled Castes.

WHERE WILL IT LEAD?

Undoubtedly, India will have to face serious consequences if reservation is extended to Scheduled Caste people, who are converted to Islam or Christianity. It is bound to be seen as continuation of the 'policy of appeasement.' In fact, demand is the outcome of seventy years of politics of appeasement, in utter disregard to the principle of equality. It is ironic that petitioners point at religious discrimination in case of reservation but conveniently choose to neglect the benefits of their minority status, which is based on religion.

Interestingly, the term 'minority' has not been defined in the Indian Constitution. But it merely appears in some articles. Eventually the term 'minority' has become synonymous to Islam and Christianity. The term minority appears in Article 29, which speaks of protection of interests of minorities. It speaks about distinct language, script or culture and not merely religion. Similarly, Article 30 is related to 'Right of minorities to establish and administer educational institutions. Again, the article speaks about language also and not merely religion. Article 350 (A) says about appointment of a Special Officer for linguistic minorities to be appointed by the President.

Currently, only those communities notified under section 2(c) of the National Minorities Commission Act, 1992, by the central government are regarded as minority. In the exercise of its powers under the Section 2(c) of the NCM Act, the Centre on October 23, 1993, notified five groups — Muslims, Christians, Sikhs, Buddhists and Parsis — as 'minority' communities. Jains were added to the list in January 2014. The reality is that the term minority has become synonymous with Islam and Christianity.

DOUBLE BENEFIT

Even though the constitution does not specifically mention religious minorities, several policies are being formulated keeping an eye exclusively on Islam and Christianity. On paper, all the policies speak about minorities but their benefits are being bagged by members of two religions — Islam and Christian. In 2022, the Union Government alone had

14 various separate schemes, which were exclusively made for minorities. Many of these schemes were related to education/scholarship at all levels of education, special training for competitive examinations, leadership development, subsidy on educational loan, earn and learn and skill development. Education and profession are at the central point of these schemes.

In addition, all the states have their own separate policies and schemes, which have been made for minorities. At ground level, followers of Islam and Christianity are getting benefits of the schemes, made by Union and State governments. Besides, they are also availing benefits of all other schemes, which are applicable to non-minority people. For example, followers of Islam and Christianity are availing benefits of the schemes like - Pradhan Mantri Jan Arogya Yojana (PMJAY), Pradhan Mantri Mudra Yojana (PMMY), Pradhan Mantri Kisan Samman Nidhi (PM KISAN), Pradhan Mantri Ujjwala Yojana (PMUY), Pradhan Mantri Awas Yojana (PMAY), Beti Bachao Beti Padhao Yojana, etc. This list will have no end if schemes of various state governments are taken into account.

Careful analysis of all the schemes by the central government, shows that followers of Islam and Christianity are getting benefits of the reservation category. Conversion of Scheduled Caste people is not an obstacle in getting benefits of these schemes. Thus, converted Scheduled Caste people will continue to get double benefits because of their minority status.

Another major reality is also overlooked. Christians and Muslims are already getting benefits of reservation as several groups of both the religions fall in the category of OBC. Mandal Commission has identified 82 sub-groups of Muslims to be included in OBC category. According to a rough estimate, around 41 per cent Muslim population fall in the OBC category and get benefits of OBC reservation. OBC Muslims constitute 15.7 per cent of the total OBC population in the country. Similarly, several sub-groups of Christian religion are included in the OBC category. This trend is strongly seen in Southern and North-East states.

The present situation creates doubt whether Muslims and Christians want to grab all the opportunities under the name of reservation with the mask of minority. This scenario is unacceptable as it fundamentally

contradicts Article 14 – which says about discrimination on religious grounds. Question arises – under which constitutional provision converted Scheduled Caste people would get double benefit with a single banner of minority? Does it respect constitutional morality? Are converted Scheduled Caste people ready to give up one tag to get another benefit? Country will face serious social unrest if reservation is extended to converted Scheduled Caste people as people are already angry with politics of appeasement.

SNATCHING AWAY HINDUS' RIGHTS

Scheduled Caste people, who did not convert to either Islam or Christianity, will be the first victim in case reservation is extended to converts. Their prospects will be jeopardized as Muslims and Christians will simply go away with the reservation benefits in a big way. This will happen when stiff competition is being witnessed in the reservation quota. This is bound to create social unrest as the topic for reservation for converts was never on the agenda. Nobody had anticipated a scenario in which converts would be getting reservation.

Extension of reservation will certainly create social tension. Official data suggests that two Abrahamic religions will corner all the reservation benefits in the near future. According to official data published by the Registrar General and Census Commissioner, the population of India was 121.09 crore in the 2011 census. Population of Hindu was 96.63 crore (79.8 per cent) while Muslims constituted 17.22 crore (14.2 per cent). Christian population was 2.78 crore (2.3 per cent), 2011 census report says. Sikhs constitute 2.08 crore (1.7 per cent) Buddhist population 0.84 crore (0.7 per cent), Jain population 0.45 crore (0.4 per cent). Population of other religions was 0.79 crore (0.7 per cent).

2011 census came up with a startling trend, according to which the population of Hindus, Sikhs, Buddhists (all India originated religions) was in decline. Christian population was stable. Steep rise in the population was noted only in Muslim religion. Hindu population declined by 0.7 per cent while Sikh population came down by 0.2 per cent. Similarly, the Buddhist population declined by 0.1 per cent. Jains and Christian did not register any decline and were stable. Increase in the population was seen

only in Muslim religion. Its increase was 0.8 per cent. Growth rate of population among Hindus was 16.8 percent while it was 15.5 per cent among Christians. Growth rate among Buddhists and Jains was 8.1 per cent and 5.4 per cent, respectively. Muslims growth rate was the highest – 24.6 per cent, according to the census report.

Muslim population has been increasing since independence. In the first census, conducted in 1951, Muslim population was 9.8 per cent and it jumped to 14.2 per cent in 2011. The data shows that Hindu population was in decline, Christians were stable. Muslim population was increasing at a phenomenal rate.

Pew Research Centre has conducted a study on projection of Indian population in 2050. The report was published in February 2021. According to Pew Report, Muslim population in 2050 will be 311 million with a 76 per cent growth rate. Hindu population will be 1.3 billion with 33 per cent growth rate. In other words, Hindus will constitute 77 per cent of the Indian population in 2050 while Muslim population will be 18 per cent. Interestingly again, Christian population will continue to be stable with two per cent. Pew Research Centre has predicted that the population of other religions will be negligible. In other words, India will have only Hindu, Muslim and Christian religions while Sikhs, Buddhists and Jains will turn into micro-minority.

All this data has to be seen against the backdrop of current statistics. While the census does not consider caste in religions like Islam and Christian, the National Family Health Survey shows some indicators in this connection. Study conducted by the National Family Health Survey (NFHS) in 2019-2021 says that the population of Scheduled Caste people (SC) among Christians was 67,47,641 while 93,18,170 scheduled tribes had adopted Christianity. According to the NFHS report, the number of Scheduled Caste people (SC), who had become Muslims is around 42,92,394 while 42,92,349 people from ST category were Muslims. In other words, 2,46,50,554 Scheduled Caste people, who belong to either Islam or Christianity, will encroach upon the reservation benefits, which are currently availed by Scheduled Caste people, who continue to be Hindus/Buddhists/ Sikhs. The population belonging to SC category is estimated to be 16.6 per cent of India's total population. More than 20

crore people belong to this category. Muslims (14.2 per cent) and Christians (2.78 per cent) together constitute 16.98 per cent of the population of India. The combination of Muslims and Christians is slightly higher and they will share reservation benefits with Scheduled Caste people, who did not opt for conversion. This situation is going to be complicated, inviting social problems, as the prospect of increase in reservation quota is very weak.

ENCOURAGEMENT TO CONVERSION

Article 25 of the Indian constitution promises the right to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality, and health. However, states have different laws to define illegal conversion and to prevent misuse of Article 25. Generally accepted grounds for illegal conversion are 1) Allurement 2) Coercion 3) Force 4) Fraudulent methods. Even mass conversion is also considered as illegal. In the case of conversion due to allurement, factors like gift, gratification, easy money, material benefits or cash, employment, free education and better lifestyle are considered under the law.

Anti-Conversion law has been partially successful as India's demography would have been changed drastically in absence of such law. It would have been more successful had it been enforced strictly. Reservation is a major obstacle for Christian missionaries and Muslims clerics to spread their religions. Despite all kinds of allurement, use of force, fraudulent ways and misleading information given by the preachers of Abrahamic religions, lakhs of Scheduled Caste people do not convert with the fear that they would have to give up reservation in the event of conversion. Pace of conversion will certainly be higher if reservation is extended to converts.

The question arises – whether reservation to converts can be treated as 'legal allurement.' Reservation, coupled with money and muscle power, will certainly change the demography of India because of conversion. This will be a major problem as the population of Hindus is already decreasing due to growing infiltration from Bangladesh and the conversion of Hindus. Conversion is already leading to imbalance in population in several parts of the country. This is seen in states like West Bengal, Bihar and North East states. Conversion has already changed demography in

Reservation for Converted SCs - Time to wake up

few parts of the country. Against this backdrop, reservation to converts will further accelerate conversion and pose a threat to national interest.

Forced conversion is not a hype but a serious reality. Even the Supreme Court has recently expressed concern over forced conversion. Supreme Court bench of Justices M R Shah and Hima Kohli observed in November 2022, “Forced religious conversion may pose a danger to national security and impinge on religious freedom of citizens.” It even wanted to know about the steps taken by the government to stop the forced conversion.

During the hearing of a case filed by Ashwini Kumar Updhyaya, SC bench warned that a difficult situation would emerge if proselytization through deception, allurements and intimidation is not stopped. It is better that the Union government may make their stand clear and file counters on what steps can be taken by Union and/or others to curb such forced conversion, may be by force, allurements or fraudulent means.

During the hearing, Solicitor General Tushar Mehta pointed out that forced religious conversions are rampant in tribal areas and people are not aware that they are the subject matter of criminal offence. The SC observed there may be freedom of religion but there cannot be freedom of religion by forced conversion. Seriousness of the situation can be understood by the Supreme Court observation as it did not hesitate from using the words – 'Danger to national security.'

Extension of reservation to converts will add fuel to an already volatile situation as reservation will be used to lure Scheduled Caste people for conversion. Historical fact also cannot be overlooked. History shows that conversion to two Abrahamic religions encouraged separatist elements, posing threat to national security and geographical integrity of the nation. This can be easily experienced in some of the border states. Extra territorial loyalties become inevitable in case of conversion to Abrahamic religions. Many converts innocently or intentionally become part of international conspiracy, which is aimed at changing the very nature and soul of India by way of conversion.

The role of Christian missionaries has always been doubtful and under scanner since long. They have been luring Scheduled Caste people

promising that they would not face caste-based hardships, if converted. Missionaries have been telling Scheduled Caste people that caste has no space in Christianity. However, they have been misleading and cheating the people as Christian bodies have been publicly saying something in contrast.

The contradiction in the Church surfaced during Pope John Paul II visit to India. Pope, the highest religious head of Catholic Christians, was in Tamil Nadu on November 11, 2003. In his address to the people, Pope extensively referred to caste-based discrimination, being faced by converted Christians.

In April 1988, The Catholic Bishops Conference of India, in its biennial meeting came out with a statement saying “... We Are Sadly Aware That Christians Too Retain Many Negative Aspects of The Larger Society of Which They Are A Part. The Scheduled Caste who has joined the Church should have found it in a community of equality and of freedom from caste oppression. But many of them feel twice discriminated against..... Most Christians of the Scheduled Caste Origin are still deprived of economic opportunities, access to adequate educational facilities, leadership roles and participation in decision making.”

Catholic Bishops Conference of India (CBCI) has publicly admitted that Scheduled Caste people, who had converted to Christianity, face caste-based hardships. It has even gone on to say that converted Scheduled Caste Christians face hardships within and outside the Church. CBCI website says, “Of the 24 million Christian population, the Dalits constitute about 16 million. Majority of these Dalit Christians are in the southern states of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.” Website says that Dalit Christians face discrimination for thrice – within the Church, outside the Church and by the government.

CBCI has even announced its eighth point action plan for the purpose. They are: i) Lobbying, Advocacy and Struggle for equal rights to Dalit Christians, ii) meeting the political party leaders, Prime Minister, President, ministers, Members of the Parliament, iii) conducting rallies, demonstrations, signature campaign in the international level and national level, iv) animation work at the regional level in order to

establish commissions at the regional and diocesan level, v) intensive Coaching for Employment with a special emphasis on the coaching for Union Public Service Commission (UPSC) exams, vi) support the Public Interest Litigation Case in the Supreme Court by providing the relevant materials and books, vii) collaborate with a Dalit Lay movement called National Council of Dalit Christians (NCCDC), viii) work jointly in collaboration with the National Council of Churches (NCCI) under the banner of National Coordination Committee for Dalit Christians(NCCDC).

Double speak of the Indian church poses serious questions before its all-out efforts for large scale conversion across the country. On one hand, Scheduled Caste people are being promised that they would not face any discrimination while they continue to face additional problems after conversion on the other hand. The Indian Church stands exposed because of this serious double speak and contradiction. This needs to be addressed seriously from the perspective of national security and integrity. The Church's obvious intention to increase Christian population in India is seen with ulterior motives.

PERSONAL LAWS

Both Abrahamic religions – Islam and Christianity – do not believe in the caste system. In fact, absence of caste discrimination and untouchability were two decisive reasons for Scheduled Caste people to convert into other religions. People, who are involved in spreading Islam and Christianity always assure Scheduled Caste people that they would not face any discrimination and untouchability. It is ironic that two Abrahamic religions are now demanding reservation on the basis of caste.

It is a big paradox that Christians and Muslims demand for caste-based reservation when caste has no religious sanction and want to be governed by personal laws of their respective religions. While Muslim Personal Law (Shariat) Application Act is always in the discussion as Muslims never tolerate any interference of any outside party into their religious matters, Christian Personal Law is hardly debated. Christian Personal Law has its origin in British rule as it was enacted in the 19th century. Christian Personal Law is mainly related with marriage, divorce, adoption and succession. Separate features of Christian Personal Law can

be judged from a provision, which indicates how Christians are over sensitive and protective about their religious identity. According to Christian Personal Law, conversion to another religion by one spouse without consent of the other, is considered as a major ground for divorce. It shows the intolerant attitude of Christians toward other religions. This is like a Muslim practice in which a bride or groom, if not Muslim, is forced to convert to Islam before nikah.

Like Christians, Muslims also have their own law. All the Muslims in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937. This law deals with marriage, succession, inheritance and charities among Muslims. Practice of triple talaq is now banned because of intervention of the judiciary and initiative by the union government but other factors continue to be run by Shariat. Muslims are over sensitive about their religious matters. India has witnessed serious conflict as Muslims never tolerate any interference, even by the state, in their religious affairs. Shah Bano case stands as an example in which the government completely surrendered itself before Muslims even after the Supreme Court ruling.

Both the Abrahamic religions want to maintain their separate religious identity, want no compromise on their personal laws but want to take benefits of reservation, which is meant for depressed people among Hindus. Both the religions have been opposing Uniform Civil Code (UCC) despite specific provision of Article 44 of Indian Constitution. Article 44 says, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." The UCC calls for the formulation of one law for India, which would be applicable to all religious communities in matters such as marriage, divorce, inheritance, adoption. Any attempt to introduce UCC is vehemently opposed by Christians and Muslims as they want not merely to maintain their religious identity but spread their religions. They want to maintain their minority status and get engaged in increasing their population by using certain constitutional provisions. They do not want any interference in religious matters but are eager to get benefits of caste discrimination, which was never a feature of their religion. This is all happening at the cost of the interests of Hindus, who are tolerant and accomodative by nature.

LAW AND ORDER

Scheduled Caste people are lured by both Islam and Christianity. Various methods like use of force, misrepresentation, misleading information, divine curse and muscle/money power are being used for conversion. Division among Hindus and increase in the population are two obvious objectives behind the conversion. Strategic alliances are being chalked out with aim to create enmity with Hindus. These alliances are not merely restricted for politics but are forged in all walks of life including culture, history, education, health and bureaucracy. However, these efforts have not yielded fruits as Scheduled Caste people have very strong roots in Indian soil. Scheduled Caste people do not have natural affection and love for Islam and Christianity as both the religions are being seen as foreigners.

Ground reality is otherwise as against the picture projected by vested interests. While Muslims and Christians are very rigid and orthodox in their religious matters, Scheduled Caste people are more liberal and open to changes. The reality is that relationships between Scheduled Caste people and Muslims/Christians have never been cordial and turn into major problems for law and order. The reasons for tensions are drastic differences between practices and customs, prayer, idol worshipping, processions, festivals and even funerals. Scheduled Caste people do not share any common interests and agenda with Islam and Christianity. Both the Abrahamic religions are aggressive by nature. They have a habit of dominating others in social life, which is not acceptable to Scheduled Caste people. Scheduled Caste people have pride that Dr Babasaheb Ambedkar neither adopted Islam nor Christianity and preferred Buddhism, which has firm and strong roots in Indian soil.

Tension between Scheduled Caste people and two Abrahamic religions will take a serious turn if reservation is extended to coverters. Scheduled Caste people are unlikely to accept it as they would be direct victims of Islam and Christianity. India has more than 20 crore Scheduled Caste population, which is mainly spread in six lakh villages. India will have to pay heavy price because of tension between Scheduled Caste people and Islam/Christians.

EPILOGUE

The extension of reservation to converts will adversely impact national character. It will not merely lead to drastic changes in demography but will result into social imbalance and open a Pandora's box. This can be seen as an unending attempt to capture ancient culture and land of India by the foreigners.

Rashtriya Swayamsewak Sangh (RSS), which has been working for Hindu unity, anticipated the possible threat three decades back. Akhil Bharatiya Pratinidhi Sabha (ABPS) of RSS, in 1990, welcomed the government decision to extend reservation to Buddhists. However, a resolution passed by RSS's ABPS expressed surprise over demand by Christians to extend the reservation to converted Christians. ABPS was pained to say that some central cabinet ministers were sympathetic about the demand for reservation to converted Christians.

RSS resolution said, "The motive behind converting a person or group of persons to either Christianity or Islam by exploiting their ignorance or holding out allurements is more political than religious. Towards that end they strive to wear them away from the national mainstream by destroying their age-old cultural value systems. Otherwise, there is no reason for their demanding concessions based on caste when they claim to be above the consideration of high or low, touchable or untouchable."

Explaining the reason behind the demand, RSS resolution said that reservation to weaker sections of Hindu society is being considered by them (Christians) as a major impediment in their mission of conversion. It says, "As such the conversion to Christianity or Islam can, under no circumstance, be considered at par with change over to Buddhism, because Lord Buddha and his value system are an integral part of our main cultural and spiritual tradition."

Stating that the constitution makers envisaged these concessions only to remove the caste-based discriminations and inequality prevalent in the Hindu society, RSS resolution categorically said that the extension of reservation to the Christians may deprive, the really needy sections of the

Hindu society, of most of the concession, as they may be cornered by the educationally advanced Christian converts.

Three decades back RSS warned the central government not to succumb to the manoeuvrings of certain Christian organisations and desist from taking any wrong step, which may strengthen the anti-national designs of the Christian missionaries, funded by foreign money, and thereby give rise to new problems before the nation.

The series of developments in the past three decades has proved how RSS was right in anticipating the scenario. The situation has become a little more complicated as converted Muslims, along with converted Christians, are demanding reservation. It is a wake-up call.

“Scheduled Castes were a backward section of the Hindu community, who were handicapped by the practice of untouchability and that this evil practice of untouchability was not recognised by any other religion and question of any Scheduled Caste belonging to a religion other than Hinduism did not therefore arise.” - Dr. B R Ambedkar in constituent assembly on April 4, 1949.

“No Indian Christian shall be deemed to be a member of a Scheduled Caste.” says Government of India (Scheduled Castes) Order, 1936.

“No person, who professes a religion different from Hinduism shall be deemed to be a member of Scheduled Caste. Provided that every member of Ramdasi, Kabirpanthi, Mazhabi or Sikligar castes resident in Punjab or the Patiala and East Punjab States Union shall in relation to that State be deemed to a member Scheduled Caste, whether he professes the Hindu or the Sikh religions.” - 1957 Presidential order.

“Many Scheduled Caste organisations have opposed the grant of Scheduled Caste status to Scheduled Caste converts to Christianity and Islam on the grounds of having embraced religions other than Hinduism only because of the discrimination faced by them on account of untouchability. Representatives of Muslim Organisation in several States were vociferous in stating that Muslims cannot be termed “Scheduled Castes” but should be included in OBCs and given benefits. In view of the foregoing, the demand for grant of Scheduled Caste status per se is unjustified.” - Union Government in an affidavit before the Supreme Court in October 2022.

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