

REVOLUTION TO RESERVATION - COUNTER REVOLUTION VIA RELIGION

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ABSTRACT

The roots of casteism are deep, it pervades all walks of life, even the realm of religion. In practice, the Dalits remained 'Dalits' regardless of religion. A Dalit is a Dalit whether he is a Hindu or a Muslim or a Buddhist or a Christian. Even as members of various Christian communities, Christian Dalits suffer the same ancient segregation, oppression and unjust discrimination, the same social, educational and economic disabilities, only now at the hands of their fellow 'upper caste' Christians.. Conversion to the new faith has not redeemed them from their 'dalitness', the stigma of 'Untouchability'. History always revolves in a circle, the story of India and its aboriginals' is also the same. New paradigms in the developmental discourses confined to nomenclatures, positive discrimination, protective and promotional policies never let off dalitness. Unfortunately independent India is not able to listen to the voices of these people at the bottom rank. It is evident by Constitutional (scheduled caste) order 1950 denying socio-economic and political and Human rights the schedule castes converted to Christianity. Extending the Scheduled status to Dalit Christians, Muslims has been a contentious issue for the decades. Already there are two petitions pending in the Supreme Court, and a third from the All India Christian federation has been admitted at the beginning of the year. Whether in human rights frame work or constitutional frame work, it is a justifiable demand to include these groups in the scheduled castes.

‘Caste’ in Indian social history served as the principal determinant of mechanisms of production of goods and services, distribution of resources and delineation of power. Dalits the major productive classes of the Indian society are deprived of the basic facilities of life and out casted to a dehumanized existence. “Graded inequality” in this unique caste system ensures the hegemony of the dominant groups and acts as a safety net from being overthrown from the upper stratum. Social exclusion negates and destroys the dialogical character of human life (Ramaiah, 2014). To ‘regain’ self respect and to attain human status by questioning the irrational divisions’ sufferers too involved in spirited revolts starting from the Buddha to Dr. BR. Ambedkar. From early times, conversion has been one of the strategies adopted by Dalits in seeking to counter their humiliation. To sustain the supremacy, counter revolutions were adopted by the dominant groups. In the progression of revolts and counter revolts, self identities of the down trodden also have undergone transformation from time to time. The terms outcaste, the untouchable, depressed classes the Harijans have been replaced by an assertive and revolutionary term ‘Dalit’ denoting affirmative action.

Dr.BR Ambedkar after giving deep thought to the problem, everybody will have to admit that conversion is necessary to the Untouchables as self-government is to India. In my opinion, conversion is the only way to eternal bliss. Conversion brings no harm to the political safeguards. I do not understand why the political safeguards should at all be jeopardized by conversion. Wherever you may go, your political rights and safeguards will accompany you. I have no doubt about it. (Ambedkar n.d.)

Hindu, Muslim and Christian Dalits roughly resemble each other in terms of their relative economic or social status – it is necessary to show that this similarity is *due to their caste identity* rather than other possible causes (Deshpande, 2008). Muslims and Christians in India are heterogeneous rather than monolithic homogenous communities. The most prominent divisions and differences have to do with the presence of multiple sects and denominations among both Muslims and Christians (Deshpande, 2008). Despite no

visible change in their social or economic status as a result of conversion, the converts are deprived of the benefits of reservation and protective measures formulated for their counterparts in the Hindu, Sikh and Buddhist religions. This amounts to discrimination by the state on the ground of religion. Caste system in its principle and operation is fully alive and active even in Christianity and they are “Twice discriminated against” firstly, by the society and secondly, by the church. A Dalit who adopts a non-Hindu religion like Christianity ceases to be a Dalit. In other words, it is not possible to be a Christian as they are discriminated within the church and simultaneously, an untouchable. The atrocities committed on the Dalits are the same irrespective of the religions they belong to. Yet persons of scheduled caste origin converted to Christianity are deprived of special protective provisions solely on the basis of religion.

Caste and Scheduled Caste

‘Caste’ refers to a closed ascribed group, whose membership is decided by birth and is mandatory and unalterable. Scheduled castes are a constitutionally declared collection of castes, which suffered from the practice of untouchability. To understand the term scheduled caste we need to go into its genesis. The term "Scheduled Caste" first appeared in the Government of India Act 1935. It was Sir Denzil Ibbetson, the then census commissioner in the British India in 1880, who classified certain marginalized caste groups involved in diverse occupations into 17 groups. Later on elaborate attempt was made by the census commissioner, JS Hatton, in census report 1931 to specify criteria for identifying the untouchable groups. Being an anthropologist he adopted a 9 point scale to study the incidence of disabilities arising out of untouchability (Mutatkar, 2006). The parameters applied by the British authorities for identifying the depressed classes, which later came to be known as scheduled castes, largely related to the practices and prejudices arising from untouchability (S.M, 2007). The term scheduled caste was used by the British Government to designate all castes and classes previously covered under the term "Depressed Classes". Officially this word was embodied in Section 305 of the Government of India Act, 1935 (Menezes, 2007), Later the expression was included in the Government of India (Scheduled Castes) Order, 1936.

In the Indian Constitution the term “Scheduled Castes” has been defined in Article 366(24) read with Article 341(1) as: ““Scheduled Castes” means such castes, 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.”

(a) “The president may with respect to any state or union territory, and where it is a state, after consultation with the governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be scheduled castes in relation to that state or union territory, as the case may be.”

(b) “Parliament may by law include in or exclude from the list of Scheduled Castes specified in a 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.” (Basu, 2011).

2. Under these provisions, a Constitution (Scheduled Castes) Order was issued in 1950. Para 3 in the order said that any non-Hindu could not be regarded as a scheduled caste. Since this order was amended in 1956 to include Sikh’s and in 1990 the Buddhists, among the scheduled castes, since the latter amendment, this Para says that nobody who is not a Hindu, Sikh or Buddhist can be a scheduled caste (Basu, 2011).

During the British rule in India, with a view to protecting the interests of converts to the rulers’ religion (viz., Christianity) a law called the Caste Disabilities Removal Act was passed in 1850. The Act, of course, provided in general terms that: So much of any law or usage now in force in India as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing, or having been excluded from the communion of, any religion, or being deprived of caste, shall cease to be enforced as law in any court (www.helpline.law.com).

The Constitution (Scheduled Castes) Order 1950

“In exercise of the powers conferred by clause (1) of Article 341 of the Constitution of India, the president, after consultation with the governors and Rajpramukhs of the states concerned, is pleased to make the following order, namely:

1. This order may be called the Constitution (Scheduled Castes) Order 1950.
2. Subject to the provisions of this order, the castes, races or tribes or parts of, or groups within, castes or tribes specified in (Parts to (XXII)) of the schedule to this order shall, in relation to the states to which those parts respectively related, be deemed to be scheduled castes so far as regards member thereof resident in the localities specified in relation to them in those parts of that schedule.
3. Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of a scheduled caste.
4. Any reference in this order to a state or to a district or other territorial division thereof shall be construed as a reference to the state, district or other territorial division as constituted on the 1st day of May 1976.” (NCRLM, 2010)

The presidential order of 1950 was issued by the president of India under Article 341 of the Constitution. The power conferred on the president by public notification is a delegated power which cannot run contrary to Article 13(2) of the Indian Constitution which states as follows: “The state shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.” (Basu, 2011). Under Article 13(3), unless the context otherwise requires, “law” includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law. So the presidential order of 1950 is unconstitutional and it is a black letter written outside the Constitution, introduced through the back door by an executive order (Das, 2010). Article 14 of our Constitution says: “The State shall not deny to any person equality before the law and shall provide equal protection for every person within the territory of India (Basu, 2011). Though this Article appears to be very short and simple, it is one of

the greatest pillars of democracy. It protects both minority and majority alike against the discriminatory conduct of the government both negatively and positively. This provision embodies a concept which is a hall-mark of democracy. However, to the question as to whether the Indian minorities really enjoy this fundamental right to equality, the answer, unfortunately, is 'no' (Nahar).

Under Article 341, the president has no authority to proclaim para 3 of the Scheduled Castes Order contrary to the Articles 15(2), 16(2), 29(2), and it is also against the basic structure of the Constitution as decided in *Kesavananda Bharati vs State of Kerala*; and para 3 of the presidential order can be quashed as per the judgement of the Supreme Court in *Maharajadhiraja Madhav Rao Jiawaji Rao Scindia Bahadur vs Union of India* (AIR 1971 SC 530 (1) SCC 85). Para 3 of the presidential order is an anathema which disfigures the beauty of the written Constitution of India. Further, the Constitution speaks of SCs as a social category in Articles 330, 332, 334, 335, 338 and 341. In these Articles there is no mention of religious background of the SC communities (NCRLM, 2010).

Even under Article 341 the president is not given the power to prohibit any citizen from professing any religion of his choice. But the president under Article 341 prescribes indirectly people, particularly scheduled castes, not to profess any religion different from the Hindu or Sikh religion. In other words, to get a benefit under the Scheduled Castes Order 1950, a citizen should profess only the Hindu or Sikh religion. This is against the preamble to the Indian Constitution, which secures "liberty of thought, expression, belief, faith and worship" to all its citizens. Under Article 341, the power given to the president is to specify the caste and not to specify religion or to identify the caste by the symbol of religion and hence it is a coloured legislation under the guise of a presidential order. The Presidential Order, as it was interpreted, was not only communalistic, it was also anti-Dalit. It tended to divide the Dalits on the basis of religion (Nahar, *Minority Rights in India: Christian Experiences and Apprehensions*).

The explanation given under Article 25 cannot be construed as exception to treat Sikhs, Jains, Buddhists and Hindus as a single class or group except for the purpose of applicability of personal laws under Article 25(2) and the presidential order has misconstrued explanation II of Article 25 for the purpose of discriminating other religions such as Christians and Muslims. Para 3 of the Scheduled Castes Order of 1950 suffers as it discriminates citizens on the ground of religion only, whereas the Scheduled Tribes Order 1951 has omitted para 3 deliberately and citizens of backward class and the forward class are not subject to discrimination on religion only in getting the equality of status and of opportunity [that] is undermined in the case of scheduled castes under the presidential order of 1950 [which] does not promote fraternity among all citizens irrespective of caste, religion and creed.

In view of the judgment passed by the apex court in *Indira Sawhney vs Union of India* (Supp (3) SCC 217), the impugned Constitution (Scheduled Castes) Order 1950 is required to be struck down. The apex court in the said judgment, delivered by BP Jeevan Reddy (on behalf of Kania, CJ, Venkatachaliah, Ahmadi, and for himself), in majority view came to the conclusion that the concept of castes is not confined to the Hindu religion only but it extends irrespective of religious sanction (NCRLM, 2010).

Efforts have been made in the past to get the Constitution (Scheduled Castes) Order 1950 amended by legislation so as to make it religion-neutral. A number of private members' bills have been moved in Parliament but to no avail. In 1983 Gopal Singh Panel and the central Minorities Commission which were strongly recommended to delete para 3 of the SC Order of 1950 On 22nd December 1986 an attempt was made to introduce the Constitutional (Scheduled Caste) Orders (Amendment) Bill once again drawing the attention of the Parliament and the ruling class to look into the demands of the SCs. One of the main arguments of Prof. P.J. Kurien who moved this Bill was that socially, economically and educationally, the SC converts to Christianity are at par with and in certain cases below that of their Hindu counterparts. Another attempt was made from 1991 to 1994 to introduce a Bill making provisions for reservation to Dalit Christians.

Narayana Swamy introduced a Private Member Bill recommending the amendment of the Constitutional (Scheduled Caste) Orders so as to include Dalit Christians under this purview. Once again in 1994 This Bill made the point clear that the SCs and converted Christians from SCs are living in the same villages or towns in similar milieus (Menezes, 2007).

An official bill called the Constitution Scheduled Castes) Order (Amendment) Bill was at last drafted in 1996. The opinions expressed by the state/UT governments on the bill, obtained by the central government, were divided. The government also took note of the recommendations in view of all this divergence of opinion, the bill was not introduced in Parliament. On 6.3.1996, The Ministry of Welfare had proposed to include SC converts to Christianity as SCs in the Constitutional (Scheduled Caste) Orders so as to make them eligible for all statutory safeguards and benefits accruing to the members of SCs. The Cabinet approved this proposal at its meeting held on 07.03.1996. In pursuance of this decision, the Constitutional (Scheduled Caste) Orders (Amendment) Bill 1996, (Bill No. 17 of 1996) was prepared. The Bill sought to amend the earlier Constitutional (Scheduled Caste) Orders so as to remove the bar in Christians converted from the SCs being deemed to be members of the SCs. Although, the Bill was listed for introduction as a supplementary item in the Lok Sabha on 12.03.1996, it could not be introduced. Following the adjournment of Parliament, the Cabinet decided on 14.03.1996, that an Ordinance be issued for the purpose. An Ordinance was proposed to the President, but was not promulgated (Louis, 2007).

Several writ petitions were filed in different High Courts and in The Supreme Court of India by Center for Public interest litigation (WRIT PETITION (CIVIL) NO.180 OF 2004). The petitioners have sought the relief that the Supreme Court should strike down Paragraph 3 of the Constitution (Scheduled Castes) Order 1950 as unconstitutional, being violative of Articles 14, 15 and 16 of the Constitution, and direct the government to extend the protection available under the Scheduled Castes and the Scheduled Tribes

(Prevention of Atrocities) Act 1989 and the Protection of Civil Rights Act 1955 to all persons of scheduled caste origin irrespective of their religion.

Conclusion

The action of the government is arbitrary and discriminatory towards the Scheduled castes converted to Christianity. on the ground that on one hand the Muslims have been excluded for the purposes of treating their caste as scheduled caste but on the other hand the Muslims are included in the list of backwards, meaning thereby that a person belonging to a caste which has been included in the list of Scheduled Castes shall stand excluded from being treated as scheduled caste on the simple ground that he is a Muslim. But on the contrary, if a person though Muslim, but his caste is included in the list of backwards, shall stand included for the purpose of treating him as a backward. In view of this, the action of the government suffers from hostile discrimination against scheduled caste Muslims. These petitioners have also sought the same relief as sought in the petitions pending before the Supreme Court. Constitution (Scheduled tribes) Order 1950 is religious neutral contrary to the scheduled caste order. Status of a backward class is also religious neutral. Indian Constitution clearly stipulates: “No person shall be deprived of his right of personal liberty except according to procedure established by law.” The fact that the Dalit Christians are not getting protection of life and personal liberty is manifest in the various government Acts and rules passed by Parliament to give special protection to the Scheduled Castes but these are not applicable to the Christians of Scheduled Caste origin during atrocities (Nahar, *Minority Rights in India: Christian Experiences and Apprehensions*). However even today, religious values and traditions continue to have a strong influence on Indian society. This religious aspect remains duly reflected in the Constitution and the quickly growing body of national laws. It has also not remained outside the ambit of judicial activism generally witnessed in India (Mahmood, 2000).

The Mandal commission’s report unambiguously stated that state assistance should be given to all genuinely backward sections of people irrespective of religion or caste which

many thought would end discrimination against the poor among the minorities. But the 'soft' Communists or secularists or religious fanatics in the majority community are now said to have found another excuse to deprive the Christians of these facilities. Discrimination against Christians may be due to their negligible "vote-bank". This is the way our rulers create divisions, frictions and differences in our country. The only demand of secularism, as mandated by the Indian Constitution, is that the state must treat all religious creeds and their respective adherents absolutely equally and without any discrimination in all matters under its direct or indirect control.

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