

## Scheduled Castes Status to Dalit Christians and Dalit Muslims: Problems and Perspectives

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### Abstract

Marginalization as opposed to the mainstream is a form of deprivation of opportunities in terms of participation in social, economic, political, educational and cultural life. Upset with the marginalization and ill-treatment in Hindu society the dalits have been converted to several religions especially to Christianity and Islam. However, Religion is not the solution for the up gradation of status in society especially in Indian social context. This is learnt from the ever since demand for reservation in Scheduled Caste List by the Dalit Christians (DCs) and Dalit Muslims (DMs) in India by advancing argument that the mere conversion to a religion does not change their social and economic status. These combined communities cite many instances of social exclusions and marginalization within their own community and out-side the community in society. For which they are organising themselves to assert, argue and demand for social justice through the routes of reservation in the list of Scheduled Castes for which they belongs earlier to their conversion to Christianity and Islam. The movement for the demand was taking place ever since. However, the successive Central Governments are unable to carve out a concrete policy framework for addressing the demand. These communities have found an alternative route to justice for them through the judicial process. There are writ petitions challenging the 1950 Presidential Order pending before the Supreme Court of India. Earlier NDA Government clearly opposed move by citing many reasons. Frequently, the UPA government is adopting evasive methods to prevent a Court verdict on the issue. It sought several adjournments since 2005 and has adopted the tactics of constituting commissions and committees in response to the court's order. Justice Ranganath Mishra Commission it had set up in 2005 submitted its report in May 2007, which was again referred to the National Commission for Scheduled Castes for further examination. Both the commissions are in favour of extending constitutional protection and guarantees to Dalit Christians and Dalit Muslims as available to their counterparts professing Hinduism, Sikhism and Buddhism. In this context it is important to note here that the 1950 Presidential Order was amended twice earlier in 1956 and 1990 to include Dalit Sikhs and Dalit Buddhist respectively. The present NDA government's stand may not be changed of its earlier one. This paper attempts to examine the pros and cons of the reservation to DCs and DMs in SCs List and its impact on the current reservation policy.

**Keywords:** Marginalized; Dalit Christians (DCs); Dalit Muslims (DMs); Hinduism; Buddhism; Sikkism; Religion; Caste; Discrimination; Oppression; Social Exclusion; Reservation; Inclusive Policy; Social Justice.

## Introduction

The society wherein suffering with huge gap between haves and have-nots based on either the class or caste which requires bridging the gap by adopting a special treatment of the communities who are suffering with the disempowered, dispossessed of the wealth and oppressed in the name of colour or caste in Hindu religion in India. The communities especially Dalits who oppressed by the Hindu religion have found their way by embracing Islam, Christianity, Sikhism and Buddhism to seek equal status, equality and brotherhood keeping faith on the teachings of these religions. However, the belief of the communities who embraced these religions proved to false, which does not actually provided such status. Upset with false promises of these religions, the Dalit Christians and Dalit Muslims (SCs converts to Christianity and Islam) started to find their way to get the original status, facilities and opportunities of scheduled castes for which they initiated to organize for unity of both these communities to press the Government to accord the original status by extending the reservational benefits by including their castes in the list of scheduled castes. After a long movement for their demand, upset with the successive governments as a last resort, filed petitions before the honourable Supreme Court of India to get the desired justice. The Supreme Court of India directed the Union Government to come out with a concrete policy frame for the meeting the justice to the DCs and DMs. To satisfy the Supreme Court of India the Union Government has referred the matter to already appointed Commission namely the National Commission for Religious and Linguistic Minorities (NCRLM) by adding an additional term of reference in 2005.

The Report of the National Commission for Religious and Linguistic Minorities (NCRLM) also known as Ranganath Misra Commission has triggered the bitter controversy in general and fear among the fundamentalist Hindus and as well as among the fundamentalist Scheduled Castes. The Ranganath Misra Commission has recommended reservation for marginalized<sup>[1]</sup> or Dalit Muslims and Christians on the basis of religion by deleting Para 3 of the Constitution (Scheduled Castes) Order 1950 which restricted the reservation to only Hindus and later extended it to Sikhs and Buddhists. As these steps are likely to have far reaching consequences for India's emerging egalitarian ethos, fragile social fabric and façade of caste and communal harmony, particularly on the egalitarian faiths like Christianity and Islam. A critique of the Report in the context of

the Constitutional provisions for reservation, and the related reservation politics will be in order. Some says that the implementation of the Ranganath Misra Report would have serious repercussion for the egalitarian faith like Christianity and Islam. Also the implementation of the Report would serious impact the growth and survival of Christianity in India.

The Constitutional Provisions for reservation, understood as a package of protective, preferential and developmental practices, are intended to create conditions for the social advancement of the historically disadvantaged groups, their integration into mainstream society, and participation in its opportunity structure on equal terms with the advanced groups.

### *Historical Overview*

The concept of caste system in India is introduced by *Vedas*; the *Vedas* are the basic pillars of the Hindu religion. The fundamental basis of Hindu religion is its caste system a tight stratified society based on *Varna* system. The *Varnas* which are regarded as initial castes of Hindu religion namely, Brahmana, Kshatriya, Vaishya and Shudra categorized on vertical line which does not allowed upward movement of people of the particular *Varna* i.e., Dalits. The *Varna* system further led to fragmentation of the castes into sects and sub-sects resulting thousands of numbers of castes in India. However, Dalits forms major portion of the Indian society which has been kept outside the *Varna* system treating them as *Avarnas* and *Panchamas* (untouchables). The superior castes in Hindu religion were used to occupy high positions which naturally resulted in exploitation of the *Avarnas* led towards sufferings and miseries. For thousands of years, Dalits continued to live as meek and submissive creatures. Voices against the miseries were very less. However, protest movements took as early as in the 12<sup>th</sup> century in Karnataka led by Lord Basavanna and his team of sharanas (Saints) and in 13<sup>th</sup> century led by Chokhamela, a Dalit saint and Mahatma Jotiba Phule to fight against inequality and injustice. Later on Dr. B.R. Ambedkar has emancipated the Dalits from the clutches of slavery and bondage resulted in reservation for Dalits in Education, Employment and Politics as a result of Constitutional provisions and various Commission reports.

In the report of the Karnataka Third Backward Classes Commission, Justice Chinnappa Reddy has rightly emphasized the need for the continuation of these benefits for calling attention to India's despairingly vast socio-economic inequalities. While

the justification for reservation is thus self evident, it is mainly in Article 15 (4), on special provision for the advancement of any socially and educationally backward class of citizens', and Article 16(4), on reservation of appointments or posts in favour of any 'backward class of citizen' which, in the opinion of the State is not adequately represented in its services, that the other Backward Classes (OBCs) figure as a category apart from the Scheduled Caste and Scheduled Tribes.

The provision in Article 340 for the appointment of a Commission to investigate the conditions of the 'socially and educationally backward classes' should mean that it is the task of this commission to identify the OBCs and recommend measures for their social and educational advancement. It is in pursuance of this provision that the Government of India had set up several commissions so far.

The first commission was appointed in January 1953 headed by Sri Kaka Kalelkar as Chairman and ten other members, used four criteria for identifying OBCs: (a) low social position in the traditional caste hierarchy (b) lack of general educational advancement among the majority of a caste/ community (c) inadequate or lack of representation in government service and (d) inadequate representation in trade, commerce and industry. However, the Commission ran into trouble. The government in May 1961 decided not to draw up all India list of OBCs and extend reservation in its services to any group other than SCs and STs. Consequently, in August 1961 it informed the state governments that while they had the discretion to apply their own criteria for defining backwardness, it would be better to apply economic tests rather than go by caste.

The second Commission was appointed by the Janata Party, set up in January 1979 with B.P. Mandal as Chairman. The Commission's general recommendations for the advancement of OBCs are twofold: First, reservation of 27 per cent job in Central services, public sector undertakings under the Central and State governments, nationalized banks, universities and affiliated colleges, government aided firms in the private sector and state governments and in promotions at all levels, for the general economic and occupational development of the OBCs, the Commission has made a number of recommendations.

When the Mandal Commission submitted its Report in December 1990, the Janata Party was out of power, and Prime Minister Mrs. Indira Gandhi was unwilling to act on it lest she should incur the displeasure of vested interest within her party. When

Rajiv Gandhi became the Prime Minister, as he admitted in an interview, he too avoided 'having a ball with Mandal', apparently as a stand against castes, a stand for the farfetched Constructional perception of 'a classless and casteless society [2]. Prime Minister V.P. Singh's announcement in Parliament on 7 August 1990 of his government's resolve to implement the Mandal Report, beginning with a reservation of 27 per cent jobs in the Central services and public sector undertakings came soon after the first assault on his ministry by its irrepressible and unpredictable Deputy Prime Minister Devi Lal, and just on the eve of Devi Lal's much publicized 'farmers' rally to be held in Delhi [3].

### Methodology

The methodology adopted for this study is content analysis of the Report of the National Commission for Religious and Linguistic Minorities (NCRLM) headed by Justice Ranganath Misra and related matter connected with the reservation to Dalit Christians (DCs) and Dalit Muslims (DMs) by including them in the Scheduled Caste List.

Sources of data acquired from both the primary as well as secondary to support the study. The primary sources of data include statutory enactments, commission reports etc. and secondary sources of data includes books, articles, comments, news items and contents available on online sources.

### *Meaning of Dalit, Dalit Christians and Dalit Muslims*

Dalits are the perpetual victims of marginalization [4] and socio-economic exclusion in India. The term 'Dalit' is not been found in English dictionaries as the term is Indian. The term 'Dalit' was introduced in the 19<sup>th</sup> Century. Now-a-days it is very popular in the society [5]. It is said that the root word 'dal' in 'dalit' has been borrowed into Sanskrit from Hebrew [6]. In both languages it has same meaning i.e., weak, crushed, split open and trampled upon [7]. The term 'dalit' thus describes a condition of disprivilege and deprivation and the people who are deprived on account of their lowly birth. 'Dalit' was first used as far as back in 1931 in journalistic literature. The militant Dalit Panthers of Maharashtra really gave common currency to the watch-word 'dalit' during their emergence in the early 1970s [8]. According to sociologists the term derived from the Latin 'the lattes'. The lattes mean they are late in terms of development sociologically, economically,

politically and culturally in the society. Actually, the term 'Dalit' means the depressed and deprived communities used in various earlier literatures. Dalit Christians and Dalit Muslims are basically origin from Dalits in India i.e., they are converts from the scheduled castes in protest against the untouchability, inequalities, oppressions, deprivations and marginalization [9] in Hindu religion seeking equality and better status.

Even today Dalits are victims of being untouchable. It is the Indian expression of apartheid. Despite the Constitutional guarantee of abolishing untouchability, Dalits are victims of many violations. Bonded labour, child labour, prostitution and Devadasi (slave to god and men) come largely from Dalit communities. Dalits live in separate colonies, far away from the Caste Hindu localities. They do not have access to public wells to draw water or to public eating-places. Dalits have separate glasses for drinking tea or coffee at the village restaurants. They cannot enter Hindu temples. Inter-caste marriages are forbidden both by religion and practice. Atrocities against Dalits basically arise in the context of 'keeping Dalits' in their place within the social hierarchy, mediated by caste and untouchability.

The untouchability is the basis for atrocities and violence, denial of basic needs, land rights, legal discrimination, infringement of civil liberties, inferior or no status, de-humanizing living and working conditions, impoverishment, malnourishment, bad health conditions, high levels of illiteracy and continuing social ostracism.

Dalits are poor, deprived and socially backward. Poor means that they do not have access to enough food, health care, housing and/or clothing (which means that their physiological and safety needs are not fulfilled). They also do not have access to education and employment, underline the injustice they face in every days life. Officially, everybody in India has the same rights and duties, but the practice is different. Social backwardness, lack of access to food, education and health care keeps them in bondage of the upper castes.

The oppression of Dalits has been going on for over 3000 years. They are segregated in all spheres of social life: places of worship, education, housing, land ownership, use of common wells, roads, busses, etc. They are the people who have to do the menial and degrading jobs. They are considered to be untouchable [10].

#### *Definition of the Scheduled Caste*

The expression 'Scheduled Castes' was used for

those people who were kept outside the fourfold Varna (caste) system, and were called Avarnas (casteless) or panchamas. They were called by different names such as: Chandalas, Panchamas or Untouchables. 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, Later the expression was included in the Government of India (Scheduled Castes) Order, 1936. Mahatma Gandhi used to call them as 'Harijan' means children of God [11], which has been protested by Dr. B. R. Ambedkar. Recently the use of the terms 'Harijana' and 'Girijana' has been banned by the Government in their all official communications [12]. The Government Circular banning the terms says that several organizations have been written to the Union Government saying 'harijana' and 'girijana' are derogatory, people of these communities are disappointed with the use of these terms and the centre has directed that the use of these words be discontinued. It further says that all government departments, government bodies and all organizations should, henceforth, use Parishista Jati' and Parishista Pangada' for communications in Kannada and 'Scheduled Castes (SC)' and Scheduled Tribes (ST) in English respectively [13].

#### *Meaning of Scheduled Caste under the Constitution of India*

"Scheduled Caste" [14] 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.

The Indian Constitution, on the basis of its Article 341(1) empowers the President of India who can only specify the castes, races or tribes or parts or groups within castes that can be deemed to be Scheduled Castes. It is then the role of Parliament to make law concerning the groups thus designated.

#### *The President of India Specify the Castes and Races as Scheduled Castes*

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 [15]. It is then the role of Parliament to make law concerning the groups thus designated.

*The President of India Promulgated the Constitution (Scheduled Castes) Order, 1950*

The President of India has promulgated the Constitution (Scheduled Castes) Order, 1950 after adoption of the new Constitution of India replacing the Government of India (Scheduled Castes) Order of 1936 for providing the list of Scheduled Castes for the country. However, new order continued to use the same list used in the Government of India (Scheduled Castes) Order of 1936. The third paragraph of the 1950 Order reads: - Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hindu shall be deemed to be a member of a Scheduled Caste.

The third Paragraph was amended in 1956 and in 1990 in favor of Sikh and Buddhist Dalits. Following the amendments in 1956 and 1990 the DCs and DMs are demanding for providing them similar reservation in scheduled castes list by amending in favour of them one that has been done towards Dalit Sikh and Dalit Buddhists. However, successive governments are not able to do the same. The way remains for the DCs and DMs accelerating the movement for their demand seeking justice.

*Movement for Justice*

For a long period the movement is there for demanding justice to Dalit Christians (DCs) and Dalit Muslims (DMs) who converted from scheduled castes. These two communities demanding for justice to give status of scheduled caste even though they converted to the Christianity and Islam for which their argument is that they are humiliated, given less status and treated as untouchables within Christianity and Islam. As per their plight they say that their status is not changed even though they have converted to these religions. Religion in India nothing to do with their status and all religions in India are practicing the casteism and untouchability for which they demanding de-linking of religion from caste to include them in scheduled caste list which prohibit untouchables of Christianity and Islam to be treated them as scheduled castes due to their conversion to Christianity and Islam.

A.M. Chinnappa, Archbishop of Madras Mylapore Diocese, said in addition to aiming to reap the 'fruits' of such a caste-based society, in terms of reservation and special status, it is also essential to get to the root of the issue and eliminate caste. D. Pandian, State Secretary, Communist Party of India, said the demand was one of basic rights. Even with conversion, things do not change at all and caste

follows people up to the grave. He also promised that the party would espouse this cause, taking it up with the Centre and State governments. Parveen Sultana, lecturer, Basheer Ahmed Syed College for Women, said the Sachar Committee report had indicated that not more than five per cent of Muslims in the country could be categorized as "Above poverty line." It is the duty of the government to help them, she added. Religion must be de-linked from caste, in order to provide Dalit Christians and Muslims an opportunity to benefit from the schemes designed to achieve social and economic equality, speakers at a public meeting have stressed. Participating in the Black Flag Day observation to demand SC status to Dalits among Christians and Muslims, MJM Mahalingam, Vice-Principal, Loyola College, who is also the co-ordinator of the Black Flag Day, said the Indian Constitution Scheduled Caste Order 1950 restricted the classification only to Scheduled Castes who were Hindus. While it was amended in 1956, and later in 1990, to accommodate SCs who had converted to Sikhism and Buddhism, the same had not been extended to Christians and Muslims. L. Yesumarian, lawyer and founder, Dr. Ambedkar Centenary Movement, said the Caste system had permeated into society that even those forsaking Hinduism is not able to escape the effects of caste-wise discrimination and segregation. Even within the Catholic Church, discrimination, segregation, and untouchability of Dalit Christians continued as issues to be addressed. The Tamil Nadu Bishops Council had estimated that 65 per cent of all Catholics in Tamil Nadu, and 75 per cent of Catholics in the country were Dalits as they are treated as marginalized group in Christianity [16].

*Demand for Amendment of Constitution (Scheduled Castes) Order, 1950*

DCs and DMs are fighting for their legitimate rights and privileges provided for the Dalits by the Constitution of India. As Dalits, these Christians and Muslims belong to the ancient indigenous people of the land, yet they have to struggle for their basic right to live as human beings.

*Equality in State and Society*

As a step towards equality, the Constitution of India has provided the Dalits with compensatory discrimination or affirmative action, but since 1950 the Government of India has deprived Christian and Muslim Dalits of such rights. So, most Dalit Christians and Dalit Muslims are economically poor, educationally backward, politically powerless

and socially outcaste. For this reason the Dalit Christians and Dalit Muslims demand that the Indian Government restore their legitimate rights and cease to discriminate against them on grounds of religion.

Dalits practicing Christian faith are excluded from the Scheduled Caste category and are treated as the BC category only. If we look at the living conditions of all Dalit Christians, there is no difference in economic or social conditions when compared to other Dalits. It is an irony that just by practicing their faith of choice; they are excluded from all the benefits that they originally enjoyed as Dalits in a democratic and secular country like India. It is seen that the living conditions of Dalit Christians in various villages in India and in spite of several years of Independence, they are still living in temporary hutments as daily wage farm labourers. The situation is such that unless both the wife and husband work they cannot meet both ends and the earnings are just enough to feed their family with low nutrition food. Hence, it is felt that Dalits who practice their own faith of worship, which could include Christianity, Islam, should also be treated as Dalits with full benefits that come under Scheduled Caste category.

The Chinnappa Reddy Commission Report, the Mandal Commission, the Sachchar Commission Report and other studies have highlighted the marginalization of Dalit communities irrespective of religion [17].

#### *Amendment of Constitution in Favour of Dalit Sikhs*

Following agitation by Master Tara Singh, the Constitution (Scheduled Castes and the Scheduled Tribes) Orders (Amendment) Act, providing for inclusion of Dalit Sikhs in the list of the Scheduled Castes, was passed in 1956. It said: - *"Notwithstanding anything contained in para 2, no person who professes a religion different from the Hindu or Sikh religion shall be deemed to be a member of a Scheduled Caste."*

#### *Amendment of Constitution in Favour of Dalit Buddhist*

In May 1990, to commemorate the centenary of the birth of Dr. Ambedkar, Prime Minister V.P. Singh brought Dalits who converted to Buddhism into the list of Scheduled Castes. He made representations to Parliament that this change of religion, from Hindu to Buddhist, had not altered their social, economic or educational conditions. The para changed: *"Notwithstanding anything contained in para 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."* The same should be acknowledged in the case of Dalits who become Christians and Muslims.

#### *Absolute Need for Amendment in Favor of Dalit Christians and Dalit Muslims*

Today Dalit Christians and Muslims are asking only for their fundamental rights. Dalit Christians and Muslims belong to the same caste and undergo the same age-old torment and oppression as other Dalits. Dalit Christians and Muslims live under the same system of oppression, deprived of justice and human dignity. The economic condition of Dalit converts is in no way different from that of their counterparts - the Dalits who are not converts. Dalit Christians and Dalit Muslims suffer from a high incidence of atrocities and economic and social disabilities owing to the government's reluctance to modify its discriminatory policy on reservation. Christians and Muslims feel that this religion-based discrimination is in violation of Article 15 (1) and contravenes the provisions of Article 15 (4) of the Constitution of India. Constitutional principles prohibit discrimination on the grounds of religion, race, caste, sex or place of birth.

#### *The Constitution (Scheduled Castes) Order, 1950*

In exercise of powers conferred by clause (1) of Art. 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, caste 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 to this Order to a State or to a district or other territorial division thereof shall be construed as reference to the State, district or

other territorial division as constituted on the 1<sup>st</sup> day of May, 1976.

#### *Moves for Change by Legislation*

Efforts have been made in the past to get the Constitution (Scheduled Caste) Order 1950 amended by the legislation so as to make it religion-neutral. A number of Private Members' Bills have been moved in Parliament, but no avail. An official Bill called the Constitution (Scheduled Caste) Orders (Amendment) Bill was at last drafted in 1996. The opinions expressed by the State/UT government on the Bill, obtained by the central Govt., were divided. The Govt. also took note of the recommendations of the 1983 Gopal Singh Panel and Central Minorities Commission which were strongly in favour of deleting para 3 of the SC Order of 1950 and of the SC and ST Commission which was against the same. In view of all this divergence of opinion the Bill was not introduced in the Parliament.

#### *Court Cases Awaiting Decisions*

There are 3 pending petitions before the Supreme Court of India. The petitioners have challenged para 3 of Constitution (Scheduled Caste) Order 1950 saying that a person not professing the Hindu, Sikh or Buddhist faith cannot be included in the lists of Scheduled Castes. They relied upon the following grounds [18]:

1. Secularism is a basic feature of the Constitution. The denial of equal privileges to persons of SC origin converted to Christianity/Islam is in violation of both the basic features enshrined in Art. 25 and the Preamble of the Constitution.
2. The Constitution has provided for equality of opportunity to all those who are similarly situated. Persons of SC origin converted to Christianity/Islam are identically situated vis-à-vis their counterparts professing Hindu, Sikh and Buddhist religions.
3. Even after conversion, the caste label continues and it is difficult for a person in Indian society to get out of the vice of caste system.
4. Caste is more a social combination than a religious group and that even though the tenets of Christianity/Islam do not recognize caste, it is in fact reality.
5. The only available judgment on the issue, namely, the constitutionality of paragraph No.3 of the Constitution (Scheduled Caste) Order 1950 in *Soosai v. Union of India*, 1985. In this judgment,

the Supreme Court had accepted that the Caste continued even after conversion. However, Supreme Court has not satisfied with material facts placed before it.

6. Position of persons of SC origin converted to Christianity/Islam remains the same as before. They continued to be forced into the most demeaning occupations. Their position both in the Church/Mosque as well as amongst fellow Christians/Islems is no better than that suffered by their counterparts in other religious denominations. They continue to be both poor and socially and educationally backward. Inter-marriages between them and upper caste Christians/Islems are rare. In Churches/Mosques they are segregated from the upper caste Christians/Islems. Even after death they are buried in different burial grounds.
7. The atrocities committed on the Dalits are uniform irrespective of the religions they belong to. Yet persons of SC origin converted to Christianity/Islam are deprived of special protective provisions solely on the basis of religion under the SC/ST (Prevention of Atrocities) Act, 1989 and the PCR Act, 1955.
8. The Constitution (Scheduled Tribes) Order, 1951 has omitted para 3 deliberately.
9. The petitioners have sought relief that the Supreme Court should strike down para 3 as unconstitutional being violative of Arts. 14, 15 and 16 of the Constitution.

There are seven Writ Petitions making the same demand are pending in different High Courts.

#### *Views in Favour of Reservation to DCs and DMs*

There are a wide range of divergence in the views and opinions expressed on the subject in favour of the reservation in SCs List before the Commission as follows [19]:

1. Even though Christianity and Islam do not recognize caste system or untouchability, the ground reality in India is different. Persons of SC origin converted to Christianity/Islam are continued to be subjected to same disabilities as SCs including untouchability associated with caste and occupation, as they continue to be part and parcel of the Indian society.
2. It is not only the society that discriminates against persons of SC origin converted to Christianity/Islam (inasmuch as such converts are not treated by other members of their own religion or by members of other religions as their

- equality), they are being discriminated against even by their own religious institutions like church/mosque; the manifestation of discriminations being separate churches/mosques or separate prayer halls or prayer timings in the same church/mosque for them and earmarked areas for the burial of their dead.
3. Denial of SC status to them despite untouchability related practices being enforced against them or atrocities committed against them deprive them of the protection of the SCs and STs (Prevention of Atrocities) Act, 1989.
  4. Despite no visible change in their social or economic status as a result of conversion, the converts are deprived of the benefits of reservation, support and development schemes formulated for their counterparts in Hindu, Sikh and Buddhist religions. This amounts to discrimination by the state on the ground of religion.
  5. Exclusion of Christianity and Islam from the purview of the Constitution (Scheduled Caste) Order 1950 is discriminatory and unconstitutional being violative of the provisions of fundamental rights guaranteed under Articles 14, 15, 16 and 25 of the Constitution. Change of Religion being strictly personal matter, such change should not deprive persons of SC origin protection and benefits available to similarly placed persons in other religions.
  6. Although Sikhism and Buddhism do not recognize Caste system like Christianity and Islam, both Sikhs and Buddhists have been given the status of SC by amending the Constitution (SCs) Order 1950. There are no reasons as to why similar dispensation cannot be extended to similarly placed persons who profess Christianity/Islam. That is not being done, is discrimination on the ground of religion that is prohibited by the Constitution.
  7. Groups and classes of persons of SC origin professing Christianity/Islam who are included in the list of OBCs should be delisted therefrom and be given status of SCs.

#### *Counter Views on SC Reservation to DCs and DMs*

1. The very basis of identification of a certain class of people as SC is social, educational and economic backwardness arising from the age old practice of untouchability that flowed from a rigid caste system in Hindu religion.
2. Persons professing Christianity/Islam were not

treated as depressed class/SC by the British in pre-independent India or by the Indian Govt. after independence. The status of depressed class/SC was an inseparable concomitant of Hindu religion in British and Independent India.

3. Persons of SC origin converted to Christianity/Islam who are socially and educationally backward are included in the list of OBC and are benefitting from reservation in services/educational institutions in favour of OBCs and from other schemes and institutional support system formulated for OBCs.
4. Apart from the benefits available to socially and educationally backward amongst Christians/Muslims as OBCs, they are also benefitting from the constitutional, legal and institutional protection/arrangements as members of minority communities [20].

Presently, reservation is available for SCs and STs at rate of 15% and 7.5% respectively although, as per 2001 census, their share in population is much more. Grant of SC status to converts to Christianity/Islam would, therefore, adversely affect the benefits available to SC in the matter of reservation in services/posts and educational institutions and related matters.

#### *Appointment of the Commission*

The Central Government has come out with clear decision to set up the commission and on 29 October 2004 resolved to constitute a National Commission consisting of [21]:

1. A Chairman
2. 03 members (one of them being an expert in Constitution and Law)
3. A Member-Secretary (with administrative experience)

The commission was asked to present a report on its deliberations and Recommendations within a period of 6 months. The actual composition of the commission was notified nearly 5 months later, in March 2005, by the Ministry of Social Justice and Empowerment. On 21 March 2005, the following took charge as Chairman and Members of the Commission:

1. Justice Ranganth Misra, Former CJI and Ex-Chairman, National Human Rights Commission as Chairman of the Commission.
2. Prof. (Dr.) Tahir Mahmood, Former Chairman, National Commission for Minorities and Ex-Dean, Faculty of Law, Delhi University as



Member of the Commission.

3. Dr. Anil Wilson, Principal, St. Stephen's College, Delhi as Member of the Commission
4. Dr. Mohinder Singh, Director, National Institute of Punjab Studies, Delhi as Member of the Commission.
5. Mrs. Asha Das, a former Secretary to Govt. of India, was later appointed as the Member-Secretary of the Commission.

The Commission's tenure was only six months initially but, from time to time the tenure was extended finally up to 15<sup>th</sup> May, 2007. The Commission submitted its report to the Government on 21<sup>st</sup> May 2007. This report prepared in two volumes:

1. Volume - I: Contains substantive part of the report and the basic papers relating to the Commission and its work
2. Volume - II: Contains the Questionnaires sent, Proceedings of Meetings of the Commission, List of the community leaders consulted, recommendations of the study sponsored by the Commission, Proceedings of the Seminars organized by the various premier institutes sponsored by the Commission etc.

#### 1) *The Terms of Reference of the Commission*

*The following are the terms of Reference [22]:*

1. To suggest criteria for identification of socially and economically backward sections among religious and linguistic minorities;
2. To recommend measures for welfare of socially and economically backward sections among religious and linguistic minorities, including reservation in education and government employment; and
3. To suggest the necessary constitutional, legal and administrative modalities required for the implementation of its recommendations.
4. After nearly five months of its work the Commission Terms of Reference were modified so as to add the following to its original Terms of Reference: "To give its recommendations on the issues raised in Writ Petitions 180/04 and 94/05 filed in the Supreme Court and in certain High Courts relating to Para 3 of the Constitution (Scheduled Castes) Order, 1950 in the context of ceiling of 50% on reservations as also the modalities of inclusion in the list of Scheduled Castes".

#### 2) *Observations of the Commission*

*Following are the observations made by the Commission:*

1. On the careful examination of prevalence of the caste system among various sections of the Indian citizenry we have concluded that caste is in fact a social phenomenon shared by almost all Indian communities irrespective of their religious persuasions. Many of the particular castes are found simultaneously in various religious communities, equally facing problems of social degradation and mistreatment both by their co-religionist and the others.
2. We are also conscious of the fact that the Constitution of India prohibits any discrimination between the citizens on the basis of caste, and yet it sanctions special affirmative measurement for SCs. At the same time it prohibits any discrimination on the ground of religion. Reading all these constitutional provisions together, we are convinced that any religion-based discrimination in selecting particular castes for the affirmative action will conflict with the letter and spirit of the constitutional provisions. We are accordingly making the following recommendations:
3. The caste system should be recognized as a general social characteristic of the Indian society as a whole, without questioning whether the philosophy and teachings of any particular religion recognize it or not - since the Indian brands of certain faith traditions like Christianity and Islam have never assimilated many puritan principles of those religions, posing this question in respect of the caste system only and singling out for a differential treatment is unreasonable and unrealistic.

#### 3. *The Commission's Conclusion*

*Following are the conclusions drawn out by the Commission:*

1. Inclusion of castes in the old Govt. of India (SCs) Order, 1936 itself was based on general impressions and not on any actual survey of the caste situation in the country. The same can be said about the Constitution (Scheduled Caste) Order 1950 which was based on the old SC Order of 1936. Inclusion of additional castes from time to the lists under the present Order of 1950 is also not based on a scientific survey of the actual caste situation in the country.
2. By all available evidence we do find the caste system to be an all-pervading social

phenomenon of India shared by almost all Indian communities irrespective of religious persuasions [23].

It is claimed and agreed to by almost all sections of the society in India, in various context and especially in respect of the issue of reservations that no special benefits can be given to any community or group on the basis of religion. At the same time, however, it is generally insisted upon that the class of Scheduled Castes must remain religion-based. This seems to be illogical and unreasonable.

#### 4) Recommendations of the Commission

The Commission has taken a bold step in recommending the several aspects to provide justice to the Religious and Linguistic Minorities and especially in respect of Dalit Christians and Dalit Muslims which are follows:

1. We would like this fact to be duly recognized that among the Muslims of India the concept of *zat* (caste) and *arzal* (lower caste) are very much in practice; and even the Muslim law of marriage recognizes the doctrine of *kufw* – parity in marriage between the parties in all vital respects including social status and descent – which in this country means nothing but caste.
2. In view of what has been said above, we recommend that para 3 of the Constitution (Scheduled Caste) Order, 1950 – which originally restricted the SC net to the Hindus and later on opened it to Sikhs and Buddhists, thus still excluding from its purview the Muslims, Christians, Jains, and Parsis, etc, - should be wholly deleted by appropriate action so as to completely de-link the SC status from religion and make the SCs net fully religion-neutral that of the STs.
3. We further recommend that all those groups and classes among the Muslims and Christians, etc. whose counterparts among the Hindus, Sikh or Buddhists, are included in the Central or State SCs lists should also covered by the SC net. If any such group or class among the Muslims and Christians, etc. is now included in an OBC list, it should be deleted from there while transferring it to SCs – placing the same persons in the SC list if they are Hindu, Sikh or Buddhist but in the OBC list if they follow any other religion – which is the case in many States – in our opinion clearly amounts to religion-based discrimination.
4. We further recommend that as the Constitution of India guarantees freedom of conscience and

religious freedom as a Fundamental Right, once a person has been included in a SC list a willful change of religion on his part should not affect adversely his or her SC status – as that would in our opinion conflict with the basic constitutional provisions relating to equality, justice and non-discrimination on religious grounds; as also with the spirit of the old and time tested Caste Disabilities Removal Act of 1850.

However, the Report and recommendations of the Ranganath Misra Commission has been criticized by the Bharateeya Janata Party (BJP) and Vishwa Hindu Parishad (VHP). BJP terms the report as a “curse”; it deserved to be “thrown into a dust-bin” and vowed to protect the rights of backward classes. Senior BJP leaders said the party would hold a massive agitation if the UPA government implemented the commission’s recommendations. Attacking the “vote bank and electoral politics” of the Congress, BJP President Nitin Gadkari told the party-organised convention of backward classes on the sprawling Palace Grounds in Bangalore that the party will not accept the report “at any cost”. The report, if implemented, would cut into the reservation of OBCs. “The BJP will oppose it with all its might”, he said. Madhya Pradesh Chief Minister Shivraj Singh Chouhan said BJP will not allow “snatching” of reservation from the OBCs, and also sought to remind the Congress that then Prime Minister Jawaharlal Nehru had opposed reservation for converted SCs and STs [24].

VHP press for rejecting the Report in toto as it is unconstitutional, anti-national and anti-Hindu [25]. Dr. Praveen Togadia warned the Union Government if it accepts the Misra Report he launch nationwide agitation. Mrs. Asha Das, Member-Secretary of the Ranganath Misra Commission has opposed the extension of SCs reservation to DCs and DMs. Being a Member-Secretary of the Commission has submitted a long Dissent Note on the Conferment of Scheduled Caste Status on Scheduled Caste Converts to Christianity and Islam on various counts and ground [26].

#### Findings

This paper arrived at some findings after going through the discussion and analyses of the work on the topic, which is listed as follows:

1. Though there are opposition and apprehension about the Report which is common in any democratic country, but the Report is well studied and very extensive which is a result of painstaking job done by Justice Ranganath Misra

Commission.

2. Its important recommendations are 15% reservation to minorities in education, Central and State Government jobs and social welfare schemes in the OBC quota.
3. Out of 15% reservation for minorities, the Report recommends 10% to Muslims and the remaining 5% to other minorities.
4. It also recommends the inclusion of Dalit Christians and Dalit Muslims in the list of the Scheduled Castes.
5. How is the Report different from the present practice? At present all minorities, including the so-called Dalit Muslims and Dalit Christians, are entitled to reservation of 8.4% out of the 27% reservation meant for the OBCs.
6. This percentage has been hiked and religion has been kept out of reservation for the SCs in the Report.
7. The report has said that the Scheduled Caste (SC) status should be de-linked from religion and the SC net should be made "religion-neutral".
8. This is what Dalits have always been asking for over the years. While exercising the right to the choice of religion, they would like to remain as Dalits and strengthen their unity.
9. The Constitution (Scheduled Castes) Order 1950 paragraph 3 unfortunately defined a Scheduled Caste in terms of religion and not in terms of social and educational backwardness.
10. Dalits and other progressives have argued that the Order of 1950 was against the secular principles enshrined in the Constitution.

### *Suggestions*

On the basis of analysis and findings, the paper suggest some of the suggestions to be followed and required to be fulfilled for the purpose of providing reservation for the DCs and DMs in SC list which are mentioned as under:

1. Government should accept the Report and implement it as early as possible as Report is scientific and address the greater social justice in the country.
2. Recommendations providing the reservation to DCs and DMs do not affect the existing policy of reservation to the Dalits if it is enhanced in proportionate to the strength of the DCs and DMs for which an extensive survey is required.
3. Scheduled Castes Commission and Dalit

organizations are not oppose the Report as its recommendations for reservation to DCs and DMs if provided their interest is not affected.

4. More over DCs and DMs are our own brethren they should not be subject to subjugation.
5. For wider unity and integrity of Dalits as a whole providing SC status to DCs and DMs is required to form a political strength and unity of the oppressed class.
6. Report is necessary to implement for the reasons that it professes secularism rather than Hinduism. However, the Constitution of India is fully Hinduistic in its letter and spirit. This is supported by Explanation II to sub-clause (b) of clause (2) of Art. 25 of the Constitution which says that - "*the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.*" For this reason only the Constitution of India is amended in 1976 to insert the words 'socialistic' and 'secular' into the Preamble of the Constitution [27]. Until then the Constitution remains as basically Hinduistic and becomes symbolically secular after 1976 amendment.
7. If Constitution appears to be a Hinduistic there is no meaning for Dr. Ambedkar's conversion to Buddhism as Buddhism is a part or remains as a sect of the Hindu religion though it has been given a separate religion status.

### **Conclusion**

Dalit Christians and Dalit Muslims are the part and parcel of the Hindu society were subject to same kinds of oppressions and discrimination as original Dalits, merely change in their faith or religion does not make changes in their lives especially economic and political life. Dalits who opposes to include the DCs and DMs in SC list is needs to accept them as their own brethren with different faith which will strengthen the unity and integrity of these communities into one-fold to fight greater claims owed to them due to historical mistakes committed by the caste Hindus. They needs to adhere to 'integration of faiths and unity of the strength and we live together and grow together by sharing pains and pleasures.' Sociologist Dipankar Gupta says: "Some dalits are enjoying reservation for three generations... why not give same facility to dalit Muslims and Christians [28]." Quite naturally the

BJP, VHP, RSS, Shiva Sena and Sri Ram Sena oppose and their opposition is clearly understandable that the extension of SC reservation to Dalit Christians and Dalit Muslims affect the Hindu religion which is a major religion going to become minority religion if the Dalit Christians and Dalit Muslims are accorded the status of SCs. The fear is that the depressed class Hindus especially Dalits are going to mass conversion to Christianity and Islam. Counter to conversion to Christianity and Islam the Hindu fundamentalists organizing campaigns to reconvert those converted to Christianity and Islam under the banner of 'Ghar-Wapasi' (homecoming). The BJP is in power many of its MPs are trying to make anti-conversion law to restrict religious conversion. Tarun Vijaya a BJP, MP was said he set to introduce anti-religion conversion bill in Rajya Sabha according to him "the bill will advocate for a non-bailable warrant to be issued against the person found engaged in the act of conversion, along with ten-year imprisonment. Another MP Yogi Adityanath had expressed similar views and said that 'religious conversion as anti-national' so he said he will introduce a similar bill in Lok Sabha. So BJP wants to criminalize religious conversion without government consent. There was a tough reaction against such move by the Human Rights groups. Singh the Founding Director of US-based human rights group Organization for Minorities of India (OFMI) warn that "these laws are biased against India's religious minorities which prevent people from leaving Hinduism by free choice but empower violent Hindu nationalist to convert minorities into Hinduism against their will". 'Passing national anti-conversion law in India is an attempt to democratically eliminate the most basic human rights of a democratic society by which India stands on the verge of criminalizing religious liberty' said by Pieter Friedrich, a south African analyst [29]. The problems of the DCs and DMs ever grow if at all the BJP enact such law. The move of BJP and its allied outfits can be quite understandable that if the benefits of the SCs are extended to the DCs and DMs there will be mass conversion and the Hindus are going to become minority. It is not true as fear felt by the Hindu fundamentalists because the Muslim rulers ruled this country for about 800 years and Britishers for about 200 years. The Muslim rulers and British rulers never interfered with the religious faiths and never mixed with the administration. If the Muslim and British rulers mind it to convert the Hindus to Islam or Christianity they would have done it, then Muslim and Christians today will be a majority community in India still they are in minority.

The BJP will not be a proper Government to extend the benefits of SC reservation to DCs and DMs for

which the community need to wait for a favorable government at Centre.

Extending the benefit of reservation to DCs and DMs is easy enough but the problems surround with such steps are 1) identification and determination of who are Dalit Christians and Dalit Muslims, 2) to what extent and how many generations of the DCs and DMs needs to be provided such reservation, 3) convincing the present SCs who are against the inclusion of DCs and DMs in the SCs list by extending the SC reservation proportionate to the population of DCs and DMs who are going to be included in the SCs list. These can be addressed if the Government wishes to extend the same.

In my own personal opinion for the protection of larger interest of the dalits who comprises SCs, STs and OBCs specifically the people who are having similar concerns and problems such as SC Dalits, Dalit Christians and Dalit Muslims needs to be brought in a single umbrella for uplifting and providing protection to them with an accelerated manner to achieve overall progress of the Indian society.

#### Notes & References

1. Oxford Dictionary defines the term marginalize as "Treat a person, group, or concept as insignificant or peripheral by removing *religion from the public space*", *we marginalize it* (as adjective **marginalized**) *members of marginalized cultural groups*. See <http://www.oxforddictionaries.com/definition/english/marginalize>.
2. See the Times of India, Bombay, and 2 September 1990.
3. [http://www.dalitchristian.com/index.php?option=com\\_contentandview=articleandid=144:2010-04-10-08-57-08andcatid=43:latest-newsandItemid=85](http://www.dalitchristian.com/index.php?option=com_contentandview=articleandid=144:2010-04-10-08-57-08andcatid=43:latest-newsandItemid=85) visited on 16.10.2013.
4. Merriam Webster defines the term 'marginalize' as "to put or keep (someone) in a powerless or unimportant position within a society or group". See <http://www.merriam-webster.com/dictionary/marginalize>.
5. Sanjay Paswan and Pramanshi Jaideva (Eds.), *Encyclopedia of Dalits in India: Movements*, Vol. 2, (Kalpaz Publications, Delhi, 2002), p.42.
6. Sanjay Paswan and Pramanshi Jaideva (Eds.), *Encyclopedia of Dalits in India: Movements*, Vol. 1, (Kalpaz Publications, Delhi, 2002), p.293.
7. <http://kamalakarduvvuru.wordpress.com/2013/04/17/the-issue-of-sc-status-for-the-christian-dalits/> visited on 16.10.2013.

8. Sanjay Paswan and Pramanshi Jaideva (Eds.), *Encyclopedia of Dalits in India: Movements*, Vol. 1, (Kalpaz Publications, Delhi, 2002), p.294.
  9. Business Dictionary defines the term 'marginalization' as "The process whereby something or someone is pushed to the edge of a group and accorded lesser importance. This is predominantly a social phenomenon by which a minority or sub-group is excluded, and their needs or desires ignored." See <http://www.businessdictionary.com/definition/marginalization.html>.
  10. See <http://www.dalitchristians.com/Html/Discrimination.htm> visited on 16.10.2013.
  11. Sanjay Paswan and Pramanshi Jaideva (Eds.), *Encyclopedia of Dalits in India: Movements*, Vol. 2, (Kalpaz Publications, Delhi, 2002), p.42-43.
  12. Deccan Herald, English Daily, October 10, 2012, p.7.
  13. Ibid.
  14. Article 366 of the Constitution of India.
  15. Article 341 of the Constitution of India.
  16. De-link religion from Caste, Stress the Speakers, The Hindu English Daily, Chennai, September 9, 2010.
  17. Ambrose Pinto, Should Dalit Christians/Muslims be excluded from Reservation?, MAINSTREAM, Vol. XLVIII, No. 17, April 17, 2010.
  18. Report of the National Commission for Religious and Linguistic Minorities, (Ministry of Minority Affairs, Government of India), Vol. I, May 2007, Pp. 140-142.
  19. Ibid, Pp. 142-143.
  20. Ibid, p. 143.
  21. Ibid, p.1.
  22. Ibid.
  23. Supra 20.
  24. PTI Bangalore, July 04, 2010, See <http://www.hindustantimes.com/India-news/Bangalore/BJP-rails-against-Ranganath-Mishra-Commission-report/Article1-567354.aspx> visited on 16.10.2013.
  25. PTI Ahmadabad, December 18, 2009, VHP International General Secretary Dr. Praveen Togadia told Mediapersons in New Delhi. See <http://www.hindustantimes.com/News-Feed/Chunk-HT-UI-IndiaSectionPage-TopStories/VHP-calls-Rangnath-Commission-report-unconstitutional/Article1-488171.aspx> visited on 16.10.2013.
  26. See Report of the National Commission for Religious and Linguistic Minorities, (Ministry of Minority Affairs, Union Government), Vol. I, May 2007, Pp. 156-168.
  27. Subs. by the Constitution (Forty-second Amendment) Act, 1976, s. 2, for "Sovereign Democratic Republic" (w.e.f. 3-1-1977).
  28. See <http://www.persecution.in/content/supreme-court-india-considering-parity-dalit-christians> visited on 16.10.2013.
  29. See <http://www.ibtimes.co.in/bjp-members-introduce-bill-criminalising-religion-conversion-653925>.
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