

India's Scheduled Caste list must be religion-neutral. Muslims, Christians are also Dalit

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Khalid Anis Ansari

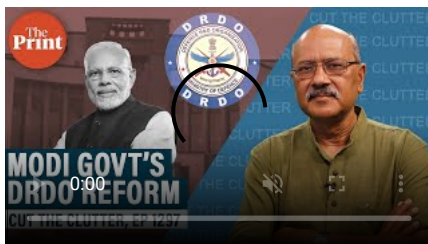
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Dalit Muslims and Christians have been demanding SC status. They argue that they face the same socio-economic constraints as Hindu Dalits | Representational Image | PTI

Pasmanda" is an umbrella term encompassing Backward, Dalit, and Adivasi Muslims. While the Other Backward Classes, Scheduled Tribes, and Economically Weaker Sections categories are religion-neutral and include several Muslim groups, the Scheduled Castes category is not.

After the promulgation of the Constitution of India, the President, under Article 341 (1), issued the Constitution (Scheduled Castes) Order 1950, listing the "castes, races, tribes" to be included in the SC category. Para 3 of the order excluded all non-Hindu groups with the proviso of four Sikh castes: the Ramdasi, Kabirpanthi, Mazhabi, and Sikligar of the Punjab region. Subsequently, the SC net was expanded through amendments, and the remaining Sikh and all Buddhist castes of Dalit origins were included in the SC list in 1956 and 1990, respectively.



Loaded: 2.46%

The Muslims and Christians of Dalit origins, presently accommodated in the OBC category, have been mobilising to lift the religious ban to be duly relocated to the SC category. Since 2004, several petitions have been filed in the Supreme Court by Dalit Muslims and Dalit Christians seeking the scrapping of Para 3, which is seen as arbitrary and unconstitutional. It violates Articles 14 (equality), 15 (non-discrimination), 16 (non-discrimination in employment), and 25 (freedom of conscience) of the Constitution. Recently, the Supreme Court decided to adjudicate the matter that has been pending in the courts for over two decades resulting in animated and polarised conversations.

Hinduism and untouchability

The affidavit filed by the Central government on 20 October 2022 against the petitions asserts that caste and untouchability are "a feature of Hindu society" and that "backwardness based on Untouchability is only prevalent in Hindu society or its branches and not in any other religion." Following this, since the test applied for inclusion in the SC list is "extreme social, educational and economic backwardness arising out of the traditional practice of untouchability," only castes belonging to Hinduism and its branches—Sikhism and Buddhism—can be considered for inclusion.

This core argument can be unpacked at many levels. At the onset, it is coloured by the orientalist-colonial religionisation of caste, where caste was rearticulated primarily as a Hindu phenomenon, and the ideological factors were privileged at the expense of the political economy.

This orthodox framework that carries the authority of stalwarts like German sociologist Max Weber and his intellectual progeny Louis Dumont, and which has historically influenced most anti-caste writings and activism, has been contested by scholars advocating heterodox approaches such as A. M. Hocart, Morton Klass, J. L. Brockington, Declan Quigley, Sumit Guha, and Hira Singh, among several others. Brockington, for instance, argues for the decoupling of caste and Hinduism and suggests that “the caste system, though closely integrated with the [Hindu] religion, is not essential to it.”

One may distinguish between the fundamental spiritual principles of religion and its contextual legal codification and cultural rituals that carry the imprint of class cleavages and status hierarchies, a feature of all post-surplus societies. In riddle number 22 in *Riddles of Hinduism*, BR Ambedkar argues that the doctrine of Brahmaism (as opposed to Brahmanism) in Hindu religio-philosophical thought that stresses Brahma as a cosmic principle that permeates all reality, fundamentally equalises all human beings, and could have acted as the foundation for democracy. However, religions are dynamic and cannot be understood in abstraction alone.

Theology and religious life evolve in relationship with the State, political economy, and extant power relations. Attributing any essence to religions—in this case, Hinduism as essentially inegalitarian or Islam/Christianity as essentially egalitarian—runs against historical evidence and will be an illegitimate premise to base social policy. Definitionally, untouchability falls outside the pale of orthodox understanding of the caste system. The critical Hindu reformist voices—Swami Dayanand Saraswati, Swami Vivekananda, Sri Aurobindo, MK Gandhi, VD Savarkar, and so on—argued against a birth-based *varna* (caste) order and almost without exception understood untouchability as an extraneous influence on Hinduism.

A heinous practice like untouchability, officially banned through Article 17 of the Constitution, cannot be construed as a protected category or an essential feature of Hinduism. But the practice of untouchability among Muslims is rigorously documented in the colonial census reports (1881-1931), regional and provincial glossaries and accounts, scholarly works by Ghaus Ansari, Imtiaz Ahmad, Joel Lee, P. K. Trivedi, Srinivas Goli, among several others, movement literature such as Ali Anwar’s *Masawat Ki Jung* (2005) and *Dalit Muslim* (2004), and the National Commission of Minorities Report (2008) by Satish Deshpande. Ambedkar also notes untouchability among Muslims in *Pakistan or the Partition of India* (1945). Untouchability is a pan-religion social evil in South Asia.

Sikhism and Buddhism as Hindu branches

Several arguments are advanced in the Centre’s affidavit to justify the extension of SC preferences to the Sikhs and Buddhists of Dalit origins and not to similarly situated Muslims and Christians as a reasonable classification. Untouchability is cited as the primary test for recognition in the SC category, which only applies to Hinduism and its offshoots and not to egalitarian faiths like Islam and Christianity. While “untouchability” entered significantly in inverted commas in Article 17, constitutes the broader definition for inclusion purposes in the SC category, historically, the listing has seen departures. Various untouchable castes like the Ezhavas in Kerala were dropped, and “touchable castes,” for instance the Vaddar (Bhovi), Lambani (Banjara), Koracha and Korama in Karnataka, were included.

The invocation of Explanation II of Article 25 (b), which renders Sikhs, Jains, and Buddhists as legal Hindus for purposes of public access to Hindu religious institutions, for the SC listing seems a retrospective justification. While four Sikh castes were included in the Constitution (Scheduled Caste) Order 1950 due to specific negotiations in the Constituent Assembly with the Sikh representatives, the remaining were included after the 1956 amendment. The claim of a practicing Sikh from the Bawaria caste to be recognised as SC since the Hindu Bawarias were enlisted was rejected by the court in 1952 in *S. Gurmukh Singh vs. Union Of India (Uoi) And Ors.* AIR 1952 P H 143.

The Buddhist Dalits did not find a place in the Order even when Ambedkar was the central law minister. In an inspiring speech, “Why Was Nagpur Chosen?” delivered on 15 October 1956—a day after he converted to Buddhism—Ambedkar acknowledged that his followers would lose SC entitlements due to conversion to Buddhism. Further, in 1965, the Supreme Court rejected the argument that Buddhists were Hindus in *Punjabrao v. Meshram* A.I.R. 1965 SC 1179. If Sikhism and Buddhism were a Hindu branch according to the Constitution, why did most Dalits Sikhs have to wait till 1956 and the Dalit Buddhists till 1990 to be enlisted as SCs?

If Islam and Christianity are egalitarian traditions, then so are Sikhism and Buddhism. If Muslim lowered castes can avail of OBC and minority preferences, so could the Sikhs and Buddhists. OBC category is religion-neutral and Sikhs and Buddhists are construed as religious minorities per the National Commission for Minorities Act 1992.

“Oppressive severity” argument

The government’s affidavit decries the absence of “documented research” to establish that caste-based disabilities persist “with their oppressive severity in the environment of Christianity/Islam.” It characterises the National Commission for Religious and Linguistic Minorities (Ranganath Mishra) Report (2007), that recommended the inclusion of Dalit Muslims/Christians in the SC list, as “flawed since the report bases its findings without any field studies.”

As we know, Dalit Sikhs were included in the list on the recommendation of the Report of the First Backward Classes (Kaka Kalelkar) Commission (1955), while the Dalit Buddhists were included based on the Report of Minorities (Gopal Singh) (1983). Since the caste census was discontinued after 1931, one may ask what “field studies” were conducted by these bodies to pass the severity test for Dalit Sikhs and Dalit Buddhists, which are procedurally different from the Ranganath Mishra Commission Report. Most commissions rely on

responses from the states or union territories to detailed questionnaires, existing social scientific knowledge, workshops, conversations with experts, activists, civil society institutions, and various stakeholders, commissioning limited studies, etc. Ranganath Mishra commission followed a similar methodology and is not an exception.

To ameliorate their social conditions and transcend stigma, the social groups victimised by untouchability have historically employed whatever instruments were available to them—conversion, public policies, education, the power of the franchise, and so on—at times successfully, most of the time not. The competitive religious market, dominated by elite voices, usually trumpets the transcendence of caste after conversion to putative egalitarian faiths. This applies both to Islam/Christianity and Sikhism/Buddhism.

However, the empirical details often present a starker picture. Dalit Muslim castes like the *gadheri* (donkey breeders), *bhangi* (scavengers), *halalkhor* (sweepers), *lalbegi* (scavengers), *bhatiyara* (innkeepers), *gorkan* (gravediggers), *bakho* (gypsies), and others continue to face extreme disabilities arising out of untouchability. Many of these castes also follow Hinduism and are on the SC list but similarly situated Muslims are not. There is documented evidence of discrimination in religious-community spaces like mosques, graveyards, madrasas, community organisations, and broader civil society because of the stigma attached to their castes. Dalitness sticks post-conversion.

Moreover, there is also an inversely proportional relationship between the experience of untouchability and compensatory discrimination based on it. As the SC list is not qualified by the “creamy layer,” many generations of beneficiaries that have witnessed upward mobility and relocated to urban professions do not face the same severity of caste stigma as before.

The indigeneity turn

The most intriguing argument in the affidavit supporting the classification between Hindus/Sikh/Buddhist Dalits and Muslim/Christian Dalits is the geographical origins of their faith traditions. The Centre asserts that “the present is a case of classification between Indian citizens and foreigners which cannot be doubted on any count.”

If we take the long arc of history, then with all the cartographic problems in imagining India across time, after the earliest African migrants that arrived about 65,000 years back, almost all subsequent people Harappans, Aryans, Scythians, Huns, Arabs, Persians, and so on were immigrants. As a result, their autochthony claims are invalid. Constitutionally, citizens cannot be discriminated against based on the origin of their religions or even being atheists, or not subscribing to any organised faith. To characterise Dalit Muslims/Christians, quintessentially legitimate citizens of this country, as “foreigners” is a rare achievement in a government document and it smacks of ideological closures.

If one reads the court judgments on conversions, there appears to be a struggle approaching these issues as a question of law or fact. In *Mohammad Sadique vs. Darbara Singh Guru* civil appeal of 2015, where a Muslim had converted to Sikhism and claimed SC rights, the Supreme Court stated, “It is settled law that a person can change his religion and faith but not the caste, to which he belongs, as caste has linkage to birth.” In stark contrast, the court approaches cases involving conversions to Islam or Christianity as a question of law. It invokes the “doctrine of the eclipse,” suggesting the loss of caste on conversions to Islam/Christianity, which is miraculously recovered on converting back to Hinduism. This definitional fiat threatens Dalits with losing their entitlements as SCs if they choose to convert to Islam and Christianity and is a violation of their agency and freedom of conscience.

The affidavit raises the identification problem of Dalit Muslims/Christians due to long durée conversion. This is a spurious argument as the Dalit Muslims/Christians are already included in the OBC category. Once enlisted, the same caste certification and verification process will also apply to them in the SC category. The impact on the existing SC community is a strategic question and can be resolved by instruments such as subcategorisation and quota expansion. Upon its enactment, the Constitution (Scheduled Castes) Order, 1950 contained around 601 caste names in its Schedule. Presently, the list has expanded to include more than 1,180 names, signifying the inclusion of over 500 castes from backward communities into the Scheduled Castes list since 1950. Interestingly, these additions have been made through amendments to the Order without altering the existing quota.

The arguments in the affidavit fail to persuade us why the preferences extended to Dalit Sikhs/Buddhists should be denied to Dalit Muslims/Christians. The classification fails the “intelligible differentia” test as it is arbitrary and violates *inter alia* the equality code and fundamental rights as per Article 14. This is a fit case for the Supreme Court to exercise the power of judicial review and strike down Para 3. The Muslims (and Christians) of Dalit origins are Dalits socially, educationally, and economically, but not legally. It must be set right by delinking the SC category with religion and accommodating Dalit Muslims and Dalit Christians.

The author is an Associate Professor of Sociology at Azim Premji University. Views are personal.

(Edited by Ratan Priya)