

# Muslim quota row deepening fault lines among Dalits

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With parliamentary elections underway, BJP's invoking of the familiar Muslim appeasement charges against Congress has reopened the Muslim quota debate. In this complex debate, some prominent anti-caste voices have opposed the inclusion of Muslims and Christians of Dalit origins in the Scheduled Caste (SC) category.

Their core argument is that excluding non-Indic faiths, particularly Islam and Christianity, from the SC category was settled in the Constitution through the Constitutional (SC) Order 1950, notified by the ministry of law when B R Ambedkar was the law minister. I will contend that this is a half-truth, and the argument on the authority of the Constitution and Babasaheb Ambedkar does not sustain a deeper investigation.

At the onset, Article 341 (1) of the Constitution does not advance any religion-based restriction in the SC list. Further, Article 13 (1 and 2) pronounces any law made before the commencement of the Constitution that is inconsistent with or in derogation of the fundamental rights to be void. The religion-based restriction in the SC list, i.e., the exclusion of non-Hindu Dalits, does not have the backing of the Constitution but was introduced by Para 3 of the Constitutional (SC) Order 1950 passed by the President. Since the President is bound by the advice of the council of ministers headed by the Prime Minister as per Article 74, the 1950 Order reflects the will of the incumbent government and not the Constitution per se.

Para 3 had excluded all non-Hindu groups with the proviso of four Sikh castes of the Punjab region (out of 34 listed in the schedule). Subsequently, the SC net was expanded through amendments, and the remaining Sikh and all Buddhist castes of Dalit origin were included in the SC list in 1956 and 1990, practically excluding Dalit Muslims and Dalit Christians. Muslims and Christians of Dalit origin have been mobilising to lift the religious ban. Since 2004, several petitions have been filed in the Supreme Court for the scrapping of Para 3. The matter has been pending for over two decades.



Women paying tribute at the 125 feet statue of social justice on the occasion of Dr. BR Ambedkar birth anniversary in Vijayawada on Sunday. pic: SS Vijay Babu

If, as per the Constitution, religion alone cannot be used as a principle for granting reservations, it cannot also be used for purposes of exclusion from reservations. That is precisely what the Presidential Order 1950 does by excluding Dalit Muslims and Dalit Christians from the SC category on the sole criterion of religion. This violates their fundamental rights, primarily Article 14 (equality) but also Articles 15 (non-discrimination), 16 (non-discrimination in employment), and 25 (freedom of conscience).

Did Ambedkar endorse the 1950 Order merely because the law ministry notified it? Under regular administrative business, any concerned ministry can notify presidential orders, and one may not get to know Ambedkar's position on the matter as the advice of the council of ministers is protected by Article 74 (2). While the onus of any Presidential Order falls primarily on the PM — Jawaharlal Nehru, at that point — one may speculate about Ambedkar's agency through a set of further questions. Why did Ambedkar fail to include Buddhism in the SC list through the Presidential Order 1950 even when he was the law minister? In an inspiring speech, 'Why Was Nagpur Chosen?' delivered on October 15, 1956 — a day after he converted to Buddhism — Ambedkar acknowledged that his followers would lose SC entitlements due to conversion to Buddhism. Also, he explicitly favoured sociology over theology and practice over principles in analysing religious collectivities. In 'Pakistan or the Partition of India', he notes categorically that "...the Mahomedans observe not only caste but also untouchability". In 'The Condition of the Convert', Ambedkar states that "...conversion has not brought about any change in the status of the untouchable convert...the untouchable remains an untouchable even though he becomes a Christian."

Moreover, explanation II of Article 25 (b) renders Sikhs, Jains, and Buddhists as 'legal' Hindus only for purposes of social welfare, reform, and public access to religious institutions. If Sikhism and Buddhism were a Hindu branch according to the Constitution, why did most Dalit Sikhs have to wait till 1956 and Dalit Buddhists till 1990 to be enlisted as SCs? If Islam and Christianity are egalitarian traditions, then so are Sikhism and Buddhism. If Muslim and Christian castes can avail of religiously neutral OBC, ST, and EWS reservations along with minority preferences, so could Sikhs and Buddhists, who are construed as religious minorities.

The shrill opposition of a few anti-caste voices to the inclusion of Dalit Muslims and Dalit Christians in the SC category has very little to do with the Constitution or Babasaheb's vision. It is animated by the punyabhumi/pitrabhumi (holyland/fatherland) logic of V D Savarkar. The new consensus that a few Ambedkarites are forging to invalidate non-Indic Dalits from being recognised as SCs is aimed at sharpening the religion-based fault lines within the Dalit community. It is neither just nor democratic