



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## The 1950 Presidential Order: A Saga of 73 Years of Denial and Deprivation

Khalil ur Rehaman<sup>a</sup>

<sup>a</sup>Karnataka State Law University, Hubli, India

Received 03 August 2023; Accepted 20 August 2023; Published 26 August 2023

---

*The Constitution (Scheduled Caste Order) 1950, popularly known as the Presidential Order 1950,<sup>1</sup> is one of the many controversial matters that are yet to be fully settled. While the Indian Judiciary is presently hearing the matter, it's interesting to see what position it takes. Needless to say, it would be binding upon all. This article is a final attempt at understanding the issue at hand in the context of the Constitution. The amendment to the order in the subsequent years to include Sikhs and Buddhists has opened Pandora's Box. The issue got limelight only after the Ranganath Misra Commission report brought home the point of according SC status to Dalit Muslims and Dalit Christians (henceforth DMs and DCs respectively) and recommended amending the 1950 Presidential Order. This Article revolves around the Order, ascertaining its validity and objectivity in the context of 'lived realities' and checks the classification on the anvil of dual test of classification formulated by the judiciary. It develops on the deliberations that led to the promulgation of the order and the rationale behind it. The study deals with the question of law and tests the Presidential Order through the touchstone of Arts 14,<sup>2</sup> 15<sup>3</sup> and 25<sup>4</sup> of the Indian Constitution. The existence of caste and the concept of purity and impurity also extend to Christian and Muslim societies, which the article briefly touches upon.*

---

<sup>1</sup> Constitution (Scheduled Castes) Order 1950

<sup>2</sup> Constitution of India 1950, art 14

<sup>3</sup> Constitution of India 1950, art 15

<sup>4</sup> Constitution of India 1950, art 25

**Keywords:** *dalit muslims, dalit christians presidential order, schedule caste, reasonable classification.*

---

## INTRODUCTION

The caste system in India is notorious to Hindu society due to the legal sanction it receives from the scriptures. Though Islam and Christianity are considered to be egalitarian religions, the prevalence of the caste system can be traced to these societies, too. Those low castes who converted to Islam and Christianity from Hinduism face social stigmas in their day-to-day lives. They are perceived to be Dalits first and Christians and Muslims second<sup>5</sup> since the conversion to a different religion does not mean the change of caste of a person in which he has taken birth.<sup>6</sup> Though Islam and Christianity, unlike Hinduism, do not give any religious-legal sanction to the caste system centuries of historical togetherness have influenced each other.<sup>7</sup> Both have shared common traits due to the amalgam of cultures. The same has never been acknowledged by the Muslim and Christian society which is evident from the intriguing silence of the Muslim leaders in the constituent assembly on the issue.

There has been a discussion in academic circles touching on the sociological and political aspects concerning the DMs and DCs in the recent past,<sup>8</sup> but the discourse and response about the same among the legal fraternity is lackluster. This article humbly endeavors to fill the lacunae by dealing with the matter at hand in the context of the law. This is a relative study aimed at ascertaining the validity of the 1950 Presidential Order *vis a vis* the constitution and bringing out the fault lines in paragraph 3 of the Order. The object of the study is to critically examine the order and justify the inclusion of Dalit-originating Muslims and Christians into the SC list. It

---

<sup>5</sup> Satish Deshpande, 'Dalits in the Muslim and Christian Communities A Status Report on Current Social Scientific Knowledge' (Kerala State Commission for Minorities, 2008) <[http://kscminorities.org/pdf/Status%20Report%20on%20Dalits in Christian and Muslim Communities.pdf](http://kscminorities.org/pdf/Status%20Report%20on%20Dalits%20in%20Christian%20and%20Muslim%20Communities.pdf)>

<sup>6</sup> *Rebeka Mathai v State of Kerala* W.P.(C) No 27063/2019

<sup>7</sup> *Indra Sawhney v Union of India* 1992 (3) SCC 217

<sup>8</sup> Arvind Kumar, 'Exclusion of Pasmanda Muslims and Dalit Christians from the Scheduled Caste Quota' (2023) 43(2) South Asia Research <<https://doi.org/10.1177/02627280231161000>> accessed 30 July 2023

also tries to burst the myth of the non-existence of caste among these communities by referring to various judicial observations.

### **A BINARY: DIVINE VIEW VS LIVED REALITIES**

There are predominantly two views concerning DMs and DCs; the book view and the field/practical view. The book view is the one where the focus is on theology and belief systems whereas the actual existing inter-caste/ community relations can be termed the field view.<sup>9</sup> The Presidential Order of 1950 confers Scheduled caste status only to those who practice Hindu, Sikh, and Buddhist religions.<sup>10</sup> It does not recognize the unwritten caste system among Indian Muslims and Christians. These religions have been kept out of the ambit of the Scheduled Caste. The two reasons predominantly given for their exclusion include: Caste is an antithesis to Islam and Christianity as its theology does not recognize it. It is a unique feature of the Hindu Society and once the person converts to these religions the baggage of the caste/ caste system goes away and its debilitating effects cease to exist.<sup>11</sup> However, this does not hold true in the Indian context. Why the issue never got highlighted within the community is a matter of question. There has never been a discourse within the community or the civil society on the marginalization of Dalit Muslims in social spheres and reservations for them. This is because there exist two broad perspectives. The first is that Muslims as a whole are backward and marginalized. Hence, the internal caste/class difference could be solved amicably within the community to project a broader Muslim unity to increase the bargaining power with the state.<sup>12</sup> The other is the Muslim *Pasmanda* perspective, which highlights the stark caste differences existing among the community. This view propagates that to achieve the primordial goal of social justice and democratize the Muslim community, the empowerment of marginalized Muslims must be taken

---

<sup>9</sup> Tejas Harad, 'Ground Reality Long Ignored: Dalit Muslims, Dalit Christians Must get SC status' (*The Quint*, 21 September 2022) <<https://www.thequint.com/opinion/dalit-muslims-and-dalit-christians-must-get-scheduled-caste-status>> accessed 30 July 2023

<sup>10</sup> Constitution (Scheduled Castes) Order 1950

<sup>11</sup> Harad (n 9)

<sup>12</sup> Hilal Ahmed, *Siyasi Muslims A Story of Political Islams in India* (Penguin Random House 2019)

up as a top priority.<sup>13</sup> It is the former perspective that has prevailed over the latter in the past several decades. Amidst all this, at the center of debate lies the 1950 Presidential Order.

## BACKGROUND OF THE 1950 PRESIDENTIAL ORDER

The President has the power to ‘specify the castes, races or tribes or parts of groups within castes, races or tribes’<sup>14</sup> who could be included as Scheduled Castes. In the exercise of this power conferred by the Constitution, the first President of India Babu Rajendra Prasad promulgated the Presidential Order in the year 1950. When looked at the text of the art. 341 it is clear that the power given to the President is to specify the caste and not the religion. But the Order does so by stating, “no person who professes a religion different from the Hindu, the Sikh and the Buddhist religion shall be deemed to be a member of a Scheduled Caste”<sup>15</sup> which indicates that it is a ‘colored legislation under the guise of the presidential order’.<sup>16</sup> In this case, the office of the President was used as a pawn by the legislature to accomplish something at the backhand.

The 1950 Presidential Order is reminiscent of the 1936 Governmental Order<sup>17</sup> issued by the British government which had included Muslim Dalit castes e.g. Halalkhor and Dafeli<sup>18</sup>, but were barred from availing benefits.<sup>19</sup> The Christians, Buddhists of Bengal, and Tribals were excluded.<sup>20</sup> The Order may have excluded Christians since the British might not have acknowledged caste among their Indian co-religionists based on their theological belief. The 1936 Order was promulgated by the Majesty based on the Government of India Act 1935 where the term ‘Scheduled Caste’ was used for the first time which defined it as “such castes, races or tribes or parts of or groups within castes, races, tribes, parts or groups which appear to his Majesty in Council to correspond to the classes of persons formerly known as ‘the depressed

---

<sup>13</sup> *Ibid*

<sup>14</sup> Constitution of India 1950, art 341 (1)

<sup>15</sup> Constitution (Scheduled Castes) Order 1950

<sup>16</sup> Ministry of Minority Affairs, *Report of the National Commission for Religious and Linguistic Minority* (vol 2, 2007)

<sup>17</sup> Government of India (Scheduled Castes) Order 1936

<sup>18</sup> *Ibid*

<sup>19</sup> Sachar Commission, *Report of the High-Level Committee on the Social, Economic, and Educational Status of the Muslim Community of India* (2006)

<sup>20</sup> Government of India (Scheduled Castes) Order 1936

classes' as his Majesty in Council may specify."<sup>21</sup> It had a religion-neutral connotation just in the case of Art. 341(1).

In the Constituent Assembly Debates, the Sikhs led by Sardar Bhupinder Singh Mann and Sardar Hukum Singh<sup>22</sup> made a passionate appeal to include Sikh Depressed Classes in the Scheduled Caste list: 'Now the power has been given to the President to include all the depressed classes in the Scheduled Class. At this time of the day, Sir, I request and repeat my request that the suppressed, backward Sikh scheduled classes should be given the same concessions, and should be treated alike everywhere in the whole of India, equal to their counterparts' - Bhupinder Singh Man.<sup>23</sup>

The Muslim and Christian representatives however went along with the general consensus and conspicuously remained silent during the debate.<sup>24</sup> Finally conceding to the Sikh demands, as a matter of exception, four Sikh lower castes- Mazhabis, Sikligars, Ramdasias and Kabir Panthis - were included in the Order. The Order was later been amended twice in the years 1956 and 1990 to accommodate Dalit-originating Sikhs and Buddhists respectively.

### **CASTE AT PLAY: A REALITY IN MUSLIM AND CHRISTIAN SOCIETY**

Caste among Muslims and Christians is a crass reality that ought to be acknowledged. The two reasons for the presence of castes in these societies could be understood from the Mandal Commission's observation:

i. To the people who converted to these communities, for them caste left an indelible mark on their social consciousness and cultural mores. As the Caste happens to be a 'great conditioner of mind,' it was carried on by them to their newer religions

---

<sup>21</sup> *Ibid*

<sup>22</sup> Tanveer Fazal, 'Scheduled Castes, reservations, and religion: Revisiting a juridical debate' (2017) 51(1) Contributions to Indian Sociology <<https://doi.org/10.1177/0069966716680429>> accessed 30 July 2023

<sup>23</sup> Constituent Assembly Deb 21 November 1949, cols 11.161.6 – 11.161.12

<sup>24</sup> Fazal (n 22)

ii. They also carried up their deeply ingrained ideas of social hierarchy and stratification which resulted in them being the Trojan horses of the caste system. Thus, both from within and without, caste amongst non-Hindu communities received continuous sustenance and stimulus.<sup>25</sup> Hence, this peculiar character of the Hindu society infiltrated even amongst Muslims, Christians and Sikhs although it has no place in these religions.<sup>26</sup>

Learned Judge P.B Sawant noted: *When Islam and Christianity made their entries and ruled the country, many from lower castes embraced them to escape the tyranny and inequity... However, the change of religion did not always succeed in eliminating castes. The converts carried with them their castes and occupations to the new religion. The result has been that even among Sikhs, Muslims, and Christians, caste prevails in varying degrees in practice.*<sup>27</sup>

There is a stark contradiction between the divine view and the 'lived realities.' Ultimately humans live in societies, and the evils in them do not fade away easily. The marked distinctions among various sections of the Muslim community especially among converts to Islam, though it does not recognize such kind of divisions and professes common brotherhood, is a crass reality.<sup>28</sup> The Sachar Commission makes three classifications among the Indian Muslim community, Ashraf: Muslims of foreign blood, Ajlaf: meaning degraded or unholy, the ritually clean occupational groups and low ranking converts and Arzal: very lowest castes.<sup>29</sup> The level of caste system intrinsic among the Christian society is also noted in *K.C Vasanth Kumar v Union of India*:<sup>30</sup>

So sadly and oppressively deep-rooted is caste in our country that it has cut across even the barriers of religion. The caste system has penetrated other religious and dissentient Hindu sects to whom the practice of caste should be anathema and today we find that practitioners of other religious faiths and Hindu dissentients are sometimes as rigid adherents to the

---

<sup>25</sup> Mandal Commission, *Report of the Backward Classes Commission* (vol 1, 1980)

<sup>26</sup> *Indra Sawhney v Union of India* (1992) 3 SCC 217

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup> Sachar Commission, *Report of the High-Level Committee on the Social, Economic, and Educational Status of the Muslim Community of India* (2006)

<sup>30</sup> *K.C. Vasanth Kumar & Anr v State of Karnataka* (1985) AIR 1495

system of caste as the conservative Hindus. We find Christian Harijans, Christian Madras, Christian Reddys, Christian Sikhs, Mujbi Sikhs etc.

In *K.P Manu*, the Supreme Court cited the Chinappa Reddy Commission which had mentioned the condition of converted Dalits and Tribals in Karnataka, stating there has been no improvement in their position even after conversion to Christianity. It notes, “Thanks to all the pervasive caste system which has penetrated the barriers of religion also, SC and ST converts to Christianity and their descendants continue, to a great degree, to be victims of the same social injustice to which the SCs and STs are subjects.”<sup>31</sup>

### REVIEWING THE 1950 PRESIDENTIAL ORDER THROUGH THE PRISM OF REASONABLE CLASSIFICATION

The government termed the DMs and DCs as ‘Foreigners’ in its affidavit submitted to the Supreme Court and invoked article 14 which provides for classification but not class legislation suggesting the classification in the 1950 Order distinguishes the Indian citizens from the foreigners.<sup>32</sup> The government argues that the classification must be seen *vis a vis* the dual test of classification i.e. reasonable classification and intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the groups.<sup>33</sup> Those grouped together must possess common characteristics justifying their inclusion in the group and distinguishing them from those excluded.<sup>34</sup> It includes all those who are similarly situated and none who are not.<sup>35</sup> The reasonableness of the classification has to be determined in the context of the realities of life. It is the substance and not the form to be considered.<sup>36</sup> By the passage of time, a law may cease to be invalid though it is valid at the time of enactment given changed situations.<sup>37</sup>

---

<sup>31</sup> *K.P Manu v Chairman, Scrutiny Committee for Verification of Communication Certificate* (2015) SCC OnLine SC 161

<sup>32</sup> Abhinav Lakshman, ‘Centre alludes to ‘foreign origins’ in its affidavit on Dalit Christians, Dalit Muslims’ (*The Hindu*, 09 November 2022) <<https://www.thehindu.com/news/national/centre-alludes-to-foreign-origins-in-its-affidavit-on-dalit-christians-dalit-muslims/article66111532.ece>> accessed 30 July 2023

<sup>33</sup> *Budhan v State of Bihar* (1955) 1 SCR 1045

<sup>34</sup> *Kerala Hotel and Restaurant Association v State of Kerala* (1990) 2 SCC 502

<sup>35</sup> *Ibid*

<sup>36</sup> DD Basu, *Constitution of India* (8th edn, Wadhwa Publications 2007) 1415

<sup>37</sup> *John Vallamattom v Union of India* (2003) 6 SCC 611

The low status accorded to the converted Dalits in their earlier community has not become advanced, equal to the status of others in the society, despite the change of religion. They remain socially backward facing social stigmas in day-to-day lives suffering exclusion.<sup>38</sup> That being the case, when Dalits remain Dalits irrespective of their religion, excluding them from the SC category does not pass the test of classification. Those grouped together must possess common characteristics justifying their inclusion in the group and distinguishing them from those excluded.<sup>39</sup> Looked thus, the inclusion of Sikhs and Buddhists in the amended Order despite their being 'egalitarian religions' where no religious sanction for caste system and untouchability in the scriptures is recognized, excluding Muslims and Christians no longer remains a reasonable classification as the constitutionality of the provision has to be judged keeping in view the interpretive changes of the statute affected by the passage of time.<sup>40</sup> Furthermore, the Presidential Order does not pass the 'New Equality Concept' test laid down in *E.P Royappa v State of Tamil Nadu*<sup>41</sup>, where the test of reasonable classification was done away with:

"Equality is a dynamic concept and it cannot be 'cribbled, cabined and confined' within traditional and doctrinaire limits. Equality is antithetical to arbitrariness. Equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, a violation of Art. 14... Articles 14 and 16 strike at arbitrariness in state action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable to all similarly situated and it must not be guided by an extraneous or irrelevant consideration because that would be a denial of equality."

The basic tenets of Sikhism and Buddhism do not recognize the caste system like Christianity and Islam. But Sikhs and Buddhists have been favored while Muslims and Christians have been

---

<sup>38</sup> Sachar Commission, *Report of the High-Level Committee on the Social, Economic, and Educational Status of the Muslim Community of India* (2006)

<sup>39</sup> *Kerala Hotel and Restaurant Association v State of Kerala* (1990) 2 SCC 502

<sup>40</sup> *John Vallamattom v Union of India* (2003) 6 SCC 611

<sup>41</sup> *E P Royappa v State of Tamil Nadu* (1974) 4 SCC 3



discriminated against by the President Order which is patently arbitrary, unreasonable, and unjust.<sup>42</sup>

## PRESIDENTIAL ORDER: ANTITHESIS TO CONSTITUTION

**i. Discriminatory:** The 1950 Presidential Order is discriminative as it confers SC status keeping religion as the basis for the determination. It is not a religion-neutral term as the inclusion and exclusion of SCs are based on religion which is a blatant violation of Article 15 of the Indian Constitution.

On the other side, the Sikhs and Buddhists, like the Muslims and Christians, can avail the benefits of minority rights to establish and administer educational institutions<sup>43</sup> and can reserve seats in such institutions. They can also avail of EWS (the upper caste Sikhs & Buddhists), OBC, and ST reservations. But while Buddhists and Sikhs of Dalit origin can be recognized in the SC category, Muslims and Christians of Dalit origin are not, which is discriminatory. Moreover, Muslims and Christian groups are included in the list of Tribals and Backward classes, not including them in the SC list is arbitrary even when the person belonging to the same caste has been included in the list if he is a Hindu, Sikh or Buddhist whereas a Muslim or Christian stand excluded.

With only the Dalit-originating Muslims and Christians being denied the SC status, such Muslim groups namely, 'gadheris, gorkuns, mehtars or halalkhors, dhobis, bakhos, nats, pamarias, lalbegis and others remain impoverished and marginalized as a consequence.'<sup>44</sup> They have been placed under the OBC list with other advanced middle castes which is unfair to them, hardly resulting in any impact on their lives<sup>45</sup> and they continue to remain on a lower pedestal.

---

<sup>42</sup> Dr. Syed Zafar Mahmood, 'Strong case for deleting para 3 in Presidential Order of 1950: A Response to Social Justice Minister Gehlot' (*Two Circles*, 15 October 2014)

<<https://twocircles.net/2014oct15/1413376337.html#.VD7UnvmSz05>> accessed 31 July 2023

<sup>43</sup> Constitution of India 1950, art 30

<sup>44</sup> Sachar Commission, *Report of the High-Level Committee on the Social, Economic, and Educational Status of the Muslim Community of India* (2006)

<sup>45</sup> *Ibid*

**ii. Against Equality:** The Indian Constitution guarantees equality before the law and equal protection of the laws to all citizens.<sup>46</sup> The term equal protection of the laws signifies the subjection of equal laws applying to all in the same circumstances.<sup>47</sup> Though the DMs and DCs face the same kind of social stigmas, the Presidential order excludes them on religious grounds.

The 1950 Presidential Order has to be ascertained in view of the policy underlying it and the object it intends to achieve.<sup>48</sup> These are the touchstones to determine the validity of the 1950 P.O. under Art. 14. The policy of the Order was to identify the caste communities who had experienced extreme social, educational, and economic backwardness arising out of untouchability<sup>49</sup> and the objective was to end all kinds of discrimination among the untouchable castes and bring them on par with other members of society. But, we find that untouchability and social stigmas continue with DMs and DCs. The National Commission of Minorities notes, 'With reference to proportions of the population in poverty and affluence, Dalit Muslims are unquestionably the worst off among all Dalits, in both the rural and especially the urban sector, being completely absent in the affluent group.'<sup>50</sup> They are socially known and treated as distinct groups and regarded as 'socially inferior' communities by their co-religionists.<sup>51</sup> DMs face the same discrimination in matters of weddings and religious gatherings as Hindu Dalits, forbidden from marrying among upper caste Muslims.<sup>52</sup> A substantial number of DM's do not receive any invitation for wedding feasts from non-Dalits and are seated separately.<sup>53</sup> There are compelling arguments in favor of their inclusion based on the principles of natural justice and fairness.

---

<sup>46</sup> Constitution of India 1950, art 14

<sup>47</sup> *Lindsley v Natural Carbolic Co.* [1910] 220 US 490

<sup>48</sup> *John Vallamattom v Union of India* (2003) 6 SCC 611

<sup>49</sup> Tehmina Arora, 'For 70 years, Dalits have been denied freedom of religion through a presidential order' (*Scroll*, 21 August 2020) <<https://scroll.in/article/970613/for-70-years-dalits-have-been-denied-freedom-of-religion-through-a-presidential-order>> accessed 31 July 2023

<sup>50</sup> National Commission for Minorities, *Dalits in the Muslim and Christian Communities A Status Report on Current Social Scientific Knowledge* (2008)

<sup>51</sup> *Ibid*

<sup>52</sup> Balhasan Ali, 'India's Dalit Muslims: Will Policymakers Take Note of Forgotten Lower Caste' (*The Quint*, 24 October 2022) <<https://www.thequint.com/opinion/indias-dalit-muslims-will-the-policymakers-take-note-of-forgotten-lower-caste-pasmanda-muslims-bjp>> accessed 31 July 2023

<sup>53</sup> Prashant K Trivedi et al., 'Does untouchability Exist Among Muslims: Evidence from Uttar Pradesh' (2016) 51(15) *Economic and Political Weekly* <<https://www.epw.in/journal/2016/15/insight/does-untouchability-exist-among-muslims.html>> accessed 31 July 2023

**iii. Death knell to freedom of religion and conscience:** The Former Minister of Social Justice and Empowerment had said; ‘Allowing SC status to converts would provide a fillip to religious conversions. The demand is not constitutional and we want to work within the parameters of the statute for the welfare of these communities’ (Hindus, Buddhists and Sikhs).<sup>54</sup> The view of the government which it continues to hold today goes against the very basis of the Indian Constitution where every citizen has been guaranteed freedom of conscience, the right to profess and practice religion.<sup>55</sup> The 1950 Order prevents the Dalits from exercising their conscience as they would be stripped of the SC status once they convert to Islam or Christianity. In a way, the Order holds them hostages for fear of losing reservations:

“The President under Article 341 prescribes indirectly people particularly (Scheduled Caste) not to profess any religion different from the Hindu or Sikh religion. In other words, to get a benefit under Scheduled Caste Order 1950 a citizen should profess only Hindu or Sikh religion. This is against the preamble of the Indian Constitution, which secures 'liberty of thought, expression, belief, faith, and worship to all its citizens.’<sup>56</sup>

The ‘private agency’ of the individual has been preferred over the ‘community interest’ under the constitution,<sup>57</sup> it shall not be a matter of concern for the state if a person converts from one religion to another as the state is expected to follow constitutional morality over the traditional religiously derived morality of Indian society as envisioned by Dr. Ambedkar.<sup>58</sup> It is the individual’s choice whether to convert or not and he should be left free to decide upon himself. The state has no business at all.

---

<sup>54</sup> Subodh Ghildiyal, ‘Govt opposed to Dalit status for converts’ (*Times of India*, 10 October 2014) <<https://timesofindia.indiatimes.com/india/govt-opposed-to-dalit-status-for-converts/articleshow/44765858.cms>> accessed 01 August 2023

<sup>55</sup> Constitution of India 1950, art 25

<sup>56</sup> Ranganath Misra Commission, *Report of the National Commission for Religious and Linguistic Minority* (Vol. 2, May 2007)

<sup>57</sup> Shashi Tharoor, *Babasaheb A Life* (Aleph Book Company 2022)

<sup>58</sup> *Ibid*

## CONCLUSION

‘Whatever is wrongly settled is never settled and must be resettled’<sup>59</sup> are the apt words that describe the present conundrum perfectly. During the Constituent Assembly Debates, no discussion was initiated by the Muslim and Christian members upon the issue of extending SC reservation benefits to DMs and DCs which later resulted in the promulgation of the unjust Presidential Order. The critics who argue that SC reservation was never intended for Dalit-originating believers of Christianity and Islam and it is a closed matter that has already been decided, must understand that the ‘right to privacy’ and the extending horizons of art. 21 are proof of evolving times which the judiciary has acknowledged through its progressive interpretation. We shall hope the judiciary will uphold substantive equality and do justice through its wisdom in the same way in this case. Recently on the 3<sup>rd</sup> of July 2023, a *Masjid* committee in Kerala comprising of Malayali Thangals (Syeds) and Mapilas (Shudra Muslims) prohibited a Malayali Dalit Ossan (Muslim barber caste) from attending the committee meeting stating: ‘Your forefathers were prohibited from attending this meeting and so are you.’<sup>60</sup> This is one of the many instances that require the immediate amendment of the Presidential Order to meet the social realities.

The Prime Minister himself has acknowledged that the ‘*Pasmanda* Muslims’ (Dalit and OBC Muslims) remain far behind others and benefits need to be reached out to them<sup>61</sup> but the government’s stand in the Supreme Court is completely contrary to this as it stands in opposition of SC status to them. It is expected that the government recorrects its decision as the legislature has the power to make special laws to attain particular objects and deal with diverse problems arising out of an infinite variety of human relations.<sup>62</sup> For that purpose, ‘it must have large powers of selection or classification of persons and things upon which such

<sup>59</sup> B.R. Ambedkar, *Who were the Shudras?* (1st edn, Thaker & Co. Ltd 1946)

<sup>60</sup> Rejaz Sheeba Sydeek, ‘Kerala: Mosque panel’s ban on youth from public meeting expose casteism’ (*Maktoob*, 10 July 2023) <<https://maktoobmedia.com/features/kerala-mosque-panels-ban-on-youth-from-public-meeting-expose-casteism/>> accessed 31 July 2023

<sup>61</sup> ‘PM Modi says govt reaching out to most deprived, mentions Pasmanda Muslims’ backwardness’ (*The Hindu*, 27 February 2023) <<https://www.thehindu.com/news/national/pm-modi-says-govt-reaching-out-to-most-deprived-mentions-pasmanda-muslims-backwardness/article66559226.ece>> accessed 31 July 2023

<sup>62</sup> *Ameeroonissa v Mehboob* (1953) SCR 404

laws are to operate.’<sup>63</sup> Therefore, it is necessary on the part of the legislature to correct this mistake and re-amend the 1950 Presidential order to meet the existing ‘lived realities’ that the DMs and DCs live in. With this, their situation would be ameliorated and primordial goals of social, economic, and political justice would be a reality.

#### **ACKNOWLEDGMENT**

Thankful to comrade Albert Jasper for his assistance during the course of the article, especially for digging out his father’s first-hand committee reports conducted on part of the Tamil Nadu Backward Class Commission and archived newspaper clippings, which gave a visible insight on the plight of Dalit Christians, helping in shaping up of the article to a great extent.

---

<sup>63</sup> *Ibid*