Scheduled Castes, reservations and religion: Revisiting a juridical debate

Tanweer Fazal

This article revisits the promulgation of the Scheduled Caste Order 1950, appended to Article 341 of the Indian Constitution. The Order provides the list of Scheduled Castes (SCs) and sets the prerequisites for a series of robust entitlements to India's 'untouchable castes'. The Order of 1950, however, also serves as a dampener to the equality claims of low castes of non-Hindu denominations by precluding them from the entitlements that the SC status promises. The Order has been amended twice—in 1956 to include Sikh low castes and in 1990 to accommodate the neo-Buddhists. However, the untouchable convertees to Islam and Christianity continue to remain outside its purview. The article develops on the deliberations surrounding the promulgation of the Government Order of 1950 in the Constituent Assembly, subsequently in the Indian Parliament, in the courts and in the public domain. Through an analysis of the discussions and disputes around this question, it attempts to deconstruct the nationalist common sense on the question of inequality and caste among non-Hindus, its fears and anxieties regarding proselytisation and the emerging idea of nationhood and citizenship.

Keywords: untouchability, religion, conversion, Scheduled Caste, Article 341, dalit Christian, dalit Muslim

I
Introduction

This article revisits the promulgation of Scheduled Caste Order 1950,[1] appended to Article 341 of the Indian Constitution. The Order provides

[1] The precursor to the 1950 Order is the 1936 Caste Order that provided a list of scheduled castes and prohibited Indian Christians from availing its benefits.

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the list of Scheduled Castes (SCs) and serves as a precursor to a series of robust entitlements to India's 'untouchable castes' by guaranteeing political representation, share in public employment, access to educational institutions and assuring allocations in development schemes. The incorporation of Article 341 and constitutional support to the policy of positive discrimination was certainly a recognition of the long-drawn struggle of caste groups placed below the pollution line of the Hindu caste system. Though essentially a continuation of colonial policy, the Article symbolises the readiness of the nationalist elite and liberal constitutional thinking to deviate from a universalist, context-blind framework to attend to culturally and historically contingent processes of injustice. As it stands today, the list includes a total of nearly 1,110 castes drawn from different states of India.

The Order of 1950, however, also serves as a dampener to the equality claims of low castes of non-Hindu denominations prohibiting them from availing the entitlements that a SC status promises. Clause 3 of the Scheduled Caste Order categorically states, 'no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste'. In the original Order of 1950, an exception allowed certain low castes professing Sikhism to be scheduled. The Government Order (GO) has since been amended twice—in 1956 to include the remainder of the Sikh low castes, and later in 1990 to include the neo-Buddhists—but the demands for an expansion in its scope and reach so as to include the followers of supposedly 'non-Indic' religions, Islam and Christianity, have remained largely unheeded. How has this denial of rights to certain religions while awarding of the same to followers of others been explained? One rationalisation that is readily offered is the absence of ritual hierarchy and hence 'untouchability' in Islam and Christianity. How do we then validate the inclusion of Buddhism and Sikhism—whose emergence itself marked the rebellion against Vedic-Brahminical Hinduism? The complicity of the Christian and Muslim elite and their discomfort with the idea of caste, the anxieties of the conservative nationalists regarding large-scale conversion out of the Hindu fold and the fear of inviting displeasure of existing beneficiaries could be other plausible reasons for the denial of entitlement to the low-caste followers of Islam and Christianity.

This article develops on the deliberations surrounding Article 341 and the promulgation of the GO of 1950 in the Constituent Assembly,

subsequently in the Indian Parliament and in the courts. Through an analysis of the discussions and disputes around this question, it attempts to deconstruct the nationalist common sense on the question of inequality and caste among non-Hindus, its fears and anxieties regarding proselytisation and the emerging idea of nationhood and citizenship. A reading of the proceedings, arguments in the courts and verdicts is attempted to gain an insight into the emerging legal philosophy on the matter. This article outlines the institutional life of justice as it comes to be mediated with pressing questions of caste, religious conversion and ideas of nationhood.

II
Scheduled Caste as a cognitive category

The term SC, as is well known, came to official usage with the Government of India Act of 1935. The Act detailed political entitlements of members of such castes, fixed the SC quota in the Council of States and the Federal Legislature (along with Muslim, Sikh and Indian Christian quota) and laid down the procedures for their election and nomination. It set the need and context for the caste groups, so far termed as depressed castes or classes, to be adequately defined and their deprivations assessed, but the imperative received a short shrift. The classification of SCs was left to the wisdom of 'His Majesty in Council':

> the scheduled castes means such castes, races or tribes or parts of or groups within castes, races or tribes…which appear to His Majesty in Council to correspond to the classes of persons formerly known as 'the depressed classes', as His Majesty in Council may specify.[2]

The term came to be equated with its previous form, depressed classes and also interchangeably used with the category 'untouchable' which had earlier found its place in the gazetteers and colonial censuses. The Census enumerators began collecting data on untouchables from 1911 onwards, but untouchability itself could not be precisely defined. The Census of 1931, the last to have enumerated caste groups in detail, broadly referred to untouchables as groups, 'contact with whom entails(d) purification on

[2] Government of India Act, 1935 (26 Geo. 5, ch. 2: 217).

the part of high caste Hindus' (Dushkin 1967: 629).[3] Three problems arise from this definition:

1. What set of practices could precisely be described as acts of pollution? And therefore, was it an exhaustive definition that covered the entire range of practices that could be termed as untouchability?
2. Did it apply to only those who belonged to Hindu low castes or could the list could be amplified further to include groups outside Hinduism against whom an institutionalised practice of untouchability was followed?
3. Were caste and practices associated with untouchability drawn from textual sources or did they refer to caste as a 'lived reality'?

The imprecision in the definition and the emerging perplexity may be assessed by the following instance, among many reported by the *Census of India* (1911):

> Meghs are practically all Hindus, there being only 639 Sikhs and 37 Muhammadans…Megh is a low caste considered untouchable by the orthodox Hindus, but the Arya Samaj has purified numerous members of the caste and raised them to the status of touchables (*Census of India* 1911: 467).

Untouchability, unlike in other parts of the country, had an atypical manifestation in the province of Punjab. The enumerators' descriptions suggested a more complex picture than what was assumed. The Census prepared a list of untouchables but was quick to caution that in the province of Punjab, 'merely touching them' (caste Hindus) did not pollute sufficiently to necessitate bathing or washing the clothes, 'except in the case of such members thereof who pursue scavenging or other unclean professions' (ibid.: 111). Similarly,

> a Brahman will not mind touching a Jaiswara, Kori or other Chamar who works as a…grass-cut (*sic*), but he will have to bathe and wash his clothes if he touches a Chamar who skins dead cattle. Chuhras being

[3] Dushkin (1967: 627) points out that there is no satisfactory conceptual definition of untouchability in the Constitution or in the law, neither is it possible to have one given the various forms that the practice of untouchability takes in India.

> all scavengers by profession may not be touched, but a shoe-making Mochi will be permitted to try shoes on the foot of a member of the highest class, although such members of his fraternity who engage in removing dead cattle will cause pollution by mere touch. Julahas, as a rule, are not untouchables in this respect (ibid.).

In a country as diverse as India, where caste hierarchy and practices differed hugely, a single test to identify SCs was bound to be inadequate. The criteria suggested by 1931 Census had nine different checks, the most important being the question of civil disabilities, such as denial of access to public roads, wells or schools. Some of them were socio-religious and the reference was strictly to the Hindu order—denial of access to Hindu temples, denial of services of clean Brahmans, denial of services to the same barber who served the Hindu high castes, acceptance of water among other criteria. The remaining ones were meant to exclude groups who were depressed solely on account of their occupation or ignorance, illiteracy and poverty (Dushkin 1967: 629). The criteria lacked precision and universal applicability.

In certain parts of the country, as in the south, this nine-point test proved a little too comprehensive and tended to include a large portion of the Hindu population. Thus, additional measures of poverty and illiteracy were applied to choose the most dispossessed. In the north, the criteria proved futile for the opposite reason. It proved too narrow to include all those whom the authorities felt deserved to be included. The disabilities suffered by lowest castes were so variable in detail that the criteria could not be strictly applied. They came to be included by the ad hoc secular criteria, that is, illiteracy and poverty.

Many colonial administrators contested the primacy given to the socio-religious by making the argument that the state should keep away from religious matters and address only civil disabilities suffered by such groups. Edward Blunt (1969) who published around the same time defined depressed castes as 'those castes who are not served by the Brahmans' (cited in Dushkin 1967: 630). However, he took a broader and political framework in a memorandum that he submitted to the Uttar Pradesh (UP) Government wherein depressed classes were defined as one whose social and economic circumstances were such that it would be unable to find political representation and protection of interest without statutory safeguards (ibid.).

The assumption that untouchables throughout India demonstrated uniform and certain typical characteristics could not hold in northern and eastern India. Thus, for Galanter (1984), touch and distance pollution applied more in the south, while in the north, it varied from one low caste group to another. The Simon Commission (1927) took note of it as it argued that 'the connection between theoretical untouchability and practical disabilities' was less close in states such as Bengal, United Provinces, Bihar and Orissa. Leaders representing the lower castes of northern India too hinted at the inadequacy of touch-based pollution as a criterion of untouchability. Thus, in his deposition before the Indian Franchise Committee (1932), G.S. Pal, representing United Provinces, insisted on educational bankruptness and economic backwardness to be factored in along with social segregation to identify the depressed castes (Galanter 1984: 125–26).[4]

In 1932, the sociologist G.S. Ghurye published his much cited work, *Caste and Races in India*, which later included a chapter on SC. The subtext of Ghurye's understanding is the endeavour to assimilate the SCs within a broader Hindu identity. He cited Hindu texts to suggest that the SCs formed the 'fifth order in the four-fold society of Hindu theory of caste' and that 'the ideas of purity, whether occupational or ceremonial, which are found to have been a factor in the genesis of caste, are at the very soul of the idea and practice of untouchability' (Ghurye 1978: 307). In terms of the ancient Hindu texts, the category referred to the *Chandalas*—the progeny of the union between Brahmin females and Sudra males. According to Ghurye, however, the Chandalas, the *Svapachas*, the *Mritapas* were the degraded group of aborigines who lived outside the limits of Arya villages and towns.

In locating the origins of untouchability in the process of miscegenation between high and low castes, Ghurye in reality followed the justification offered by *Manusmriti*. And in doing so, he differed markedly from Ambedkar who in his classic, *The Untouchables*, offered an altogether novel thesis which maintained a distinction between Hindus and untouchables. Untouchables were not Hindus, but broken men from alien tribes. Contempt for the broken men, as of Buddhists by the Brahmins, and their

[4] In the Franchise Committee, however, Ambedkar differed arguing that it would be a 'mistake to suppose that differences in tests of untouchability indicate(d) differences in the conditions of the untouchables' (cited in Galanter 1984: 129). The crucial common element according to him was the 'odium and avoidance' of Hindu high castes (ibid.).

refusal to give up beef-eating were the two roots from where sprung untouchability, Ambedkar emphasised (2014 [1948]: 242).[5]

Ghurye's Hindu nationalist sociology took him to advocating the assimilation of the fifth order into the Hindu mainstream. However, this was to be achieved not necessarily by the abolition of caste order or by reforming the caste Hindus but by urging the low castes to give up their degrading professions and adopt the way of life of caste Hindus. He approvingly cited the case of the Chamars of Bihar who had become more orthodox in matter of religion than their eastern brethren. Some, according to him, had advanced so much in the direction that they had begun to 'employ Maithil Brahmins for the worship of the regular Hindu gods' (Ghurye 1978: 322). Ghurye's concern with assimilating 'untouchables' within the varna order corresponded with that of the nationalists, leaders of the caste Hindu organisations as well as a section of the depressed caste leadership.[6]

It is reasonable to argue that in the earliest understanding of the category depressed castes/classes, it was the ritual hierarchy that was generally referred to. For all practical purposes, it meant an over reliance on scriptural sources that provided the ideological legitimation of the caste order. In effect, it served to restrict the criteria for identification solely to practices within Hinduism. And in doing so, it failed to appreciate the fact that the caste system manifests itself in two kinds of descent-based hierarchies: the ritual and the social. The two interact and correspond closely in case of Hinduism but tend to vary in case of other religions. The textual understanding, confined as it is to the normative domain, failed to capture the variations that a field view could have provided. This missing field perspective in the evolution of the criteria and thereof the classification of social groups, I argue, ultimately resulted in the exclusion of non-Hindu low castes from being counted as depressed groups.

[5] Ambedkar disputed other theories of the origins of untouchability such as the racial theory and the occupational theory, and expressed the view that contempt for Buddhism or beef-eating habits alone made certain groups untouchables.

[6] Incidentally, much of the social science deliberations on untouchables and untouchability is restricted to locating the phenomenon within the Hindu order. Moffat (2015) provides three different models within which the different theoretical works on untouchability could be clubbed. Mendelsohn and Vicziany cite evidence from the Bhakti period to highlight that untouchability was not readily accepted without 'reflection or protest from its victims' (2007: 20–22).

The exclusion of similarly placed Muslim and Christian groups from being counted as 'untouchables', however, was not simply a case of methodological inadequacy or oversight. This coalescence of interests between colonial administrators, the nationalist elite and certain sections of the depressed class leadership that allowed such a categorisation to emerge and perpetuate demands a deeper probing. This article therefore sets to examine the context, the motivations and interests that contributed in the production of knowledge about untouchability in the colonial and the postcolonial phases.

In the early days, the census commissioners and administrators of colonial bureaucracy classified untouchables as outside the Hindu fold. A major concern among the nationalist elite, particularly those coming from the right, was to consolidate the Hindu community which, according to many among them, was pivotal to the forging of Indian nationhood. This fusing of Hindu with the nation, and the underlying task of consolidating the former for the latter, offers another lens to comprehend the continued exclusion of 'untouchables' professing or adopting Islam and Christianity from availing benefits for SC status. A careful analysis of the deliberations in the Constituent Assembly on the subject and the case law of over 60 years makes this nationalist imperative explicit.

III
Constituent Assembly Debates (CAD) and anxieties of nationhood

In the Constituent Assembly, representatives of 'depressed classes' were exceptionally vocal and assertive in demanding reservation and protections. Their claims for guaranteed representation were largely based on recounting the history of oppression at the hands of 'caste Hindus'. In this regard, the practice of untouchability was frequently narrated and emphasised upon to suggest the extent of sufferings that the 'untouchables' had gone through. The practice was, however, seen inextricably associated with Brahminic Hinduism sanctified by the classical Hindu texts. Speaking on the debate to abolish untouchability, H.J. Khandekar's views resonated the opinion of most of the members belonging to the community:

> You…know that untouchability is a curse on Hindu society, and seven crores Hindus have been treated or are being treated like dogs

> and cats by their caste Hindu brethren…This country was being governed for ages together by the law of Manu…Varnas were being created, castes within castes were formed…we untouchables were not allowed to name our children according to our wishes (*CAD* 2003, vol. XI: 736–37).

Untouchability was to be abolished not only for the indignities and injustices that it indisputably was associated with but for the fact that it embarrassed India and thwarted its ambitions of being a modern nation. With the adoption of the Constitution that laid stress on the abolition of untouchability, Khandekar hoped that India would be counted among the civilised nations of the world. This latter argument that linked abolition of untouchability with the nationalist desire to see independent India counted among the civilised countries of the world touched members coming from different caste and ideological groups including those from the Congress right. Such views emerging primarily from the right held Hindu and Indian as synonymous, and a Hindu unity was seen as tantamount to the foundations of a united nation. The abolition of such a practice by law, they hoped, would remove the social barriers that existed between caste Hindus and a large majority of Sudra and untouchable castes to pave the way for the consolidation of the Hindu community.

This urge to consolidate the Hindus by abolishing untouchability takes us back to the days of the Poona Pact, 1932. Held in the backdrop of the fast undertaken by Gandhi, the Pact sought to settle the raging debate over strategies of amelioration—whether to treat untouchables as a community politically distinct or inseparable from the majority at large—among nationalist leaders, representatives of Hindu organisations and those from depressed classes. It is usually argued that the settlement in favour of reserved seats in joint electorates was an affirmation of the latter view. A reverberation of the same could be heard in the Constituent Assembly too when representatives of the 'untouchable' groups insisted on their political distinctiveness and claimed minority status. The claim of being a political minority did not rest on their racial or religious distinctiveness (since their Hinduness was indisputable), as the untouchable representatives, P.R. Thakur (Bengal General) and S. Nagappa (Madras General) argued. Instead, such claims were made on two counts: first, their segregation and disempowerment and second, the indigenous origins of the depressed classes and the adivasis. The second argument

was put forth to set themselves apart from the caste Hindus as also to embarrass the Muslims:

> We the Depressed Classes are the original inhabitants of this country. We do not claim to have come to India from outside as conquerors, as do the Caste Hindus and the Muslims. As a matter of fact, India belongs to us and we cannot tolerate the idea that this ancient mother country of ours, will be divided between the Muslims and the Caste Hindus only (P.R. Thakur, *CAD* 2003, vol. I: 140).

The belligerent postures of some of the SC leaders created fears of separatism among a section of nationalist leadership. K.M. Munshi, one of the prominent law makers, moved an amendment that sought to remove SCs from the rubric of minority on the basis that they were not culturally apart from the Hindu community. The inclusion of SCs among minorities was a 'mischievous usage' by the colonial government and that the safeguards that were being provided to the SCs were primarily meant to facilitate their 'absorption in the Hindu society' (*CAD* 2003b, vol. V: 229), he asserted:

> Another reason is this, and I might mention that reason is based on the decisions which have already been taken by this house. The distinction between Hindu community other than Schedule castes and Scheduled castes is the barrier of untouchability…So far as the federation is concerned; we have removed the artificial barrier between one section of Hindu community and the other (ibid.: 227–28).

In the Constituent Assembly, a sort of consensus existed on the question of who constituted the SCs though differences over modes and instruments of intervention did crop up. Invariably, untouchability was the test of identification and the members demanded clarity in terms of practices that fell within the rubric of untouchability. Social segregation, stigmatisation of occupations and groups were discussed but it was the ritual hierarchy and the scriptural endorsement of differential treatment of the 'untouchables' that received emphasis. Attempts to broaden the definition of untouchability were generally not appreciated.

While the Muslim and Christian representatives chose to go along with the general consensus and conspicuously refrained from participating

in the debate, Sikhs led by Sardar Bhopinder Singh Mann and Sardar Hukam Singh made a firm pitch for Sikh low castes, such as Mazhabis, Ramdasias, Sikligars and Kabir panthis, to be included among the beneficiaries. With the withdrawal of provision for guaranteed representation to the religious minorities after the second reading of the Constitution, the Sikh leadership hoped to make use of the SC category to the maximum extent possible. The imperative to secure SC status also emerged from the fear of losing the low caste converts that Sikh preachers had begun to attract. The thrust of their argument was the close proximity between Hindu and Sikh faiths and how in such a situation, a change in religion rarely affected the social status of individuals and groups. They argued that the practice of untouchability, though forbidden in Sikhism, thus continued to stigmatise the occupational callings of low caste converts to Sikhism. Thus,

> born of the same parents, one is a Hindu and the other is a Sikh; he is mending the shoes and the other is also mending the shoes; the one is cleaning the latrines and the other is also cleaning the latrines and simply because one happens to grow long hairs, he should not be given the same opportunities which the other, his real brother is getting. I feel it is a recognition of certain facts which exist today and not a concession (B.S. Mann in *CAD* 2003, vol. XI: 733).

The most vociferous opposition to the Sikh demands came from SC representatives who saw it as an attempt to usurp the benefits meant specifically for Hindu SCs. Khandekar chided the Sikhs and reminded them how earlier their leaders had presented themselves as a casteless religion to attract Ambedkar and his followers into the religion (*CAD* 2003, vol. XI: 738–39). Muniswamy Pillai, another member belonging to the SC community, warned against any dilution of the definition and expressed his disapproval to make it applicable to converts to other religions: 'there are number of people who have left scheduled castes and Hinduism and joined other religions...they also are claiming to be Scheduled castes. Such converts cannot come under the scope of the definition' (Saksena 1981: 529–31).

Eventually, when the Sikhs did succeed in securing the exception, the nationalist unease on the concession was evident in Sardar Patel's clarification. The provision extended to Sikh groups was explained

in terms of political pragmatism rather than being prompted by any deep conviction:

> Now it was against our conviction to recognize a separate Sikh caste as untouchable or scheduled caste, because untouchability is not recognized in the Sikh religion. But as the Sikhs began to make a grievance continuously…I persuaded the scheduled caste people with great difficulty to agree to this, for the sake of peace. I persuaded the other members…on the condition, which is in writing, by the representatives of the Sikhs, that they will raise no other question hereafter (Saksena 1981: 413–15).

Finally, Article 341 came to be enshrined in the Constitution. It empowered the President to specify the 'caste, races or tribes or parts of them' to be included as SCs. It empowered the Parliament to make amendments in the list of SCs. Appended to Article 341 was the Presidential Order of 1950, para 3 of which confined SC status to the followers of Hinduism, and as a matter of exception, four Sikh castes—Mazhabis, Sikligars, Ramdasias and Kabir panthis—were made eligible.

IV
Case law on the 1950 Scheduled Caste Order

Following the promulgation of the Presidential Order (1950) and its subsequent amendment in 1956, the courts were inundated with cases pertaining to elections of persons from reserved constituencies who had embraced Buddhism (prior to inclusion of Buddhism in the 1950 order), or Christianity, and had thus lost the right to avail these protective measures meant for SCs. In other cases, contentions arose on the conversion of persons who had gained public employment on reserved seats but had converted to other religions subsequently. A Department of Personnel and Training (DoPT) circular, in this regard, demanded SC employees to declare whether they had converted to religions other than Hinduism and Sikhism (Jenkins 2003: 101). The complainants approached the court with the plea that the Order of 1950 and the subsequent circular infringed upon the inalienability of constitutional guarantee of freedom of religion.

While the courts before which these disputes were brought adjudicated on a variety of questions, two issues appear consistently through this welter

of litigation. Both these issues were closely related to each other and may only be heuristically separated:

1. The first question directly relates to whether conversion impacts caste status, given that conversion is effected to escape caste and its disabilities in the first place. The answer to this was not simple or straightforward. The courts too responded in a variety of ways. The critical test for the courts has been whether the caste laws continue to apply to those who converted.
2. A second, closely related question was whether caste revives upon 'return' to Hinduism.

In one of the early cases, *G. Michael* v. *Mr S. Venkateswaran* (1951), the court did not altogether dismiss that families continued to be governed by the caste laws as they were prior to their conversion to another faith. 'But these are all cases of exception and the general rule is conversion operates as an expulsion from the caste; in other words, a convert ceases to have any caste.'[7] Again a scriptural understanding of religion prevailed as it argued that 'caste system' was an 'integral feature of Hindu society' and 'Hindu religion'.[8] The judgment referred to scriptures of Hindus such as the *Purusha Suktha* and a passage from Gita where Lord Krishna spoke of the four varnas having been created by him (*Chathurvarniam Mayashrishtam*). It went on to argue: 'Christianity and Islam are religions prevalent not only in India but also in other countries in the world. We know that in other countries these religions do not recognise a system of castes as an integral part of their creed or tenets.'[9]

The imbroglio over neo-Buddhist demand for SC status reached the Supreme Court in the 1960s. The court was asked to adjudicate whether on embracing Buddhism, a SC candidate lost his right to contest elections from reserved constituencies. In *Punjab Rao* v. *D.P. Meshram and Others* (1964), the Constitution Bench of the apex court was seized with the matter whether a candidate who had won an assembly seat in the Maharashtra Assembly from a reserved seat was bound to lose it on conversion to Buddhism.[10] The Supreme Court invalidated the election

[7] AIR 1952 Mad 474: 113.
[8] Ibid.: 112.
[9] Ibid.
[10] 1965 AIR 1179; 1965 SCR (1) 849.

of D.P. Meshram, a prominent Ambedkarite, on being furnished with sufficient documentary proof that he had converted to Buddhism after having won the reserved seat.

It is worth noting that the court read the constitutional definition of Hinduism, as provided in Article 25, rather narrowly than expansively so as to exclude Buddhism.[11] In the wisdom of the court,

> The definition of Hindu (in Article 25) is expanded for the special purposes of sub-cl. (b) of cl. (2) of Art. 25 (i.e. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus) and for no other.[12]

Combining this with the specific mention of Sikhs along with Hindus in the 1950 Order, the SC rejected the suggestion that the definition of Hinduism was broad enough to include Buddhism within it.

In *Ganpat* v. *Returning Officer & Others* (4 December 1974), the court upheld the election of the candidate on the grounds that his conversion to Buddhism had not been credibly established. In its observances, however, the court displayed its awareness of the caste practices prevailing among non-Hindus.[13] It acknowledged the maintenance of separate churches for SC Christians and concurred that change of religion does not abolish untouchability. However, when it came to extending the benefits and concessions that followed from Article 341 to convertees, it upheld the soundness of the SC Order of 1950. The logic of an emerging vested interest came to be invoked:

> The attempt of persons who have changed their religion from Hinduism… who still claim the concessions and facilities intended for Hindus only shows that otherwise these persons might get a vested interest in continuing to be members of the Scheduled Castes…It is from the

[11] Article 25 of the Constitution concerns Freedom of conscience, practice and propagation of religion. Sub-clause 2 (b) provides a definition of Hindu: '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.' See Government of India (2011: 12).

[12] *Punjab Rao* v. *D.P. Meshram*, AIR 1965 SC 1179 para 14.

[13] (1975) 1 SCC 589.

> point of view of discouraging that tendency that the provision of the Scheduled Castes Order seems to be a proper one.[14]

Court interventions have led to a paradoxical situation wherein 'untouchables' leaving Hinduism were denied retention of SC status, while those reverting to it could easily reclaim the status. The predisposition of the courts towards adopting the assimilationist framework is discernible in this regard. The Supreme Court in 1983, in *S. Anbalagan* v. *B. Devarajan & Others* while deciding another case closely mirroring *Ganpat*, ruled that a SC candidate who had converted to Hinduism from Christianity would acquire his original caste—Adi Dravida in this case—upon conversion. 'In fact', the court ruled, 'it may not be accurate to say that he regains his caste; it may be more accurate to say that he never lost his caste in the first instance.'[15]

The presence of Christian Reddies, Christian Kammas, Christian Nadars, Christian Adi-Andhras and Christian Adi Dravidas was cited by the court as an illustration of the tenacity of caste. As a matter of fact, the question before this court was not whether the SC status should be extended to the formerly SC caste converts to Christianity but whether upon re-conversion to Hinduism, the convertee reverts to his earlier caste. The court's opinion was ambiguous: 'It disappears (on conversion to Christianity), only to re-appear on reconversion.'[16] Those who embrace other religions in their quest for liberation discovering that 'their disabilities have clung to them with great tenacity' return 'like lost sheep' to their caste fold once again to be assimilated, the court concluded.[17]

Indeed, this is the *sine qua non* of much of the case law challenging the Order of 1950. In cases where the respondents claimed SC status on returning back to Hinduism, invariably, the court was inclined to grant it. One of the most cited cases is of *C.M. Arumugam* v. *S. Rajgopal & Others*. The court recalled the 1886 adjudication (*Administrator-General of Madras* v. *Anandachari*)[18] that subject to the acceptance of caste members, a person on return to Hinduism enters his original caste. The Supreme

[14] Ibid., para 12.

[15] (1984) 2 SCC 112 para 13.

[16] ibid.

[17] Ibid.

[18] *Administrator-General of Madras* v. *Anandachari*, civil suit no. 30 of 1886, Indian Law Reports (Madras), volume 09: 466.

Court found no compelling reason 'either on principle or on authority'[19] to disregard this established view.

On the question of whether caste disabilities were perpetuated on conversion to religions other than Hinduism, the court held:

> Once such a person ceases to be a Hindu and becomes a Christian, the social and economic disabilities arising because of Hindu religion cease and hence it is no longer necessary to give him protection and for this reason he is deemed not to belong to a Scheduled Caste. But when he is reconverted to Hinduism, the social and economic disabilities once again revive and become attached to him because these are disabilities inflicted by Hinduism.[20]

Evolving jurisprudence on the question thus propounds the doctrine of eclipse—conversion out of Hinduism eclipses caste, but gets revived on reverting to the original religion. The underlying assumption being that caste-centric social order was fundamental to Hindu society but only incidental in case of others. Such a view is reiterated in the *Kailash Sonkar* case which averred that 'when a person is converted to Christianity or some other religion the original caste remains under eclipse and as soon as during his/her lifetime the person is reconverted to the original religion the eclipse disappears and the caste automatically revives'.[21] In other words, the courts have upheld and facilitated a sort of *gharwapasi*.[22]

In its most recent intervention, *K.P. Manu* v. *Chairman Scrutiny Committee* (2015), the apex court invoked the same argument to grant SC status to those who were born outside Hinduism, whose forefathers had renounced the religion, but were now ready to revert. K.P. Manu, a Christian by birth, decided to give up Christianity and obtained the status of Hindu Pulaya.[23] The SC status that he secured ensured employment but

[19] *C.M. Arumugam* v. *S. Rajgopal*, (1976) 1 SCC 863 para 17.

[20] Ibid.

[21] *Kailash Sonkar* v. *Smt. Maya Devi* 1984 AIR 600; 1984 SCR (2):176.

[22] Gharwapasi or homecoming is a political campaign by the organisations of the Hindu right to seek converts from religions such as Islam and Christianity. The underlying assumption is that that the two religions have grown in India through allurement and force and gharwapasi ensures the return to the original faith. Gharwapasi should be studied along with the anti-conversion campaign that the Hindu right has launched in many parts of the country.

[23] *K.P. Manu* v. *Scrutiny Committee* for Verification of Community Certificate, (2015) 4 SCC 1.

a later inquiry revealed that the SC certificate was 'erroneously' granted to him. The state government dismissed him from his job and the decision of the government was upheld by the High Court. However, a two-judge bench in the Supreme Court overturned the decision and endorsed Manu's claim of being a Hindu Pulaya and thus eligible for SC status. The court relied on the sanction provided by the Hindu Pulaya community to the conversion of K.P. Manu:

> It is the community which has the final say as far as acceptance is concerned, for it accepts the person, on reconversion, and takes him within its fold. Therefore, we are inclined to hold that the appellant after reconversion had come within the fold of the community and thereby became a member of the scheduled caste. Had the community expelled him the matter would have been different.[24]

The first real constitutional challenge to the GO of 1950 was offered by the Soosai case (1985). The petitioner, a Christian convert of Adi Dravida caste, argued that the provision contained in paragraph 3 of the 1950 Order was discriminatory as he was denied the benefit of welfare assistance on grounds that he professed Christianity. This case shifted the terrain of debate: while the earlier cases dealt primarily with whether a 'return' to Hinduism also signalled a return to the caste status, this petition contested the constitutional soundness of the 1950 Order itself. The petition argued that this provision created grounds for tempting Christian converts to re-convert to Hinduism or Sikhism in order to benefit from the constitutional provisions relating to SCs. In its operation therefore, paragraph 3 denied the petitioner his freedom of conscience and the right to freely profess, practice and propagate his religion.[25]

The courts, however, introduced the 'test of parity'. The converts demanding SC status were asked to demonstrate a comparable depth of social and economic disabilities, cultural and educational backwardness as well as similar levels of degradation within the Christian community that they suffered to avail the SC status. Mere continuation of caste in the new religion did not fulfil the conditions, the courts now came to aver. And in

[24] *K.P. Manu* v. *Scrutiny Committee for Verification of Community Certificate*, (2015) 4 SCC 1: 5. The courts while relying on caste communities for acceptance of the re-convertees seem to be inadvertently endorsing the extra-legal authority of caste organisations.

[25] *Soosai etc.* v. *Union of India & Others* 1986 AIR 733; 1985 SCR Supl. (3) 242.

the absence of any 'authoritative and detailed study' of the existing conditions of the Christian society, the apex court believed, it was impossible to conclude that para 3 of the 1950 Order was discriminatory. In dismissing the case, the court paid no attention to the complaint that the continuation of the Order in its present form could serve as an allurement for re-conversion and an impediment in the freedom to propagate religion.

It could be argued that it was the proclaimed castelessness of the adopted religions that obligated courts to impose such a test. However, the argument fails to hold much ground as courts deviated from the 'doctrine of eclipse' when it came to SCs embracing Hindu sects that were avowedly anti-caste and, thereby, against untouchability. Two cases stand out in this regard. In the first, the Mysore High Court ruled that the change of religious belief—from orthodox Hinduism to Arya Samajism—had little effect on caste membership as 'unlike Christianity or Islam, it was not a new religion entirely distinct from Hinduism'.[26] In the second case, the court dealt with the status of a person who belonged to the Mahar caste, and the question whether upon conversion to the tenets of the Mahanubhava Panth, he ceased to belong to that SC. The court held that regardless of the views the founder of the sect may have had about caste, in actual practice, caste continued to remain a feature of this *panth* (path) and therefore conversion was 'only ideological and involved no change of status'.[27]

In the entire case law on the subject of conversion, these two cases mark a departure also in terms of the principle invoked to grant the SC status. While in cases of converts moving out of Hinduism, the court relied on theological principles rather than lived reality of caste to deny SC status to Christians (and by logical extension Muslims), in these two cases, the principle was inverted—social and political reality rather than religious philosophy. Speaking on behalf of the court, Justice Bose declared in so many words:

> what we have to determine are the social and political consequences of such conversion that, we feel, must be decided in a common sense practical way rather than on theoretical and theocratic grounds.[28]

[26] *B. Shyamsunder* v. *Bhaskar Deo Vedalankar & Others*, AIR 1952 Mad. 474, (2); AIR 1960 Mysore 27, (3); [1954] S.C.R. 817.

[27] *Chitturbhuj Vithaldas Jasani* v. *Moreshwar Parashram & Others* 1954 AIR 236, 1954 SCR 817.

[28] Ibid.

Thus, we can see the courts setting up different orders or grades of conversions depending on the apparent degrees of separation of these faiths from Hinduism. This is also evident in cases where the convertees spoke against the proclaimed castelessness of Sikhism to argue that it is not the presence of ritual hierarchy but social reality that should be taken into account. The courts have been prompt to suggest the proximity of Sikhism to Hinduism to justify the 1950 exception to Sikh untouchables.[29]

V
The Scheduled Caste Order in the Parliament: Fears of conversion

The problem of conversion and retention of caste post-conversion was the subject of debate in the Parliament too. The Lok Sabha came to deliberate on the Presidential Order of 1950 when a private member Bill was introduced by P.J. Kurien representing the Mavelikara constituency of Kerala. The Constitution (Scheduled Castes) Orders (Amendment) Bill, 1980 sought the deletion of paragraph 3 of the Order which denied SC status to followers of religions different from Hinduism or Sikhism. Members deliberated on the subject of untouchability, its practice in non-Hindu religions and the policy of affirmative action that emerged from Article 341. Eventually, the Bill fell in the House as Prof. P.J. Kurien, the author, was forced to withdraw it on the plea that it had failed to muster support of fellow members of Parliament. Kurien took the case of certain 'Harijans' who had taken refuge in religions outside Hinduism and whose condition—'socially, economically and educationally'—was 'at par with and in certain cases below that of their Hindu counterparts': 'By changing religion, what changes? It is nothing except his opinion. Perhaps opinion about God and opinion about religion change but nothing else…Yet he is deprived of benefits given by the state which he actually deserves as a member of scheduled caste' (Kurien reproduced in Kananaikil 1986: 6–10).

On the question of untouchability and segregation in non-Hindu religions, Kurien cited government-instituted commissions that confirmed

[29] In *S. Rajagopal* v. *Arumnugam*, the Supreme Court held that the caste system prevailed only among Hindus or possibly in some religions closely allied to the Hindu religion like Sikhism. See *S. Rajagopal* v. *Arumnugam & Others* 1969 AIR 101; 1969 SCR (1) 257.

the persistence of the practice long after conversion. Thus, despite the proclaimed castelessness of Christianity, the Pillai Commission, 1964[30] and later the Damodaran Commission, 1971,[31] both instituted by the Government of Kerala, had observed that the 'degree of segregation of the new converts from the Scheduled Castes is (was)…as high as before their conversion' (Kurien reproduced in Kananaikil 1986: 14). A decade or two earlier, the first Backward Classes Commission (Kalelkar 1955) appointed by the central government too reported the 'prevalence of caste prejudices among the Sikhs, Christians and Muslims' (Kurien reproduced in Kananaikil 1986: 15). Specifically, the commission referred to the distinctions being maintained between 'caste Christians and untouchable Christians' in certain states of southern India, as Kurien reminded the House (ibid.). The Presidential Order of 1950, in reality, breached Articles 25 and 15 of the Constitution that assured freedom of conscience and equal opportunity irrespective of religious persuasion, Kurien added, in order to make a case for the deletion of para 3 of the Order.

Kurien's passionate defence of the Bill failed to impress the members of the Lower House of the Parliament. The Bill came to be opposed on diverse grounds as members irrespective of party affiliations came to express their disquiet around conversion, the practice of untouchability and the impending threat to Hindu solidarity. Though the Bill meant to address the disadvantages that SC converts faced, most members speaking on the subject identified conversion itself as the root cause. Members expressed apprehensions of inducements and coercion behind conversion and demanded a curb on proselytisation through social legislation. In essence, conferring SC status was seen as a compensation for remaining Hindu and its denial a chastisement for leaving the faith: 'After conversion these people have no right to appropriate benefits meant for Harijans.

[30] The G. Ramana Pillai Commission was appointed by the Government of Kerala on the instruction of Kerala High Court in 1964. The Commission submitted its report in 1965 wherein it identified 91 communities as backward that were classified into various sub-categories of OBC. It recommended 25 per cent reservation of seats in admissions to institutions imparting technical and professional education. See Mathur (2004: 53).

[31] The M. Damodaran Commission was yet another backward classes commission appointed by the Kerala government. The report submitted in 1970 developed several tests to ascertain backwardness, such as educational attainment, income level and possession of assets, capacity to secure adequate number of appointments in public service and caste disability. It recommended 40 per cent reservation for eight different classes such as Ezhavas, Muslims, Nadars, and SC converts to Christianity. See Mathur (2004: 53–55).

The government should take strong action against those who do it' (Verma reproduced in Kananaikil 1986: 28).

Since conversion did not amount to any status mobility or the abolition of untouchability in the adopted religion, as the proposed amendment suggested, the members wondered why the untouchables wished to leave religion: 'what is the attraction in other religions and what are the short comings in our religion which are not in other religions?' (Jain reproduced in Kananaikil 1986: 26). Palpably, a majoritarian anxiety that emerged from the fear of losing out in numbers to otherwise minority religions informed the intervention of many members. The extension of the benefits of SC status to the converts was dreaded on the grounds that it would accentuate the pace of conversion and ultimately result in the numerical decline of Hindus:

> At the time of Independence, the population of Christians was 83 lakhs and now it is 3 to 4 crores. Similarly, the strength of other religious groups increased 10 to 20 times. It is all due to conversion…It cannot be that people go on converting their religion and continue to get concessions (Verma in Kananaikil 1986: 27–28).

In their bid to validate para 3 of the Presidential Order (1950), the members cutting across party affiliations insisted on the absence of caste segregations and therefore untouchability in Islam and Christianity. Since Kurien and other Christian members had cited evidence of the practice of untouchability against converted Christians, the yardstick was changed. Members opposing the Bill demanded substantiation through theological recognition of untouchability as against mere observance in everyday practice. They advised that the identification of SCs from among them would inadvertently amount to imposing casteism from without:

> If we pass this Bill, implicitly we mean that Islam and Christianity have caste. Are we going to do that?... Is it his (Kurien's) intention to get admission from the Parliament of India that Christianity and Islam recognize untouchability? (Parulekar reproduced in Kananaikil 1986: 43).

The inclusion of low-caste Sikhs in the schedule was defended on the premise of an expansionist definition of Hinduism that included Indic

faiths within its fold. Lok Sabha member Parulekar sought support from the constitutional definition as in Article 25,[32] the word Hindu included Sikhs, Buddhists, Jains and, obviously, the Hindus: 'therefore whoever are SCs in Buddhists, Sikhs, Jains and Hindus, they get the benefit of Constitutional provisions' (Parulekar reproduced in Kananaikil 1986: 43). In the understanding of most members therefore, Sikhism was only an offshoot of Hinduism, a sect within the ecumenical Hindu *parivaar* (Shastri reproduced in Kananaikil 1986: 50).

The amendment to the Bill drafted by Kurien failed to impress the government as well. The Minister of State (Home Affairs), Ram Dulari Sinha, recounted the history of the category 'scheduled caste', tracing its origins in the term 'depressed classes'. The emphasis on 'extreme social, educational and economic backwardness' arising out of 'traditional practice of untouchability' was reiterated as the principal criterion for inclusion of caste groups. The absence of untouchability, primarily understood in terms of ritual observance, was the reason for the disqualification of other religions, the minister emphasised. The inclusion of Sikhs came to be explained in terms of its proximity to the Hindu religion: 'As the Sikhs also came within the fold of Hinduism, they were covered along with Hindus in the 1950 order' (Sinha reproduced in Kananaikil 1986: 54–55).

VI
Conclusion

A reading of the deliberations in the Constituent Assembly and in the Indian Parliament and nearly 60 years of case law is instructive. Three sets of anomalies emerge as we deconstruct the promulgation of GO of 1950. The first anomaly has to do with the flouting of the principle of secularism. By excluding all non-Hindus from the ambit and benefits of reservations, it is obvious that the majority Hindu religion is being privileged and given a status superior to other religions. Given the widespread understanding that secularism is a 'guarantor' of freedom of religion and equality of opportunities, it is obvious that this provision works to the unfair and undue advantage of the followers of dominant Hindu religion. To use an Orwellian phrase, it is almost like suggesting that 'all religions are equal but Hinduism is more equal than others'. The second

[32] See footnote 11.

anomaly refers to a sustained inconsistency in the interpretations of courts where the pattern that seems to emerge is an almost obstinate unwillingness to take into account the lived reality of caste disadvantage continuing to plague an individual even upon conversion to supposedly more egalitarian religions such as Islam and Christianity. The absurdity of such an interpretation is underlined and further compounded by the readiness to resume benefits of reservations upon reconversion, thereby endorsing a form of 'gharwapasi'. The third anomaly has to do with the emergence of a supposedly pan-Hindu identity across caste identities and Indic religions. This anomaly seems to work like a background assumption right from the time of the inclusion of the GO of 1950 and in the various subsequent court rulings. This assumption obviously operates to consolidate a Hindu identity.

Is the reliance of the courts (and the law makers as well) on a textual reading of caste a product of an inadvertent cognitive blindness? This could be partially true as colonial categories and orientalist constructs continue to inform much of our comprehension of social processes and institutions. However, the extension of access to SC benefits to low castes of doctrinally casteless religions of 'Indic' origins compels us to seek explanation beyond the supposed inadequacies in the colonial forms of knowledge. Majoritarian anxieties around questions of nationhood, ideas of Hindu consolidation and the common discursive sphere that the two share therefore become the critical foci for our understanding.

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