

The Presidential Order, 1950: An Imposed Marginalisation of the Religious Freedom of Dalit Christians and Dalit Muslims – A Constitutional Study.

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Abstract

The Presidential Order, 1950- An imposed marginalization of the religious freedom of Dalit Christians and Dalit Muslims focuses on the deprivation of the excluded class of India, that are Dalit Christians and Dalit Muslims. In India, they had embraced the new religion to attain dignity from the oppressive caste system in Hinduism and the influence of the belief system. Fortunately, or unfortunately, the self-respect which they were seeking is not found, even in Christianity and Islam. This article elaborately discusses the amendments in the Presidential order and a series of oppressions on the Scheduled Caste-converted Christians and Muslims, deprivation of their embraced brotherhood in the converted religions & their ex-religion for many practical reasons. Furthermore, the article challenges the arbitrariness of the Presidential Order, which is perceived as dictatorial, and the president's authority to decide whether to include or exclude Scheduled Caste classes in the states. The author critically analyses the constitutionality of the Presidential order on its direct attack on the fundamental rights under Articles 14, 15 (1), 15 (4), and 25 of the Indian Constitution. and proposes a new model of amendment for a better division of legitimate power and seats among the Scheduled Castes in the provision of the judicial appointments under Art.124A and 217 in borrowing the word Consultation to the amending model of the Presidential Order, 1950 and also, reveals the error committed in the Scheduled Castes Order, 1936 on the term "Indian Christians" that was in continuance in the Presidential Order as well.

Keywords: Presidential Order, Scheduled Castes, Dalit Christians, Dalit Muslims.

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I. Introduction:

The caste system is a major issue in India, which is predominantly drawn from the Hindu religious belief that discriminates against a human being based on birth, which is inherited with the principle of purity and Impurity. The ones who suffered from this uncertainty were the Scheduled Castes, “from now on,” known as the SCs. Until 1936, the SCs were slurred, treated as untouchables, degraded in their access to religious events, denied education, drinking water, and limited in marriage celebrations, such as not allowing a Dalit groom to ride a horse during his ceremony.

It would take a commentary to discuss the plight of the SCs for whom Dr. B.R Ambedkar stood as a stalwart for them through his eminent social activities by fighting for the liberation of the Dalits, breaking the inhuman Hindu caste system, but had immensely contributed to liberating the Hindus towards shifting them to the way of equality. At last, the only way he believed that the liberation of the SCs is through conversion to another religion. Wherein he saw Hinduism as a weapon against social utility and individual justice¹. The liberation of the SCs would only be alive upon embracing the new religion, according to the ideology of Dr. Ambedkar. He renounced Hinduism and embraced Buddhism in the year 1956 as a step toward his social liberation. After Ambedkar’s conversion to Buddhism, many SCs embraced Buddhism as their religion, and some chose Christianity and Islam as their faith to attain human dignity, but the reality of the conversion to Christianity for the SCs had brought nothing but a double-fold marginalization. They were further deemed as Ex-Untouchables by the Constitution of India².

In continuation, they were removed from the affirmative actions and were given the right to the SCs, who continued to be Hindus. Further, Sikhs and Buddhists were recognized as SCs upon conversion to the said religion. They were included after the fight for enforcement in the constituent assembly in 1956 for Sikhs and for Buddhists in 1991, respectively, with the nomenclature, Neo-Buddhists as SCs in the Presidential Order, in the future known as ‘PO, 1950’. But the other oppressed section is the Dalit Christians and Dalit Muslims, who are still seen as untouchables by the Caste Christians and Muslims, but Dalits are the dreamers of equality. In a brief notion, Dalit means the one who is oppressed, who suffers with the oppressed and fights at their side, from now on known as the DCs and DMs. They have not been included in the PO, 1950, as SCs, given the reason that the background of their scriptures does not have the teaching of the caste system.

Unfortunately, in reality, the scripture is seen as impuissant for the inherited Indian Christians and Muslims towards oppressing their adopted Dalit brotherhoods in the differentiation of caste, which will be dealt with in this paper, also covering the two-fold oppression for DCs and DMs in democratic India. This article focuses on the background of the PO and the myth of homogeneity among SCs and its continuation of oppression by society. Furthermore, the dictatorial role of the president as the sole dictator is a separate subject in this article.

There have been sufficient legal and social studies for the inclusion of SC status for DCs and DMs, but the problem of who decides the very inclusion of the SC is a fundamental matter to be discussed. This article goes ahead and proposes such an amendment model for the PO, 1950.

This study aims to provide the following changes and guiding importance for the states to determine and sub-classify the castes among DCs, to provide adequate affirmative action to the more backward

¹ B.R Ambedkar, *Ambedkar Speaks*, Konark Publications, New Delhi, 2nd edition, 2013, pp. 275-327

² *The Constitution (Scheduled Castes) Order*, 1950, India.

DCs in India, which, according to the author, is only possible by giving the power to the state governments to determine the inclusion and exclusion of the castes.

The state of Tamil Nadu is passing a resolution for the inclusion of DCs³, and on the other hand, the State of Karnataka is seeking the amendment to the Article. 341 (3) to provide power for the State government to sub-classify castes⁴, broadens the issue in upholding social justice. The article presents an amendment model that upholds the balance between the executive and the judiciary, embracing a role as a chariot with two wheels to promote social justice for the excluded class. The model proposes the following key features:

1. Adoption of the term “consultation” as reflected in Art. 124⁵ and Article 217⁶ of the Constitution of India.
2. Recognition of the State Governor’s effective consultation as decisive, based on the report provided by the state.
3. Limiting the role of the President to that of a formal appointing authority, serving primarily as the ceremonial head in the appointment of Supreme Court judges.
4. Granting the state the right to approach the High Court in the event that the Governor refuses to endorse the report.

Further, this article puts a front foot in not only to include the DCs and DMs into the SC list but also proposes to subclassify the castes among DCs.

II. Background of the Presidential Order 1950:

The Presidential Order of 1950, also known as the Scheduled Caste Order, 1950, gives the president the power to set up a commission for the scheduled caste. It provides the president of India the power to specify particular castes, tribes, and races as scheduled castes or to include or exclude a class from the scheduled caste status in the state or territory⁷. The term scheduled caste was first coined in the Government of India Act 1935⁸.

The presidential order of 1950 was first promulgated under the headship of the first president of India, Babu Rajendra Prasad. The said order further states that the parliament, by law, has the power to include or exclude the list of the scheduled castes specified under the provision mentioned above of clause (1);⁹. The order of para 3 states that no person who professes another religion than Hinduism will be deemed to be known as the scheduled caste¹⁰. In 1950, the central government unanimously

³ ‘MK Stalin latest resolution on SC reservation for Dalit Christians’, *Roots Tamil*, 2023, available at https://youtu.be/NujDS_FfucU?si=arUauCnhDoCaMPsa, accessed on 26 June 2025, accessed on 17 April 2025.

⁴ *The Karnataka Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions And Of Appointments or Posts in The Services Under the State) Act*, 2022, India.

⁵ *Constitution of India*, 1950, art 124.

⁶ *Constitution of India*, 1950, art 217.

⁷ *Constitution of India*, 1950, art 341 (1).

⁸ *Government of India Act*, 1935, India, Para 26 Schedule 1.

⁹ *The Constitution (Scheduled Castes) Order, 1950*, India.

¹⁰ *Ibid*

ruled with an influx majority on the view that only the SC Hindus were to be categorized under the ambit of the scheduled caste¹¹. The particular paragraph in the order was the main controversy that has been debated due to its particular specification of not being religion neutral.

During the period of the Crown, the Order for the scheduled caste was referred to as the (Schedule Caste Order, 1936)¹², which was merely religion-neutral, though it did not give SC status to the Buddhists from Bengal, and for the Indian Christians¹³. Due to its practice of egalitarianism.

Later in the order of 1950, Sikhs who were the depressed class members, such as Ramdasi, Kabirpanthi, Mazhabhi, or Sikhligar caste members from the provinces of the Punjab or the Patiala and East Punjab states, were deemed to be the scheduled castes¹⁴. With the great debate in the constituent assembly by Bhupinder Singh Mann¹⁵ and together with the eminent representative of the Sikh community, Sardar Hukum Singh,¹⁶ the Sikh community was included in the scheduled castes list in the modified order of 1950 through the amendment in the year 1956. Previously in October 1951, on the other hand, Giani Kartar Singh, a Sikh leader wrote a letter to the then prime minister Jawaharlal Nehru seeking the same rights on the reservation to the Sikhs as which was given to the Hindu Scheduled castes or otherwise would deny contesting in the very first general elections of the country representing the Congress party. Wherein Nehru responded that while Sikh-scheduled castes would not have a right to contest elections from reserved seats, educational and other facilities would be extended to all the backward classes, such as Hindus, Sikhs, and Christians¹⁷. After the inclusion of Sikhs in the scheduled status, religious reservations were recognized.

In October 1956, Dr. B R Ambedkar, along with his wife Savita and thousands of SC Hindu followers, was called upon to convert to Buddhism from Hinduism. In that event large number of SC Hindus converted to Buddhism to live with dignity without having to face discrimination in their life, which they had faced in Hinduism due to the practice of untouchability and the atrocities against them. With the influx in conversions, an important question arose: Do Scheduled Caste Hindus who convert to Buddhism remain under the Scheduled Caste category? The former answer by the parliament until 1990 was that they were not part of the scheduled caste status since they had embraced Buddhism as their religion.¹⁸

In July 1957, Jawaharlal Nehru sent a letter to the Maha Bodhi Society through his principal private secretary and informed them that the scheduled caste status to the SC Hindu converts to Buddhism would not be provided SC status. Further, the other benefits of backward classes, such as economic help, can be given to the community was told to society.¹⁹ In the year 1990, the neo-Buddhists were

¹¹ Abhinav Chandrachud, *These Seats Are Reserved, Caste, Quotas, And The Constitution Of India*, Penguin Random House, India, 2023, p. 71.

¹² *The Government of India (Scheduled Castes) Order*, 1936, India.

¹³ Ibid

¹⁴ Ibid (n 2)

¹⁵ 'Constituent Assembly Debates', Constitution of India, of India, 1949, available at <https://www.constitutionofindia.net/debates/21-nov-1949/#137244>, accessed on 15 April 2024.

¹⁶ Ibid

¹⁷ S. Gopal, *Selected Works of Jawaharlal Nehru*, Jawaharlal Nehru Memorial Fund Teen Murti House, New Delhi, volume 16, 2nd edition, 1994, pp. 534-535.

¹⁸ Abhinav Chandrachud, *These Seats Are Reserved, Caste, Quotas, And The Constitution Of India*, Penguin Random House, India, 2023, p. 71.

¹⁹ Mushirul Hasan, *Selected Works of Jawaharlal Nehru*, Jawaharlal Nehru Memorial Fund Teen Murti House, New Delhi, volume 38, 2nd edition, 2006, p. 203.

also included in the scheduled caste status through the amendment of the 1956 order by the VP Singh government. Later in 1990, the Neo-Buddhists were given SC status to their community.

Neo Buddhists are those SC Hindus from the Scheduled caste community recognized by the presidential order of 1950, who embraced Buddhism, which was amended in the year 1990.²⁰ In 1958, Nehru wrote a letter to the U.N. Dhebar, president of the Indian National Congress, stating that Harijans who had converted to Christianity would not be given the status of scheduled caste.²¹ In other words, they do not take their caste with them after they embrace other religions, such as Christianity, and other religions that practice no discrimination of caste.

Further, Nehru in 1958 wrote a letter to Thomas Pothacamury,²² Archbishop of Bangalore, that Hindu scheduled castes who converted to Christianity could no longer be considered as scheduled castes because there is no such thing as scheduled caste Christians. Further mentioning that, Christianity had fortunately kept itself away from these caste distinctions.

III. An Enthroned Dictatorship in the democratic Constitution:

The Constitution of India emphasizes the prohibition of discrimination under Article. 15²³ Which states no citizen shall be discriminated against, irrespective of their religion, caste, sex, or place of birth. This presidential order of 1950 under Art.341 emphasizes that no scheduled caste citizen who professed a religion other than Hinduism would be considered SC. It is legitimate enough to understand that after the inclusion of Sikhs in the amendment of 1956²⁴ and the Neo-Buddhists in 1990²⁵. Acceptance of the religious reservations was recognized, but not for those SCs listed under the presidential Order, who have chosen to follow the Path of Christianity and Islam, assuming that the untouchable Hindus will be way forward because of their conversion to these egalitarian religions, and they will be known as Ex-untouchables. As stated above in the background, the parliament was of the view that there are no castes as scheduled castes in Christianity and Islam.

One must understand that in India, no converted community/ group could completely disconnect itself from its pre-conversion belief system overnight²⁶. The order provides only for the president to include or exclude a group as SC, in doing so, with the consultation of the governor. In doing so, by anointing the president to rule by sitting in the Union and enthroning her as the sole dictator, is arbitrary in the laid down democratic Constitution of our country. The president of India alone is competent or authorized to issue an appropriate notification in terms of Art.341 (1), which is exhaustive. The list prepared by the president under Art.341 (1) forms one class of the homogeneous group. Only one list is to be prepared by the president, and if any amendment to it is to be made, the same is to be done by the parliament alone. Even the states have no legislative competence

²⁰ *The (Scheduled Castes) Orders (Amendment) Act*, 1990, India.

²¹ Ibid (n 18)

²² David M. Cheney, Catholic Hierarchy, *Archbishop Thomas Pothacamury*, available at <https://www.catholic-hierarchy.org/bishop/bpath.html>, accessed on 17 April 2025.

²³ Constitution of India, 1950, art. 15(1).

²⁴ Ibid (n 18)

²⁵ Ibid (n 18)

²⁶ Ashok Kumar Mocherla, *Dalit Christians in South India*, Routledge Taylor & Francis Group, London and New York, 1st edition, 2021, p. 6.

to alter the same²⁷. Further, it is not open to the court to question the validity of the president's determination that a particular caste or tribe is a scheduled caste or tribe, and also of the finding of any administrative inquiry that preceded the making of the presidential order²⁸. Caste status in India differs from place to place; one person might have a social disadvantage in his town, but when he migrates to another place, he may not face the same disabilities in the migrated state²⁹. It is worth taking the notion of the Sikh representative Sardar Hukum Singh while arguing for the inclusion of the Sikhs in the amendment of the PO, 1950, in the constituent assembly, as mentioned below³⁰.

“To sum up, our constitution does not give anything substantial or concrete to the individual. It gives solemn promises and pious platitudes. The minorities, particularly Sikhs, have been ignored and completely neglected. the common man has been squeezed out of politics, and the president has been enthroned as the great Moghul to rule from Delhi with enough splendour and grandeur. Any ambitious president would discover a rich find in this constitution to declare himself as a dictator and yet apparently be acting within this constitution. The discontent and dissatisfaction is lure to grow without any economic solution of difficulties of the masses. This shall consequently facilitate the development of administration into a fascist state for which there is enough provision in our constitution.”³¹

As mentioned in the speech above, it is understood that the status of the SCs is decided by the President sitting in the centre. It is said that it would be difficult to provide the right proportion to the required class in the ambit of SCs under the PO, 1950, where these SCs are divided into sub-groups, which we will be discussing further broadly. The scheduled caste cannot be given with the one list, and state that this class comes under the SC status. It would be naïve to say that SC is a homogeneous group³². In the present, the states have been given only the recommendatory power, and the state has no right to include or exclude any group or community. Recently, the 7-judge constitutional bench of the Hon'ble Supreme Court held that the SC cannot be classified as a homogeneous group³³.

Further, the apex court had held that the states may sub-classify the scheduled castes and further ruled it as constitutional.³⁴ In continuation, the Court held that the presidential list had been in diverse groups put into the same groups together under Art.341 of the constitution, as “Scheduled castes” cannot be treated like³⁵. It would be arbitrary to provide affirmative action without sub-classifying the castes because, in the southern parts of India, the castes of the converts stay even after their conversion to the egalitarian society among the Scheduled castes.

It is pertinent to note that there are divisions of High and low inside the section of the Scheduled caste which is predominantly practised in the southern parts of India, such as Pallar, Pariyar, and Arundhathiyar in Tamil Nadu, Mala/Holias, and Madiga in the Andhra Pradesh and Karnataka,

²⁷ *Shree Surat Valsad Jilla K.M.G Parishad v. Union of India*, Supreme Court of India, 2007, AIR 2007 SC 2056

²⁸ *Bhaiya Ram v Anirudh*, Supreme Court of India, 1970, 2SCC 825.

²⁹ *Marri Chandrasekhar Rao vs Dean, Seth G.S. Medical College and Others*, Supreme Court of India, 1990, (1990)3SCC.

³⁰ *Ibid* (n 15)

³¹ *Ibid* (n 15)

³² *Triloki vs The State of J&K*, Supreme Court of India, 1969, AIR 1969 SC 1, paras. 4, 6.

³³ *State of Punjab vs Davinder Singh*, Supreme Court of India, 2024, 2024 INSC 562.

³⁴ *Ibid*.

³⁵ *Ibid*.

also in the Northern Part of Bihar, are some of the instances of SCs being put under the fiction of homogeneous groups.

IV. Ex-untouchable: a myth?

As stated above, the PO, 1950, was not religion-neutral. The parliament and the authorities have assumed that affirmative action could only be provided to the untouchable Hindus, as they have faced the extreme depression of social, educational, and economic backwardness. The status of SC Hindus upon conversion to Christianity was challenged before the Supreme Court of India many times. Still, it kept dismissing the case because there was insufficient evidence to prove their backwardness upon conversion and their theological tenet.³⁶

The theological view and the lived practices are contrary in reality. An SC upon the conversion to Christianity or Islam is removed from the status of SC and is assumed to be forward. This practice is nothing but an imposed marginality on the freedom of religion of DCs and DMs. The practice of dual religion, i.e., Christian in belief and Hindu in the documents, discrimination for the DC and DMs is double-folded marginalization from the outer upper caste Hindus and from their new congregation tenets, which is the civil disability suffered by them even after the embrace to the new religion.

The discrimination of caste is so deeply rooted that it keeps haunting the oppressed even after embracing other religions. The practice of caste, however irrational it may appear to our reason and however repugnant it may appear to our moral and social sense, is so deeply rooted in the Indian people that its mark does not seem to disappear on conversion to a different religion, if it disappears, only to re-appear on re-conversion. The caste mark does not seem to disappear even after some generations after re-conversion³⁷.

It is noted that Christianity was the religion that came with the advent of St. Thomas who came from the Malabar coast of India to preach Christianity. The Thomas Christians were the earliest Christians of India, it is believed to be that St. Thomas one of the 12 disciples of Jesus Christ came to India in the early first century and converted many native upper caste groups to Christianity.³⁸

It was the Syrians who played a vital role in the establishment of Christianity in early India. St. Thomas Christians preserve the manners and modes of life of the Brahmins.³⁹ The retention of such a lifestyle was an emphasis on their Brahmin caste connections and on retaining their higher social status in Kerala society.⁴⁰ The SC Hindus in India converted to Christianity not only because of their religious beliefs, but also because of the oppression they faced in the period of pre-conversion in Hinduism, they were not allowed in the Hindu temple, not permitted to use the general water well which is the primary source for all the people in the town, not allowed to enter the schools and

³⁶ *Punjab Ras vs Mesbaram*, Supreme Court of India, 1965, AIR 1965 SC 1179.

³⁷ *S. Anbalagan v Devarajan*, Supreme Court of India, 1984, (1984) 2SCC112.

³⁸ Zaleski Ladislav Michel, *The Apostle St. Thomas In India: History, Tradition And Legend*, Kodialbail Press, India, 1st edition, 1912.

³⁹ James Forbes, *Oriental Memoirs: A Narrative of Seventeen Years of Residence in India*, General Books Llc, U.S.A, volume 1, 1st edition, 1813, p. 406.

⁴⁰ *Ibid.*

higher education for which they were not educated.⁴¹

The Hindu value system has deeply established a fault line between the Dalits of India and the upper caste Hindus, which in turn led to the perpetual denial of Human dignity in their day-to-day life⁴². So, to argue that one becomes socially forward when one converts to an egalitarian religion is nothing but a myth to understand. The two extents of discrimination of the DCs DMs after their conversion to the egalitarian society, one from their new community, and the second from the society as a whole, for whom they are still the untouchables, will be discussed to support this argument. To draw this, in the southern part of Kerala, with the invasion of the colonial rule in India and the contribution of the then London Mission Society (LM) i.e., the natives of the colonials had contributed to a deep extent in bringing up the social strata of the Asians, Africans and the Scheduled castes in the period of the colonial system.⁴³

The *Shanar* community was known as the lowest caste in the southern part of Kerala, they converted to Christianity and the women from the *Shanar* community started to wear cloth to cover their breasts which were only allowed for women from the Brahmin community and the women of the *Nayars* caste were allowed to wear a cloth to cover their breasts with a cotton cloth, unlike the Brahmin's way of dressing in the fined cloth with half sleeves which is known to be *Mudichi ravakky*.

The cruel part of this system was that the scheduled caste women from the *Shanar* community were not allowed to cover their upper bodies as they were considered untouchable. After embracing Christianity, they started contesting wearing the blouse by covering their upper body, when the colonial authorities announced allowing them to wear it.⁴⁴ Two years later, the same colonial authorities in 1812 announced that these Christian women were allowed to wear the *kuppayam*,⁴⁵ Like the Syrian Christians (who predominantly follow the traits of Brahmins)⁴⁶ and the Muslims, but not the upper cloth, which was usually among the *Nayars*. This action went on to turn into a conflict between the *Shanar* community and the *Nayars* community.

These instances show a prudent form of discrimination for the scheduled castes even after the conversion to the egalitarian society in the pre-independence era itself; only their theological belief system changed, but their identity as a scheduled caste never changed. The backwardness of the community by their surnames and their identity as Dalit is engraved within their following customs, and culture after the post-conversion and discrimination by the upper caste society, which in turn results in a civil disability for the SC turned Indian DCs. This should be seen as a threefold bullet: the primary objective of understanding their backwardness.

Customs:

When the scheduled caste Hindus turned towards the conversion to Christianity, their theological belief system changed, but when it comes to the rituals of the customs and culture of the Dalits, it has been followed in their community since their inheritance has not changed. Conversion by any

⁴¹ Dick Kooiman, *Conversion and Social Equality In India: The London Missionary Society In South Travancore In The 19th Century*, Manohar, India, 1st edition, 1989, p 148.

⁴² Oliver Mendelshon & Vicziany Marika, *The Untouchables; Subordination, Poverty And The State In Modern India*, Cambridge University Press, New Delhi, 1st edition, 1998.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ James Forbes (n 39)

means is no ordinary event or thing. It is complex, often multi-layered, extraordinary, and more importantly, not an overnight rapture.⁴⁷ To take an instance, Dalit Christians in the southern part of Andhra Pradesh follow the custom of “*Areetamma Jathara*”⁴⁸ It was a prominent cultural practice among the backward castes in the late 18th and 19th centuries. They believed that Goddess *Areetamma* would save the crops cultivated during the monsoon from all kinds of natural disasters, it is to be noted that the SC-converted Christians also participated in the gathering irrespective of their religious identity in the present which is way more to understand that the caste identity of the Dalits seems to be more inherent than the newly adopted religion.

Secondly, the culture of “*Manchi Kutumbam*”. “Good family’ differs from one caste group to another based on their various economic, social status, place, and religion. An idea formed by the protestant community in Madras was that the male figure of the household must be a prominent clergyman, literary figure, a high caste convert, or a famous person with a noble job.”⁴⁹

V. Social Backwardness and Internal Oppression:

It is known that the case of status quo for the SC originated Dalit Christians had fallen on the Supreme Court of India many times, the Apex since the former did not deny to approve the plea but had turned up ruling against due to the lack of social backwardness from the petitioners to prove with the same footing of the oppression faced by the Scheduled Castes groups who are under the ambit of PO, 1950⁵⁰ had been absent, while in the present, many petitions are pending before the Supreme Court of India in the present issue of Status quo for the DCs and DMs.

Since the debate on the status quo for DCs and DMs, the primary argument in the parliament is that an SC, upon conversion to an egalitarian society, attains social forwardness. In reality, it goes contradiction to nowhere found upliftment for the SCs but more downtrodden with a twofold oppression for the DCs and DMs. Social backwardness means any person who is socially, educationally, and politically underrepresented or who has not been adequately represented in jobs, politics, or education. The Indian Constitution emphasizes equality before the law for all citizens of India.⁵¹ By protectively discriminating against the unequal from becoming equals is the very idea of the reservation system in India, as Art.14 guarantees factual equality and not formal equality⁵². The so-called egalitarian religions of Christianity and Islam are known to be religions that don’t have a plant root of the caste system in their customs and practices, and are secondly argued as foreign-originated religions, which is the primary argument made by the parliamentarians in India whenever the argument of Status quo for the DCs and DMs arises. The truth of the foreign-origin religion practised in India is nothing, but a methodology of caste and inherent cultural ideology followed by the Indians who converted to these egalitarian societies that gave more importance to their caste identity.

⁴⁷ Ashok Kumar Mocherla (n 26), p. 46.

⁴⁸ Ibid.

⁴⁹ Lionel Caplan, *Class and Culture in Urban India: “Fundamentalism in Christian Community”*, Clarendon Press, England, 1st edition, 1987, p. 122.

⁵⁰ *Soosai vs The Union of India*, Supreme Court of India, 1985, MANU/SC/0045/1985.

⁵¹ Constitution of India, 1950, art.14.

⁵² *Triloki vs The State of J&K*, Supreme Court of India, 1969, AIR 1969 SC 1, paras. 4, 6.

Fortunately, or unfortunately, the colonial authorities, while drafting the scheduled caste order, 1935, had failed to take in a piece of adequate knowledge about the word Indian Christians while inserting it and exempting them from the Scheduled Caste Order, 1935⁵³ Which was the same error followed by the constitutional makers of India during the draft of the Presidential Order, 1950.

The Indian Christians are those Christians who had converted from Hinduism, irrespective of their caste. It is prudently evident that during conversion, their behavioural pattern towards the oppressed has not changed. To make these remarks legitimate, this article puts forth the instance that is being unsung and suffered by the DCs and DMs who are still untouchable for the upper caste Indian Christians and Indian Muslims. Several overtones by the converts in India predominantly didn't allow them to leave their distinct cultural identities, which are uniquely Indian⁵⁴. So, it is important to understand that the view of foreign-originated religion is embraced by the Indians who adopted the new religion with the comfort of the distinct cultural roots of their previous religion.

The Jesuits in India focused on the methods and methodology of evangelization, which is quite disturbing to accept the fact that the prime targets of the Jesuits were the people belonging to the upper caste background. Primarily, this idea was to cover the hold of the upper caste background so that it had an underlying aspect of trickling down to the other sections of the castes in the hierarchy.⁵⁵ As a result, until the end of the 18th century, it was known that the majority of the High caste Hindus converted to Christianity from the *Kamma*, *Reddy*, and *Velama* castes in the southern part of Andhra Pradesh.⁵⁶

It would be naive to argue that the sole basis of the conversion to Christianity or Islam is only the base of oppression of untouchability to the scheduled caste, as the conversion to Christianity was not only embraced by the Scheduled castes but also by the other Hindus from the upper castes. On the other hand, it is also important to understand that motives, motivations, patterns, and reasons behind conversion to Christianity in India were, in fact, and continue to be diverse and contextually Indian. From birth to death, an untouchable is still downtrodden by their former Hindu religious society, and it still sees them as an untouchable. Unfortunately, the newly embraced religion is in no way removed from the civil disability among the DCs and DMs.

To start with, the conversion among SCs to Christianity has not been assured after their conversions. In the act, the catholic churches have been tolerant enough to encourage caste prejudice in the church by dividing two different churches for the higher caste Christians and the untouchable Christians. In Madurai, the de Nobili mission accepted the Idea of having separate churches for High caste converts⁵⁷. Further, even after the death of a Dalit Christian, s/he is not given a place to be buried in a common ground where other high caste converts are buried, but in a different burial ground, dividing a wall between the ex-untouchable and the so-called High caste Christians⁵⁸.

⁵³ Ibid (n 15)

⁵⁴ Robert Erick Frykenberg, *Christians and Missionaries In India: "Cross-Cultural Communication Since 1500"*, William B Eerdmans Publishing Company, Michigan, 1st edition, 2003.

⁵⁵ Ibid, p. 322.

⁵⁶ Ibid.

⁵⁷ Ashok Kumar Mocherla (n 26), p. 46.

⁵⁸ Philip Mathew, 'Q&A With Sr. Robancy Amal Helen, an Activist For Dalit Christians In India', *Global Sisters Report*, 2021, Bengaluru, available at <https://www.globalsistersreport.org/ministry/q-sr-robancy-amal-helen-activist-dalit-christians-india>, accessed on 17 April 2025.

Even in the appointment of bishops subject to the catholic diocese, there has been considerable controversy that no person from the Dalit community had been appointed as bishop in the catholic diocese, the non-Dalit bishops with the idea of their hegemony had not sent to the names of the Dalit priests to the appointment of Bishops had never been suggested to the holy-see (The Pope)⁵⁹.

The DCs who follow and see the parish priests as a model of integrity and holiness themselves are being discriminated against by the hegemony of the upper-caste Christian fathers ruling the diocese. This shows the reality of the lived religion among the pseudo-brotherhood among the Indian Christians. In the southern part of Tamil Nadu in the town KK Pudur, Fr. A Gnanapragasam, a priest in the diocese was threatened and cornered by the caste priests of the church for fighting against the oppression happening for the Dalit Christians inside the church, to calm and show the fear to Dalits with their hegemony upper caste status quo, they wanted to transfer Fr. A.Gnanapragasam from the diocese of KK Pudur⁶⁰. Later, it was known that Fr. A. Gnanapragasam was transferred from the KK Pudur diocese after an amicable meeting by the senate held by the priests came to the conclusion of transferring the priest to another parish and replacing him with another priest from the same community, i.e., from the same scheduled caste origin.⁶¹

The segregation made by the upper caste converted Christians is in a way that brings no human Dignity to a scheduled caste in whichever religion s/he shift to attain human dignity. The Yelumudi, a sign of oppression, is an instance of caste oppression in the Ex-untouchables in their traditional occupation, the barber services were not extended to the Mala and Madigas, who fall under the category of Scheduled castes in the southern part of Andhra Pradesh till the early 1970s. Despite the higher population of the Mangali Caste, the barbers refused to provide service for the Ex-Untouchable. In the logical thinking to differentiate from women, the Ex-untouchable men tie their hair, which is known as the *Yelumudi* in the pointed style, which distinguishes them from the High caste and the Low caste⁶²It conveys the social stigma of the person after embracing the new religion.

The instance to understand the conversion of Christianity among the Scheduled castes should be seen in the aspect of freedom to choose faith, but not social advancement. This social stigma of *Yelumudi* became an identity of marginalization based on the view that the person who carries a *Yelumudi* must be an ex-untouchable. Even the Malas and ex-untouchables were not allowed access to the basic bore wells facility, which was largely driven by the doctrine of Purity and Impurity⁶³.

The scheduled castes originated Dalit Christians understood the oppression haunting them even after their conversion to the new religion, which discriminates against them in the twofold oppression and marginalization by their past religious society and by the new society that shows their pseudo brotherhood. Hence, the Dalits understood that the root of this oppression was the cause of the inherited caste Hierarchy, which brought them a caste consciousness among the DCs. Due to the tolerant act among the catholic dioceses, the DCs felt uncomfortable continuing and

⁵⁹ Franklin Caesar Thomas, 'Caste-Biased Clergy Ruined Dalit Catholics', *Matters India*, 2021, India, available at <https://mattersindia.com/2021/03/caste-biased-clergy-ruined-dalit-catholics-franklin-caesar-thomas/>, accessed on 17 April 2025.

⁶⁰ Mary John.M, letter to Archbishop Rev. Dr. Aruldas James. Memorandum of Dalit Christian Liberation Movement, Tamil Nadu And Pondicherry. 6.10.1994.

⁶¹ Archbishop House, Salient Meeting Points that Emerged from the Priest Senate Meeting, File Note. San Thomas, Madras, 06.03.1995. REF:NO: GEN: 025:03:95.

⁶² Ashok Kumar Mocherla (n 26), p. 6.

⁶³ Louis Dumont, '*Homo Heirarchicus: The Caste System and Its Implications*', University of Chicago Press, 1st edition, 1980.

changed towards the protestant belief system in Christianity, which was a desirable choice for the DCs in India. Later, there was a huge increase in mass conversions by the SC Hindus to Christianity. Around 1,800,000 protestant communicants in India, possibly as many as 70%, are the product of mass movements by the Dalits.⁶⁴

Further, among the scheduled castes, there were feuds among themselves, such as *Mala* and *Madiga* in the southern part of Andhra Pradesh and Karnataka, and further, *Pallar*, *Pariyar*, and *Arundbathiyar* from Tamil Nadu, who belong to the same community, have their stigma of marginalization, wherein one such instance of *Pariyar* and *Pallar* is that they do not inter-dine, and Intermarriage between *Arundbathiyar*⁶⁵. However, the SCs are marginalized from the outer sphere of their community; their community brings in a separate distinction even on the oppressed of the oppressed, blocking themselves in the consciousness of intermarriage and inter-dining, and driving around the Brahminized context of the varna system is no exception for the SCs. Furthermore, the *Malas* and *Madigas* had a differentiation of opinions, which led them to have different churches, where the *Madigas* attended the Baptist church and the *Malas* went to the Lutheran Church⁶⁶. The Scheduled castes and this said section of this community, who have differences among themselves in customs, occupations, and differences between High and low, have been put in the fiction of a Homogeneous group in the presidential order until 2024, before the overruling of the *E.V. Chinniah case*⁶⁷ who were put under a uniform group for several years.

Another oppression that occurred for DCs from the second fold of their old religion of Hinduism can be seen with the hurting incident of DCs in the year 24th December 2007, a darkest plight of the DCs occurred when an anti-march on Christians took place by the Hindutva mob groups such as Bajrang Dal, and VHP on the Dalit and Adivasi Christians to renounce Christianity. To achieve the act, they ransacked the houses of the Adivasi and Pana Christians, where the Dalit Pana Christians comprise 30 percent of the population in Bhramagoan Kandhawal. The incident of damaging the property of Dalit and Adivasi Christians is an incident that occurred in the village of Gojana Digal, Shankara Khol, Tikabali block in the State of Odisha.⁶⁸ This attack on the Dalit Christians is an ever-unknown issue in our country; even if known, it is unsung in the mainstream Indian Media channels. Further, many of the victims who feared in life ran into the forest to safeguard themselves. In the National Tribunal of Kandhamal, a victim narrated the incident⁶⁹ quoted below:

“On 25 August 2008, at about 5.00 pm, shouts could be heard from Shankarakhol town. At about 7.00 pm a mob of rioters, more than 200 persons, came towards our hamlet... Seeing the mob equipped with weapons and hearing their slogans, my terrified family and I ran away to a nearby forest. Then I returned to the corn field near my house to see the misdemeanours of the rioters... they opened my house and looted all household items and valuables; they even carried away my bicycles. Before leaving, they set fire to my house, burning everything from the floor to the roof. Nothing of my home is left except parts of a burnt wall...I made several attempts to

⁶⁴ Jarrell Waskom Pickett, ‘Christians Mass Movements in India: A Study with Recommendations’, The Abingdon Press, 1st edition, 1933, p. 313.

⁶⁵ Ilangoan Rajasekaran, ‘Purity and Honor’, *The Hindu*, India, 2020, available at <https://frontline.thehindu.com/cover-story/article30911129.ece>, accessed on 17 April 2025.

⁶⁶ Ashok Kumar Mocherla (n 26)

⁶⁷ *State of Punjab vs Davinder Singh*, Supreme Court of India, 2024, 2024 INSC 562.

⁶⁸ Dharendra Panda, Shivani Chaudhry & Rizwana Aktharee, ‘Unjust compensation’, *An Assessment of Damage and Loss of Private Property during the Anti-Christian Violence in Kandhamal, India*, volume 3:1, 2013.

⁶⁹ Ibid.

*return home with my family but was told that my family would have to convert to Hinduism and withdraw our complaints to be allowed back into our village.”*⁷⁰

Some of the *Pano* Dalit survivors said their state of depression was due to their children not being allowed into the government-run ashram schools for SCs and STs in the state of Odisha. In contrast, the authorities of the school had informed the parents that Christian Dalits are not entitled to admission into such schools⁷¹. So, it is important to understand the reality that the SC-originated Dalits do not have the freedom to choose their religion despite their deprivation in all spheres by the two-fold brothers of the communities which commutatively meet them even upon the renunciation and, in change of faith.

In terms of the other religion known to be foreign-oriented, i.e., the Islamic religion, it is seen to be corrupted in India. In the fold of Indian Muslims and their oppression towards the converted DM will be discussed in the latter part of the article. One may argue that Islam is an egalitarian religion, but what matters is the reality of the practiced religion as a caste-based livelihood among the DMs. To look into the instance of the lived reality in India is nowhere uplifted nor liberated for the SC-originated turned Muslims upon conversion from their Hindu tenant. It is a known fact that Indian Muslims residing since the millennium had a history of records that they have entered the religion of Islam, converting from their ex-religion of Hinduism, which did not estrange their old customary practices and their inhuman practice of Varna being in their minds like a person's hereditary disease to compare with.

Caste-based discrimination has been a pertinent issue within certain Islamic traditions, notably *Deobandi* and *Barelvi*. The notion of *Ashraf* supremacy, which elevates *Sayyids*, *Sheikhs*, *Mughals*, or *Pathans* to a privileged status, has been used to justify exclusivity in Islamic scholarship and leadership, effectively disenfranchising lower caste Muslims. The main founder of the Deobandi School of thought, Muhammed Quasim Nanautavi, wrote, “God entrusted these four Quam”⁷². Even fatwas have been issued saying that if an upper-caste Muslim girl marries a Lower caste Muslim boy, that marriage is said to be void according to the said text. The famous Indian context local book written by Maulana Ashraf Thanvi gives an enumerated list of which Islamic castes may marry each other.⁷³

The same to the Varna system in Hinduism, which prohibited the lower castes into the Hindu temple, the Indian Muslim scholars emphasized the prohibition of the lower occupational working class from entering the masjid⁷⁴, which went on to intensify that the tanners and fishermen folk were not allowed to enter the Holy Mosque⁷⁵. Further, the higher authorities of the Muslim organization are seen to have an over-representation by the hegemony of the Upper-caste Muslims in the State of Bihar, which specifically showed the higher representation of the *Sayyids* and *Sikhs*. The scholarly work of Ali Anwar⁷⁶ opens the eye to the reality that in the Muslim community, almost all 36 Muslims belonged to the Higher castes out of 39 members of the All India Muslim Personal Law Board (AIMPLB).

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ali Anwar, *Maswat Ki Jung (The Battle For Equality)*, Vani Prakasham, 1st edition, 2001.

⁷³ Shireen Azam, ‘Scheduled Caste Status for Dalit Muslims and Christians: A comprehensive Clarification’, *Economic & Political Weekly*, 2023, p. 15.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ali Anwar (n 72)

The DM is kept away as downtrodden from being a member of (AIMPLB)⁷⁷. The ruling Muslim Classes over the years are said to be known as the High castes in Islam, and the Brahmins who converted to Islam are known to be seen under the ambit of the *Sayyids* section of Islam⁷⁸. In furtherance, the Rajputs who converted to Islam claimed the caste of Pathans, and the Tanner who converted to Islam is still a Tanner⁷⁹. The Infamous Scheduled Castes Order of 1936 and the present Enthroned Presidential Order of 1950 is a live-examples that recognized a few Muslim Castes into the section of Untouchability,⁸⁰ which itself accepts the untouchability among the DMs.

The DM students are made to sit separately in Schools. When a Low-Caste DM dies, s/he is not given a place to be buried as her Upper-caste Muslim community is buried, but in a different ground away from where the High caste Muslim tenant is buried.⁸¹ The backwardness among the DMs after the conversion is not seen to be changed in renouncing their ex-religion, but treats them the same as the civil disability, which keeps reappearing to haunt them due to the continued oppression in both extents. The subdivisions between the Muslims have legible barriers of caste.⁸² In India, the majority of the sanitation jobs are held by the SCs, wherein it is no surprise to see DMs in the Sanitation Jobs.⁸³

In practice, Islam in India reflects a closed circle of brotherhood, where restrictions on intermarriage with Dalit Muslims, prohibitions on their entry into certain mosques, and the dominance of orthodox, lineage-based Muslims create a persistent divide between Dalits of Scheduled Caste origin and traditionally born Muslims, keeping a borderline between the SC Originated DM and the Orthodox-born Muslim, can be understood as a lived reality in the contradiction of the egalitarian holy tenets of the DM. In furtherance, the deprivation of Muslims in India by the majority is that they're perceived as Anti-National, terrorists, for which they're pushed to prove that they're not Anti-National.⁸⁴ The Discrimination for the DMs is not only the discrimination of untouchables by their brotherhood but also has an alleged placard by the Ex-religion appealing the Muslims as a whole, in general, an anti-national sentiment in their lives.

Wherein an untouchable Hindu converted to Christianity is still untouchable while worshipping the god, and is discriminated against by making them sit down on the floor when the others sit on the chair, if questioned on the Caste hegemony imposed on the oppressed DCs by a Dalit Priest, he gets transferred by another from the same community just to cloth the naked reality of their caste hegemony driven by the Brahminist doctrine of purity and impurity, further in continuation the deprivation upon conversion haunts in a way even after the death of DCs and DMs, s/he is kept away with a wall of differentiation of high and low and buried in the other side of the High Caste Burial Ground.

The question of social liberation and Human dignity is still a search for DCs and DMs, who are

⁷⁷ Ali Anwar (n 72)

⁷⁸ Shireen Azam (n 73)

⁷⁹ Shireen Azam (n 73)

⁸⁰ Ibid (n 9)

⁸¹ Trivedi, 'Does Untouchability exist among Muslims', *Economic & Political Weekly*, volume 51, 2016, p. 15.

⁸² Sobin George, Shrinidhi Adiga, 'Caste Among Muslims: Ethnographic Account from a Karnataka Village', *The Institute of Social and Economic Change*, 2017.

⁸³ Shireen Azam (n 73)

⁸⁴ 'Report of the Social, Economic and Educational Status of the Muslim Community', *Cirrus Graphics Pvt. Ltd.*, 2006, India.

untouchable for both the pseudo-brotherhood of Christianity and the closed corporation of Islamists. Out of this, the present government, which is in fear of losing its majority Hindu votes, on the other hand, the secular governments, nor raising their voice by maintaining a strategic silence showcases their fear of losing the majority votes in representing these infamous communities. This is nothing but fracturing the trust of the Dalits by shutting its ears from listening to the plight of the unsung Dalit warriors fighting against the oppression having, no legal sword of protection under Scheduled Castes Atrocities Act, or by any legislative or Union representatives speaking on behalf of the plight of the unrecognized Dalits in the recent years in the parliament. But have been a viewer with a great oratory by claiming, the nowhere found social forwardness among the Dalit Christians and Muslims by deeming them into an imagination known as ex-untouchables.

The judiciary, on the other side, recommends the executive and overrules the judgment that was passed by the apex court on the matter of sub-classification by permitting the same. It overruled the EV Chinniah judgment, but failed to view the dictatorial presidential order, which is placed in Delhi, orders in one place, directing all other 28 states, by deeming a section as scheduled caste, is the irony in this democratic State of India. The judiciary had recommended the sub-classification of SCs by giving the power to the states to determine the most backward among the SCs, wherein the grassroots of the PO itself is anointed solely by the President to determine the backwardness.

VI. Amending the Past, Embracing the Future; PO, 1950 review:

As we have seen, the influence of the caste system on the foreign-origin religion practised by the Indian citizens, whose roots towards casteism can be seen in the practice upon conversion to these egalitarian societies. Wherein we see the oppressors, after conversion, continue the same line of supremacy in oppressing SC-originated DCs and DMs, being continued by the higher caste converts. As observed by the court in the case of *K.C. Vasanth Kumar vs the State of Karnataka*⁸⁵.

*“The caste has penetrated other religious and dissentient Hindu sects to whom the practice of caste should be anathema and today we find Christian Harijans, Christian Madars, Christian Reddys, Christian katnmars, Mujibi Sikhs, etc., etc. in Andhra Pradesh there is a community known as Pinjars or Dudekulas (known in the as ‘Rui Pinjane Wala’) (who are professional cotton beaters) who are Muslims, but are treated in rural society, for all practical purposes, as a Hindu caste, several other instances may be given.”*⁸⁶

Moreover, many commission reports have submitted the plight of Dalit Christians, one among them is the Ranganath Mishra committee report⁸⁷. Given in the year 2007 which emphasized the deletion of Para 3 of the Presidential Order by condemning for its non-nature of religious blindness which further found it as an anti-thesis of the Secular constitution, automatically when a person from the scheduled castes get converted to Christianity, the removal of her caste in the basis of religion seems arbitrary and a violation under Art.15 (2)⁸⁸, (4)⁸⁹ Which promulgates the Discrimination on

⁸⁵ *K.C. Vasanth Kumar vs the State of Karnataka*, Supreme Court of India, 1985, 1985 (Supp) SCC 714, 743.

⁸⁶ Ibid, para 23.

⁸⁷ ‘Report of the National commission for Religious and Linguistic minorities’, *Alakananda Advertisings Pvt. Ltd.*, 1st edition, 2007, p. 140-142.

⁸⁸ *Constitution of India*, 1950, art 15 (2).

⁸⁹ *Constitution of India*, 1950, art 15 (4).

the ground of religion, race, caste, sex, or place of birth, for which this PO order directly hits against the fundamental rights enshrined in the Constitution of India.

The model of this order shows how it keeps away the intervention of the judiciary as a mere spectator in the name of the separation of powers by the back door. Wherein the Supreme Court cannot declare a verdict but a recommendation to the executive on the upliftment of the Scheduled castes, we see the infirmity of the judiciary under the name of judicial restraint⁹⁰, for which the Indian government has disregarded the recommendations given by the Supreme Court, which makes the dreamers of equality in a pursuit of equal and non-dictatorial law that determines the more deprived to achieve their basic human equality.

Further, the presidential order stands as an iconic stand-holder that restrains the SCs from choosing their freedom of faith and religion with a threat to the removal of their guaranteed affirmative action given to them. This, in turn, made many SC-originated Hindus secretly practice their faith and claim themselves as Scheduled Castes in certificates, an utmost oppression for a DC to hide his/her religion and maintain the Ex-religion as Hindu in certificates. An order that discriminates against a person by giving her status as backward, given the practice of her religion, further restricts embracing any faith other than Hinduism, Sikhism, and Buddhism⁹¹. The NDA government ruled states, which is also in the central government, is giving life to arbitrariness in trying to pass the Anti-conversion bill, which doesn't surprise⁹². This action is a gross violation of the absolute right to practice and profess any religion of an individual⁹³. On the other hand, the commission reports and the State legislature of Tamil Nadu passed its resolution for the amendment in the Presidential Order to be neutral by excluding its specific religious nature and providing SC status for Dalit Christians.⁹⁴

The backwardness among the DCs and DMs can be seen in a way where the DCs follow their old customary caste practice even after conversion. On the prism of the events of oppression mentioned above, the DCs and DMs are an instance wherein the varna system is in-rooted, even after the conversions of SCs to Christianity. We see the DCs and generally the SCs divide among themselves into sub-groups and prohibit each other from intermarriage, inter-dining, which are purely driven by the doctrine of purity and impurity, keeping in mind that the Supreme Court together had permitted the sub-classification of the Scheduled caste as constitutional to treat the classes who are not adequately represented.⁹⁵

In furtherance, the sub-classification among the SCs has brought a wide controversy. At the same time, the critics of this judgment had opined in the view that the sub-classification among SCs will bring them again on the same footing, and in furtherance, it is argued that the judgment also fails to determine the test to creamy layer among the SCs as it is left to the executive to decide upon.

⁹⁰ Marc Galanter, 'Competing Equalities Law and The Backward Classes in India', *University of California Press*, 1st edition, 1984, p. 312.

⁹¹ *Constitution of India*, 1990 amendment, Clause (3).

⁹² *The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act*, 2021, Uttar Pradesh, India; also see *Madhya Pradesh Freedom of Religion Act*, 2021, Madhya Pradesh, India.

⁹³ *Constitution of India*, 1950, art. 25.

⁹⁴ PTI, 'Tamil Nadu assembly resolution favours SC benefits to Dalit Christians' *The New Indian Express*, Tamil Nadu 19 April 2023, <https://www.newindianexpress.com/states/tamil-nadu/2023/Apr/19/tamil-naduassemblies-resolution-favours-sc-benefits-to-dalit-christians-2567429.html>. accessed on 18 November 2025.

⁹⁵ *State of Punjab vs Davinder Singh*, Supreme Court of India, 2024, 2024 INSC 562.

The notion of Sub-classification among SCs is a needed requirement. We may see many instances to discuss, wherein the division among the SCs can be seen with the differential between the *Mala* and *Madigas* in the southern part of Andhra Pradesh; the social untouchability among these two communities is that the *Malas* do not inter-dine with the *Madigas*, as they are the lowest category in the Varna system.⁹⁶ The *Malas* and *Madigas*, though both belong to the same community of the scheduled castes they follow the practice of untouchability in the intra-play of the community, wherein for *Mala*, the *Madigas* is an untouchable in a way that they do not even exchange water among themselves, and for both these internal-communities *Thoti* is an untouchable who is again under the purview of scheduled Castes in the state of Andhra Pradesh⁹⁷.

Further, *Dakkali* is one of the sub-groups that is again prohibited from sharing common social norms where the *Madigas* treat them as untouchable in sharing food and water.⁹⁸ a sub-group among the Scheduled castes, the *Gosangi* caste, who are predominant in the southern part of Telangana, it is said that they are the illegitimate descendants of the *Madigas* and had an occupation of begging according to the Vishakapatnam Manual of 1869⁹⁹, wherein the *Gosangi* community keeps away from sharing food, marrying each other from the *Madigas* community, since they have an internal positive hold with the *Mala* community¹⁰⁰. Further, the SCs in the Northern Part of Maharashtra faced a similar nature of untouchability; the *Mang* and *Mahars* were treated as untouchables by the *Chamars*, though they fell under the same tenancy as dictated by the President in the PO, 1950¹⁰¹.

This intra-play among the Scheduled castes is also prevalent in the excluded DCs in the church, as mentioned earlier. It is to understand that untouchability and caste differ from place to place and the Presidential system having its sole power to determine the SCs as a whole in the country is nothing but a failure to uphold the constitutional value of the right to equal treatment for which the backup for the criticism on sub-classification by many is based on the Parliament having its sole control by the President to determine the SCs for the same. This paper has established enough on this PO, 1950 being a vague Order, by making the president a sole dictator. It is evident to see the legible nexus among the SCs themselves who prohibit each other to many degrees of untouchability, wherein it is now time to determine how proper this PO, 1950, had been in the past decades, including or excluding the SCs in the order by the president.

Through this study, a few amendments to this Presidential Order, 1950, have been proposed in this paper ahead, from the instance in the appointment of the Supreme Court Judges under Article 124¹⁰² of the Indian Constitution, to this amendment model of the PO, 1950. The judicial appointments in the present adhere to the independence of the judiciary, wherein the power to appoint judges to the Supreme Court is based on the seniority of the judges in the collegium, wherein the President of India is the 'ceremonial head'¹⁰³. The final recommendation of the CJI in the appointment of judges

⁹⁶ Ilangoan Rajasekaran (n 65)

⁹⁷ Ramchandra Raju, 'One Man Commission of Enquiry into certain demands made by a section of Scheduled Castes for categorisation:1997', *A.P Secretariat*, Hyderabad, 1997, p. 26.

⁹⁸ Ibid.

⁹⁹ Ibid, p. 51.

¹⁰⁰ Ibid, p. 26.

¹⁰¹ Antariksh Jain, 'The Dalit Kitchen, Documenting the Culinary history of Dalits', *BBC News India*, 2024, available at https://www.youtube.com/watch?v=Vcj9_or9UBE&pp=ygUPRGFsaXQgY3VsaW5hcnkg, accessed on April 17 2025.

¹⁰² *Constitution of India*, 1950, art.124.

¹⁰³ D. Rangaswamy, 'Judicial Appointments Process: Then and Now', *SDM Legal Opus*, 2015, p. 128-131.

is said to be the final call.¹⁰⁴ And for the High Courts, by the Chief Justice of the state.¹⁰⁵

In this model, we see the word consultation as the final recommendation by the CJI, which is binding on the executive. In the Embracing of the new amendment in the PO, 1950 it is important to have the role of governor of the states to make sure the number of seats allotted to the SCs who are a par lower than other SCs who are a way higher based on Social, educational and politically forward that can only be possible through a legitimate report given by the respective State Legislatures, where the Governor of the State shall deem fit with her “Effective Consultation” and be passed to the president of India.

As it is, the respective state legislature is bound to prove the Disability of the most backward SCs by determining the test of Social, educational, and political backwardness compared with their other SC bond hoods through empirical evidence and class legislation with intelligible differentia¹⁰⁶. This means the difference between the two classes shall have a reasonable difference. Mere difference or no difference cannot legislate Intelligible Differentia,¹⁰⁷ or any other test that may be deemed fit to be legitimate by the state legislature, as the governor of the state deems fit to prove. The word effective consultation means the same power that the CJI possesses in the appointment of Judges for the Supreme Court of India¹⁰⁸. The final effective consultation given by the Governor shall be in concurrence with the President, in addition to the Particular community as the Most Backward SC in the list of the said state. If the Governor of the state denies recommending the consultation report of the State legislature, with a valid reasonability shall provide a written order signed by his/her office for the reason for invalidating the report.

If the state feels the opinion of the governor is not valid or arbitrary, the State shall be free to challenge it before the Judiciary, and it shall have the power to scrutinize the report's constitutionality. One may argue that the Judiciary is a separate body, and it cannot intervene in the operations of the Executive, as it has its power only when it affects the Basic Structure of the Constitution¹⁰⁹, but it is high time to understand that our constitution strives for equal treatment without any discrimination based on religion, caste, sex, race or place of birth wherein providing a seat of affirmative action should not be given to the uplifted but to the oppressed one and bring her to the same line of social, educational and political forwardness as the uplifted is living in the country, failing to uphold to the Art.14 would also be a direct violation of the right to equality by not protecting the required class and its High time for us to understand that the affirmative actions for the inadequate class as a facet of the basic structure of this constitution, failing to uphold for the upliftment of the inadequate class will turn the morality enshrined in the constitution as an impotent.

This model will uphold the balance between the Executive and the Judiciary by not having a tussle of the greatest power hand game, but striving for the constitutional morality of the country. At last, the constitution shall have the primacy of equality and fraternity. Secondly, the inclusion of Dalit Christians and Dalit Muslims shall be inserted in part 3 of the Order¹¹⁰ and uphold the neutrality

¹⁰⁴ *Supreme Court Advocates on Record vs The Union of India*, 1993 (4) SCC 441.

¹⁰⁵ *The Constitution of India*, 1950, India, art. 217.

¹⁰⁶ *State of West Bengal vs Ali Anwar Sarkar*, Supreme Court of India, 1952, MANU/SC/0033/1952.

¹⁰⁷ *Deepak Sibal vs The Punjab University*, Supreme Court of India, 1989, 1989.SCC 145.

¹⁰⁸ *Supreme Court Advocates on Record vs The Union of India*, Supreme Court of India, 1993, 1993 (4) SCC 441.

¹⁰⁹ *Kesavananda Bharati Sripadagalvaru vs The State of Kerala*, Supreme Court of India, 1973, MANU/SC/0445/1973.

¹¹⁰ *Ibid* (n 9)

in religion by providing SC status to the Citizens of India who were Ex-SCs by not prohibiting affirmative action to the SCs based on Religion and following the fundamental right under Article 15 (1) of the Constitution of India¹¹¹ that is being discriminated against till today, while the Supreme Court on the other side is withholding by adding new facets of equality under Art.14¹¹² by failing to hear the plight of the DCs and DMs who have been crying before the gates of the apex court for 33 years. Treating the DCs and DMs as separate groups would be a vague criterion again, but it has to be treated among its sub-community, which the DCs and DMs had belonged to the past religion, as there are instances among the DCs who form a group of *Mala* and *Madiga* that have to be seen specifically, where the DCs should be recognized as SCs because they ought to be SCs. Treating them as a separate homogenous group may put them again in a fiction of Homogeneity. To bring more legitimacy, the need for a caste census is a required criterion, without which determining the Adequacy of the Class and their Social, educational, and political backwardness would not be proper to determine.

VII. Conclusion:

In the deprivation of the DCs and DMs, their plight has never been heard and was said to be a politically motivated group, people of green pastures and the forward, one can never see forwardness in their life when s/he has never attained social liberation. Dr. B.R Ambedkar said, “Until one renounces Hinduism, he shall not have social liberation.”¹¹³ Wherein we see today, a Scheduled Caste is an untouchable even if s/he converts to Christianity or Islam, who in the society is treated as untouchable and not allowed to sit in the chairs of the church, which eventually turned into caste consciousness among the DCs, even after death, s/he is allotted a separate burial ground. Hegemony of the caste priests in not allowing the Dalit Priest to become the bishop of the Diocese, further the Islam, following its Closed brotherhood, had kept the DMs away from their brothers.

The Status of a Scheduled Caste is that whatever religion they choose, the evil of Brahmanism keeps haunting them based on birth, not on worth. Though the draconian Manusmriti had been burnt and treated as an oppressive structure to Human Dignity, the inherited inhumane values of the varna are imbibed in the minds of the oppressing class, where an SC is untouchable for whatever religion s/he shifts to. On the other hand, is the error in the law in treating the ex-SCs and their backwardness on the sole base of religion by deeming the conversion to the egalitarian religion as forwardness which doesn't have an empirical data to prove, i.e. a vessel that makes noise without water in it, addition with a threat to the removal of their affirmative action on the change of religion is an open declaration which the Union itself is oppressive in imposing marginality for the DCs and DMs.

What shall be the belief in liberation for the SCs when the Democratic Constitution itself lays the oppression on the SC converted ex-untouchables as a forward class on the criteria of religion? Today, we are in stature where the Supreme Court of India measures social forwardness on an economic basis¹¹⁴. If so, was the economic forwardness a basis for social upliftment, a Dalit President of India shouldn't have been denied access inside the Hindu temple.

¹¹¹ *Constitution of India*, 1950, art. 15(1).

¹¹² *Constitution of India*, 1950, art. 14.

¹¹³ GM. Tartakov, 'Art and Identity: The Rise of a New Buddhist Imagery', *Art Journal*, 1990, pp. 409-415.

¹¹⁴ *State of Punjab vs Davinder Singh*, Supreme Court of India, 2024, 2024 INSC 562.

To prove the backwardness among the SCs is to prove the social, educational, and political backwardness, for reservation, but the Constitutional Bench upheld the recent 103rd amendment brought by the present Union government, which states that the one who doesn't own a piece of land, for say 5 acres of agricultural land or a land of more than 1000.sq ft above, those who do not have a salary above the par of Rupees 8,00,000 can be identified as an "Economically Weaker Section". Wherein reservation for public employment need not be established by the social backwardness of a person, on the other hand, its present criteria to provide a reservation seat for the SCs and STs further exclude the SCs and STs from the EWS¹¹⁵.

The idea of giving affirmative action once was to make sure that there would be equal protection of law to the SCs & STs due to their extreme social and educational backwardness, today we see the purpose of the reservation system going its hats off. This EWS system is nothing but an upper-caste reservation system. Given the adequacy, reservations are to be provided, but in the upper-caste reservation system, the economic base alone is sufficient to allow the EWS candidates. Once Justice Chinnappa Reddy mentioned that providing reservation in consideration of the Poor Brahmin is grotesque to even be considered¹¹⁶. According to the Supreme Court's recommendation that the creamy layer of SCs be removed on the other side, it is contrary to upholding its judgment before *Davinder Singh's case*¹¹⁷.

On the notion of running to exclude the creamy layer in SCs and STs on a socio-economic basis, it is to be understood that through dictatorial Presidential Order, a group of converted Dalits to say in the constitutional terms; the fiction of Ex-untouchables have been facing oppression in the present, have been excluded from the ambit of SC with nowhere found social forwardness in the embraced egalitarian religion, who is still suffering from untouchability by their adopted brotherhood. Wherein the Supreme Court ruling by deeming the economic reservation for the already uplifted creamy layer as constitutional, is now recommending that the executive determine the creamy layer of an SC based on socioeconomic parameters.¹¹⁸ The most oppressed citizens remain on the fringes, denied justice through silence by forming and rejecting the commission reports.

The exclusion of DCs and DMs from SC quotas coupled with economic reservations favouring the affluent creamy layer through EWS perpetuates a systematic injustice that is nothing but an anomaly in the basic idea of the reservation system, it's time that we include the required excluded class through affirmative actions for the oppressed in the society but not the uplifted creamy layer, though ample commission report had been submitted such as the Ranganath Mishra committee report, the parliament's statement on the report was said to be gross and politicized and it kept it shunned away. The same was the statements on the reports of the Sachar committee, which emphasized the identity of certain Muslim groups as Dalits.

Above all, the Union had again constituted a commission in the year 2022 under the Headmanship of Former Chief Justice K.G. Balakrishnan and three others¹¹⁹ to survey the need for the SC status for the DCs and DMs which impliedly gives the answer of rejection to the Dalits by the union

¹¹⁵ Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training, Government of India, No.36039/1/2019-Estt. (Res.-II), 2019.

¹¹⁶ *KC Vasanth Kumar vs The State of Karnataka*, Supreme Court of India, 1985, 1985 (Supp) SCC 714, p. 743.

¹¹⁷ *Janbit Abhiyan vs The Union of India*, Supreme Court of India, 2021, (2021) 11 SCC 78.

¹¹⁸ *State of Punjab vs Davinder Singh*, Supreme Court of India, 2024, 2024 INSC 562.

¹¹⁹ Ministry of Social Justice and Empowerment, India, SO 4742 (E), (Notified on 06 October 2022). <https://socialjustice.gov.in/public/ckeditor/upload/72301683023078.pdf> accessed on 18 November 2025.

members themselves, the recent speech by the prime minister Narendra Modi himself to the public had rightfully conveyed that the status quo of SC status won't be passed to the Muslim until he is alive, is a live set reality that the Union government has stood strong for years and with no doubt will reject the status quo for the DCs and DMs. Hence, it is only possible for the Judiciary to declare Part 3 of the Presidential Order as an Anti-thesis to fundamental rights and consider it as a direct attack on the principles of the constitution, which should be revisited through a proper amendment by making sure the sole dictate of the president shall not dilute in the sharing of adequate seats to the inadequate class and uphold the morality of the constitution, as it is not a natural sentiment but needed to be cultivated, we must understand our people have yet to learn it¹²⁰.



¹²⁰ Ibid (n 15)